

WP(C) 44/2005

BEFORE

THE HON'BLE MR. JUSTICE H. N. SARMA

( 1 ) This batch of writ petition contains similar facts and has been filed praying for similar relief. Accordingly, these are disposed analogously.

( 2 ) I have heard Mr. A. Dasgupta, learned counsel for the petitioners and Mr. B. L. Singh, learned Sr. Govt. Advocate on behalf of the respondents.

( 3 ) The relevant facts necessary for disposal of this writ petitions are summarized bellow: the petitioner in WP (C) No. 44 (AP)2005 is serving as Draftsman Gr. n, the petitioners in WP (C) No. 45 (AP) 2005 are serving as W/c Wireman and UD A respectively, whereas the petitioners WP (C) No. 46 (AP) 2005 are serving as Draftsman Gr. III and Sr. Mechanic respectively under the respondents/state. The Govt. of Arunachal Pradesh having published an advertisement on 06. 02. 97 for appointment to the post of jr. Engineers in (1) Electrical, (2) Mechanical, (3) Electronics and (4) Computer, which falls under the Group 'c' posts, in the Department of power, the petitioners having possessed necessary qualifications as per the said advertisement, duly applied for the same. After holding the necessary selection test, a select list was published selecting 65 (sixty five) numbers of candidates in different branches as follows:

A. Electrical: 40 candidates vide memo No. SE/ apec-I/e/s-6 (C)/44/96-97, dated 29. 05. 97. B. Mechanical: 18 candidates vide memo No. SE/apec-I/e/s-6 (C)/44/95-97/930-35, dated 20. 05. 97. C. Electronics: 4 candidates vide memo No. SE/ apec-I. E. S-6 (C)/44/95-97/936-41, dated 20. 05. 97. D. Computer: 3 candidates vide memo No. SE/ apec-I/e/s-6 (C)/44/96-97/921-25, dated 20. 05. 97. Total candidates = 65 (Sixty five) Nos.

( 4 ) The petitioners in WP (C) No. 44 (AP)2005 and WP (C) No. 45 (AP) 2005 applied for the post in Electrical Branch and their names appeared in the said select list at SI. No. 30, 40 and 39 respectively, whereas the names of the petitioners in WP (C) No. 46 (AP) 2005 appeared at SI. No. 18 and 17 respectively in the Mechanical Branch. On the basis of the aforesaid selection list, the respondent authorities appointed 35 selected persons covering all the Branches against 44 vacancies of Junior Engineers, which were lying vacant as on 06. 10. 97. Out of those 35 posts, 22 were appointed in Electrical, 8 were appointed in Mechanical, 2 were appointed in Computer and 3 were appointed in electronics branch. The respondent authorities having appointed certain persons outside the select list on contract basis after expiry of the select list against which one Shri Duter Loyi, whose name appeared at SI. No. 10 (Mechanical) in this select list, approached this court challenging the said practice in WP (C) No. 898 (AP) 2001, at which such appointment on contract basis were terminated by the department. The said termination orders were again challenged by some of the effected persons in WP (C) No. 253 to 255 (AP)2003, WP (C) No. 934 (AP) 2001 and in WP (C) No. 945 (AP) 2001, and all these petitions were finally disposed of on 15. 12. 04. In the said judgment dated 15.12. 04 it was inter alia observed that as the person whose name appeared at SI. No. 27 (Electrical) of the aforesaid select list was appointed, there is no valid justification for not appointing the person whose name appeared at SI. No. 25. Similar observation was also made in respect of one Aju Khonjuju, whose name appeared above Sri Duter Loyi in the select list. In the end of the aforesaid judgment it was directed by the Court that the State respondents shall not make any further appointment on the basis of the aforesaid list without leave of the court. On the basis of the aforesaid facts, alleging discrimination in the matter of appointment of candidates from the select list, the petitioners in this batch of writ petitions have filed these writ petitions in the year 2005 praying for a direction for their appointment in the post of Junior Engineers like those of the persons above.

( 5 ) An affidavit in opposition has been filed on behalf of the State respondents.

ts denying the allegations made by the petitioners. In the said affidavit it has been inter alia stated that as per Rule 17 of the \arunachal Pradesh power Engineering Service Rules, 1993\ (hereinafter as the Rule of 1993), the validity of the select list is for one year and accordingly, the validity of the present select list expired on 19. 05. 98. It is further stated that after expiry of the validity of the select list, 4 persons namely. Sri R. K. Tasse, Sri Mito Kamsi, Sri Aju Khonjuju and Sri techi Tajo were appointed on contract basis purely as temporary arrangement against short term vacancies and their appointments were not considered on the basis of their inclusion in the select list as the same was already ex-pired and the services of those persons have already been discontinued. However, in view of the directions dated 15. 12. 04 passed in wp (C) No. 934 (AP) 2001 and others, issued by this Court, the said four persons were appointed. Thereafter no other person is appointed as Junior Engineer from the select list, the validity of which was expired on 19. 05. 98. It has also been stated that a fresh advertisement has been made vide No. SE/apec-I cood (A) 19/04. 05/6718-60 dated 17. 02. 05, which was published in the \echo of Arunachal\ in its issue dated 20. 02. 05, and in \the Arunachal Times \in its issue dated 22. 02. 05 for filling up the existing vacant posts of Junior Engineers in the Department. The respondents denied that the petitioners have: any enforceable right for being appointed as junior Engineer on the basis of a select list. validity of which has been expired on 19. 05. 98.

( 6 ) Mr. Dasgupta has submitted that the petitioners were selected by a due process of selection and similarly situated selected persons having been appointed on the basis of the order passed by this High Court, the petitioners are also entitled to get the similar directions. Mr. B. L. Singh, the learned Sr. Govt. Advocate on the other hand submits that the select in which the names of the petitioners exists, having been expired on 19. 05. 98 and the Department having decided to fill up the posts by making fresh recruitment for which necessary advertisement has already been made and the selection process as per the said advertisement being in process, no direction for appointment to the petitioners on the basis of the expired select list be made. It has further been submitted that those 4 persons, named above had to be appointed only with compliance of the directions passed by this High Court in WP (C) No. 934 (AP) 2001 and others dated 15. 12. 04.

( 7 ) I have considered the rival submissions made by the parties and also perused the connected records including the judgment passed in WP (C) No. 934 (AP) 2001 and others, on 15. 12. 04. The basic question that falls for determination in the instant petitions is that, whether after expiry of the select list about 6 years ago, this Court can pass a direction directing the authorities to appoint the petitioners from the said select list that to, when the next recruitment is in process and whether the petitioners are entitled to base their prayer on the basis of appointment of some candidates appointed after expiry of the select list?

( 8 ) The selection, appointment and other conditions of services of the Junior Engineers in Power Department is regulated by a set of rules known as the \arunachal Pradesh power Engineering Service Rules, 1993\. The said Rules of 1993 is framed under Art. 309 of the Constitution of India and published vide notification No. SPWD 427/90-91/pt, dated 13. 10. 93. Rule 12 of the Rules of 1993 provides the provisions regarding the recruitment to the post of Junior Engineers. As per Rule 12 (2) of the Rules of 1993, recruitment to each of the Branches i. e. Electrical, Mechanical and Computer tele Communication/electrical shall be made in case of direct recruitment on the basis of a written examination and viva-voce test, both conducted by the commission as per syllabus mentioned in schedule II of the Rules of 1993. Rule 12 (4) inter alia provides that in case of the post to be filled up by direct recruitment, the commission shall prepare a panel/list of qualified candidates in order of their merit and the panel would contain the names equal to the number of vacancies as notified to the Commissioner by the appo

appointing authority. Rule 17 of the Rules of 1993 provides that the select list or the penal, as the case may be, ordinarily be in force for a period of one year until it is rescinded or revised. Rule 20 of the same rules inter alia provides that the inclusion of a candidate's name in the select list prepared under Rule 12 (4) shall confer no right to appointment unless the Government or the Appointing Authority, as the case may be, is satisfied after such enquiry as it may consider necessary that the candidate is suitable in all respect for appointment to the service and an actual offer of appointment is made to the candidate. Under the Proviso 2 of Rule 12, when a candidate selected under Rule 12 (4) is not appointed to the service, the reason for the same shall be recorded in writing by the appointing authority.

( 9 ) The learned counsel for the petitioner has admitted that Rule 12 (4) having provided that the authority is required to prepare the penal/list containing the names equal to the number of the vacancies as notified to the commission and in the instant case, the appointing authority having prepared three different select lists containing the names of 65 candidates, as per the said Rule, it should be presumed that there exists 65 vacancies to fill up.

( 10 ) In the advertisement dated 06. 02. 97 itself disclosed that, there were seven (7) vacancies of Junior Engineers in different categories as follows:

1. Electrical 4 Nos. 2. Mechanical: 1 No. 3. Electronics and Tele communication: 1 no. 4. Computer: 1 No.

Total candidates = 7 (Seven) Nos. On being called for whether any further vacancy arose from the date of advertisement to the date of publication of select list i. e. from (06. 02. 97 to 20. 05. 97, the respondent authorities intimidated that during this period 28 vacancies of Junior Engineers arose. The said 35 vacancies were filled up from amongst candidates so far names appeared in the respective select list before its expiry and the last batch of appointment was made on 15. 04. 98. On behalf of the respondents it is contended that thereafter no further appointment was made from the said select list by the appointing authority except those persons, who were directed to be appointed by this high Court as mentioned herein above. It is further contended by the respondents that the select list has been expired on 19. 05. 98 and for that reason the appointing authority has refrained from making further appointment there from to any person, and the claim of the petitioners to direct the appointing authority for offering appointment to the petitioners in the existing vacancies from the expired select list is not sustainable.

( 11 ) In the aforesaid factual background, it is now required to be seen whether, the petitioners have an existing right of appointment from the said select list dated 20. 05. 97 and as to whether such appointment can be claimed in the existing vacancies of Junior engineers or any vacancies that arose after publication of the select list ?

( 12 ) The petitioners were not offered appointment during the continuance of the select list as their names were far below i. e. in view of their downward position in the select list. At the time of advertisement there were only 7 vacancies of Junior Engineers and till the publication of the select list 28 more vacancies arose raising the vacancies to 35. The select list is expired on 19. 05. 98 and the same has not been extended and it is the categorical case of the respondents that, in view of the expiry of the select list, the petitioner were not offered the appointment and all the 35 vacancies were filled up before expiry of the select list.

( 13 ) Mere inclusion of the name of a candidate in a select list does not confer any right of appointment under Rule 20 of the Statutory Rules of 1993 holding the field. Similar question came up for consideration before the apex Court in the case of \State of U. P. : and others Vs. Harish Chandra and others\ reported

in \ (1996) 9 SCC 309\ . At paragraph 10 of the said judgment, the Apex court held as follows:

\10. Notwithstanding the aforesaid Statutory rule and without applying the mind to the afore said Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the writ petitioners. Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4. 4. 1987 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist. In the course of hearing the learned counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuant to the direction of the court some appointments have been made but in some other cases it might have been done by the appointing authority. Even though we are persuaded to accept the submission of the learned counsel for the respondents that on some occasions appointments have been made by the appointing authority from a select list even after the expiry of one year from the date of selection but such an illegal action of the appointing authority does not confer a right on an applicant to be enforced by a court under article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the appointing authority have been made contrary to the provisions of the statutory Rules for some unknown reason and we deprecate the practice adopted by the appointing authority in making such appointments contrary to the Statutory Rules. But at the same time it is difficult for us to sustain the direction given by the High Court since, admittedly, the life of the select list prepared on 4. 4. 1987 had expired long since the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not. \

( 14 ) In the case of \Nagar Mahapalika vs. Vinod Kumar Srivastava \, reported in (1987) 1 SCC 602, it was observed by the apex Court that, \the reason underlying the limitation of the period of life of waiting list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the posts in the succeeding years on being selected for appointment\ . Again in the case of \Babita Prasad V. State of Bihar\, reported in \1993 supp (3) SCC 268\ the Apex Court held that \though the life of the panel was not prescribed, it was directed to be confined to a reasonable time. A long waiting list cannot be kept in infinitum in view of the principle infinitum injure reprobatur' . In the case of

\State of Bihar V. Secretariat Asstt. Successful Examinees' Union 1986\ reported in \ (1994) 1 SCC 126\ the Apex court further held that \a person having been s

elected, does not, on account of being empanelled alone, acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for purposes of appointment and by itself does not amount to selection or creating right to be appointed unless relevant rules state to the contrary\.

( 15 ) In the instant case, admittedly, there were 7 existing vacancies at the time of advertisement and 28 more such vacancies arose during the selection process. It is not understood as to why the appointing authority prepared a unduly long list of 65 candidates. En dealing with such a question, the Apex court in the case of \hoshiaar Singh Vs. State of Haryana\ reported in 1993 Supp (3)SCC 377, inter alia held that, 'since the requisition was for eight posts of Inspector of police, the Board was required to send its recommendations for eight posts only. The board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only', hi the case of \ashok Kumar Vs. Chairman, Banking Service Recruitment board\, and reported in (1996) 1 SC 283 at Para 5, the Apex Court held as follows:

\5. Article 14 read with Article 16 ( 1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the noticed vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16 ( 1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impeached, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and expected vacancies and the Recruitment Boards should get advertisement published and recruitment should strictly be made by the respective boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection . \

Similar point having fallen for consideration, the Apex Court in the case of \surinder singh and others Vs. State of Punjab and another\, reported in (1997) 8 SC 488 held at Para 16 as follows: \it is in no uncertain words that this Court has held that, it would be an improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision has been taken. Exercise of such power has to be tested on the touchstone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised'. Similar view was also expressed by the apex Court in the case of \prem Singh V. Haryana State Electricity Board \ reported in (1996) 4 SCC 319.

( 16 ) In the instant case, as stated hereinabove and as disclosed from the records, the initial advertisement was for 7 vacancies of Junior Engineers as per the advertisement dated 06. 02. 97. During the process of selection 28 more posts fell vacant and all the 35 vacancies of the Junior engineers were filled up before expiry of the select list i. e. before 19. 05. 98 and the appointment of the last batch of 6 candidates were made on 15. 04. 98, thereby exhausting all the existing and anticipated vacancies. After expiry of the select list, the Government has not extended the same nor intended to act thereupon. In view of the provisions contained in the statutory Rules of 1993 and as per the ratio of various decisions of the Apex Court above, the petitioners are not entitled to claim for similar directions as given by this Court on 15. 12. 04 in wp (C) No. 934 (AP) 2001 and other batch of writ petitions.

( 17 ) There is yet another aspect of the matter. The appointing authority has in the meantime taken necessary steps for filling up the existing vacancies by way of fresh recruitment and has started the recruitment process by making necessary advertisement. It is submitted at the Bar that the present petitioners have also applied in pursuance to the aforesaid advertisement. If at this stage the petitioners are directed to be appointed on the basis of the select list expired six years ago, it will adversely affect the right of the candidates who are expecting appointment in term of the current requirement process. The select list prepared on 20. 05. 97 cannot be made a perennial source of recruitment for all the existing posts till the list is exhausted. In view of the aforesaid discussions and following the ratio of the various decisions of the Apex Court, I do not find that the petitioners have got any existing right to get a writ of mandamus to be issued against the respondent authorities, directing the petitioners to appoint in the existing posts of Junior engineers as per the aforesaid expired select list.

( 18 ) Consequently, this writ petitions stand dismissed, making however no order as to cost.