WP(C) 1035/2008
BEFORE
HON'BLE MR JUSTICE B.K. SHARMA

JUDGEMENT AND ORDER

1. All the writ petitions pertaining to the claim of the petitioners for ap pointment to Grade-III and IV posts under the respondent Corporation, have been heard analogously and are being disposed of by this common judgment and order.

2. While in the first two writ petitions the petitioners are aspirants for Grade-III posts of Assistants, in the third writ petition, the petitioner aspire s for appointment against Grade-IV post of Watchman.

3. Pursuant to the employment notice dated 06.12.93 inviting applications f or the aforesaid posts, the petitioners offered their candidature. After the se lection, they having been empanelled, were awaiting for appointment. Their empa nelment was in January, 1996. At that point of time Annexure-I Circular letter dated 25.02.93nissued by the Central Office of respondent Corporation on the sub ject of Recruitment (Class-III and IV Staff) Instructions, 1993 was in operati on. As per the said instructions, the candidates in order of rank in the penal will be offered appointment against immediately available permanent vacancies an d the remaining persons in the penal will be absorbed in the regular service as and when vacancies arise. Thus as per the said instructions, once a penal is pr epared, same is to be kept alive till the entire penal gets exhausted.

4. As noted above, the petitioners were empanelled and on the basis of the aforesaid instructions dated 25.02.93, it was their expectation that they would be appointed in due course against the future vacancies. Be it stated here that at the first instance their positions in the penal did not permit their appoint ment against the existing vacancies.

5. The petitioners are aggrieved by the notice dated 26.11.07 by which it w s communicated that the competent authority had scrapped the penal and the penal ceased to exist for any purpose with immediate effect. The petitioners have as sailed the legality and validity of the notice in view of the aforesaid instruct ion of 1993.

6. The respondents have filed their counter affidavit in which it has been contended that cancellation of the select penal is not unjustified. It has been stated that the instructions of 1993 were issued by the Chairman of the Corpora tion on 25.02.93 in exercise of power under Regulation 4 of the Life Insurance C orporation of India (Staff) Regulations, 1960. It has been stated that the Chai rman of the Corporation in exercise of the power under Regulation 4 of the Regul ations, has amended the provision of instructions and such amendments were commu nicated to all Zonal Managers and Sr. Divisional Managers. As per the amended c lause, the validity of a select list would be for a maximum period of two years and the candidates in the select list would be appointed against available posts as per their merit positions and those not appointed, would be considered for a ppointment against the posts, if available, for a maximum period of two years.

7. While Mr. P.K. Roy, learned counsel for the petitioners has contended th at the amendments, even if any, in absence of any indication of retrospective op eration, would operate prospectively and thus, the vested right accrued to the p etitioners for being appointed from the select list o f1996 cannot be set at nau ght. On the otherhand, Mr. N. Deka, learned counsel for the respondent Corporat ion has submitted that with the introduction of the amendment to the amendment o

f 1993, the select penal which was prepared in 1996 has ceased to have any effec t. He also submitted that the petitioners, merely because their names were incl uded in the select list prepared in 1996, do not have any indefeasible right for appointment.

8. While Mr. P.K. Roy, learned counsel for the has placed reliance on the d ecisions of the Apex Court in P. Mahendran vs. State of Karnataka reported in AI R 1990 SC 405 and Sonia vs. Oriental Insurance Company reported in (2007) 10 SCC 627, Mr. N. Deka, learned counsel for the respondent Corporation placed relianc e on the decision of the Apex Court in Vinodan T. vs. University of Calicut repo rted in (2002) 4 SCC 726.

9. The issue to be decided is as to whether the respondent Corporation was justified in scrapping the select list of 1996 by bringing the amendment to the instructions of 1993 in 2007. As indicated above, it is the case of the petitio ners that since they were empanelled in the year 1996 and as per the instruction 1993, the select list is to remain valid till its exhaustion by way of appointm ent of future vacancies, the select list could not have been scrapped by bringin g an amendment to the 1993 Instructions. On the other hand, it is the case of th e respondent Corporation that the amendment having been brought to the instructi on of 1993 limiting the validity of the select penal for two years, the select l ist of 1996 ceased to have its validity with the introduction of the amendment.

10. The petitioners were empanelled against Grade-III and IV posts way back in 1996. They could not be appointed against immediate and/or existing vacancie s. Not only that, they also could not be appointed over the last twelve years a gainst future vacancies. There is also no guarantee that they would be appointe d against future vacancies by operating the select list of 1996.

11. It is not the case of violation of any statutory rules. The circular let ter dated 25.02.93 was issued as an executive instruction. Executive instruction was modified and/or amended and the same was issued on 23.11.07. with the intro duction of the amendment on 23.11.07, the particular clause(s) in the exeucitve instruction of 1993 ceased to operate which provided that the select list would remain valid till the same was exhausted. As has been held by the Apex Court in J & K Public Service Commission vs. Dr. Narinder Mohan reported in AIR 1994 SC 1 408 pegging the recruitment in chain system would deprive the eligible candidate s as on date of inviting applications for recruitment offending Article 14 and 1 6 of the Constitution of India.

12. In State of M.P. and others vs. Raghuveer Singh Yadav and others reporte d in (1994) 6 SCC 151, while holding that a candidate passing the prescribed ex amination does not acquire any vested right for appointment observed thus;

5. & It is settled law that the State has got power to prescribe qualificat ion for recruitment. Here is a case that pursuant to amended Rules, the Governme nt has withdrawn the earlier notification and wants to proceed with the recruitm ent afresh. It is not a case of any accrued right. The candidates who had appear ed for the examination and passed the written examination had only legitimate ex pectation to be considered of their claims according to the rules then in vague. The amended Rules have only prospective operation. The Government is entitled t o conduct selection in accordance with the changed rules and make final recruitm ent. Obviously no candidate acquired any vested right against the State. Therefo re, the State is entitled to withdraw the notification by which it had previousl y notified recruitment and to issue fresh notification in that regard on the bas is of the amended Rules.

13. The system of preparing a penal both for existing and future vacancies a nd keeping the same alive for years together and/or till the penal is exhausted would be against the normal procedure of keeping the penal alive for a limited p eriod so as to enable the other eligible candidates to offer candidatures agains

t future vacancies. Exclusive reservation of future vacancies for one time empan elled candidates would naturally offend Article 14 and 16 of the Constitution of India. Realizing this, if the respondent Corporation decided to bring amendment limiting the validity of the select list for two years, I am of the considered opinion that, no fault could be attributed to such action of the Corporation.

14. With the introduction of the amendment by the Circular letter dated 23.1 1.07, the select list of 1996 ceased to have any effect. It cannot be said that irrespective of Circular letter dated 23.11.07, the select list of 1996 should r emain operative till the same is exhausted by way of appointing the candidates a gainst future vacancies. It is in this context, Mr. Deka, learned counsel for th e respondent Corporation argued that the contention raised on behalf of the peti tioners regarding prospectivity of the Circular letter dated 23.11.07 validating the select list of 1996 till its exhausted, is not tenable in law.

15. In P. Mahendran (supra) Apex Court dealing with the statutory provisions , i.e. Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules (19 62), observed that in case of amendment of rules same is prospective unless it i s expressly or by necessary implication made to have retrospective effect. In th at case, the Court was concerned with change of eligibility criteria. In the ins tant case, the matte concerns executive instruction of 1993. By necessary implic ation, the executive instruction of 2007 so far as the validity of the select li st is concerned which is two years, will have retrospective application.

16. In Sonia (supra), the Apex Court observed that an executive instruction cannot have retrospective effect unless and until the intention of the authoriti es to make it as such is revealled expressly or by necessary implication in the executive instruction itself. That was a case relating to exchange of Scheduled Caste and Scheduled Tribe candidates. It was held that the date on which the app lications were invited should be the relevant date for consideration whether exc hange of Scheduled Caste and Scheduled Tribe candidates was permissible. Same is not the case in hand. The petitioners were empanelled way back in 1996. The who le basis of their claim is 1993 circular letter to which the amendment was broug ht by circular letter dated 213.11.07. By the amendment the unlimited validity p eriod of the select list was limited to two years. Thus by necessary implication the select list of 1996 ceased to have its validity with the introduction of th e amendment. Irrespective of the amendment, if the select list of 1996 is allowe d to remain operative applying the test of retrospectivity and/or prospectivity of the executive instruction, same will lead to a chaotic situation.

17. In Vinodan T. (supra), the principles that the persons merely selected f or a post do not thereby acquire a right to be appointed for such post, has been reiterated. Even if the vacancies exist, it is open for the authority concerned to decide how many appointments should be made. In that case, pursuant to a not ification issued on 01.11.91 inviting applications for preparation of a penal fo r appointment as Assistant Grade-II, the appointees were selected after a writte n test and interview and a rank list was prepared on 25.10.95. The appellant’s c laim was that the rank list should have been operative for a period of three yea rs and that the respondents were bound to appoint them to the vacancies which ha d arisen within that period. The respondents took a decision on 26.11.97 limitin g the validity of the rank list prepared in 1995 to two years and cancellation o f that list as in the instant case. Dismissing the appeal preferred by the selec ted candidates, the Apex Court held that the appellants have no right to insist on regular appointment merely because they form part of the rank list.

18. The impugned decision of the respondent Corporation in general is in con sonance with the principle being followed in respect of the period of validity o f a select list. A select list cannot be allowed to remain operative indefinitel y as was done under 1993 instruction. Although the petitioners were empanelled i n January, 1996, they could not be appointed even after 11 years. As to whether

during the long 11 years their suitability for such posts remained the same as it was at the time of selection, is another factor to which the appointing authority cannot be oblivious. It will be opposed to the principles relating to appointment upon judging the suitability for such appointment, if a select list is allowed to remain operative for years together till such time the select list is exhausted by making appointment against future vacancies. Such a course of action would also deprive other eligible candidates violating the mandate of Article 14 and 16 of the Constitution of India.

19. For the aforesaid reasons, I do not find any infirmity in the decision taken by the respondents Corporation. No mandamus can be issued for appointment of the petitioners on the basis of the select list prepared way back in January, 1996 which in the meantime has been scrapped pursuant to the amendment brought to the said executive instruction as notified vide circular letter dated 23.11.07

20. The writ petitions are dismissed leaving the parties to bear their own costs.