

WRIT PETITION (S) NO. 203 OF 2008.

In the matter of an application under Article 226 of the Constitution of India.

- 1.Harendra Kumar
- 2.Vikash Kumar Sinha
- 3.Md. Siddik Ansari
- 4.Shashi Bhushan Yadav.
- 5.Surendra Kumar Ram
- 6.Gyani Mahto
- 7.Surendra Ram
- 8.Bidya Nand Shukla
- 9.Kameshwar Prasad
- 10.Ravi Kant Tiwari
- 11.Satendra Kumar Roy
- 12.Brahmdeo Ram
- 13.Shiv Lal Marandi
- 14.Swadesh Kumar Ojha

Petitioners.

Versus

- 1.Life Insurance Corporation of India, through Chairman, Central Office, Mumbai.
- 2.The Senior Divisional Manager, Life Insurance Corporation of India, Hazaribagh Division, Hazaribagh.

Respondents.

For the Petitioners : M/s Saurav Arun
For the L.I. C : Mr. Sachin Kumar.

P R E S E N T
HON'BLE MR. JUSTICE PRASHANT KUMAR

Reserved on 15.12.2011

Delivered on 02/02/2012.

Prashant Kumar, J. In this writ application petitioners prayed for issuance of an appropriate writ for quashing Annexure-3 series, whereby

respondents intimated to the petitioners that panel prepared in pursuance of employment notice dated 14.3.2005 for appointment in class IV cadre of Hazaribagh Division has been scrapped and the said panel cease to exists. Petitioner further prayed that their cases of appointment in class-IV post be considered as still 130 posts are vacant.

2. It is stated that in the year 1995, respondents Life Insurance Corporation of India Ltd.(herein after referred as Corporation) invited application through employment exchange for preparation of a panel for appointment on the posts of Class-IV cadre in its Hazaribagh Division . It is stated that in pursuance of aforesaid request names of petitioners and others sent to the Corporation by the Employment Exchange. Accordingly, a panel prepared on 09.11.1999 (Annexure-1). It is stated that aforesaid panel prepared in pursuance of Recruitment(class III and class IV Staff) Instructions, 1993. It is stated that as per Clause V of the aforesaid instructions panel will remain valid till absorption of all candidates in regular service. In other words, no time prescribed for validity of said panel,thus, it will remain alive till exhausted. It is stated that inspite of aforesaid provision, respondent no.2 by issuance of Annexure-3 series had scrapped the panel and debarred petitioners from being appointed on the posts of class IV cadre.

3. A counter affidavit filed on behalf of respondent nos.1 and 2, wherein it is stated that some candidates, who were in the panel of Bhagalpur Division of the Corporation, had filed writ application in Patna High Court praying for issuance of direction to appoint them against the vacancy. In those writ application, Patna High Court directed Central Office of the Corporation to take final decision for filling up of subsequent vacancy, if any, from the panel

prepared in the year 1996. It is stated that in pursuance to aforesaid direction of Hon'ble Patna High Court , the Managing Director of the Corporation took legal advise. It is further stated that in pursuance of aforesaid legal advise, the competent authority i.e. Board of the Corporation, in its meeting held on 04.12.2006 amended Clause 5 and 15 of the Recruitment Instructions 1993. It is stated that according to amended Clause 5 and 15 of the Recruitment Instructions, maximum life of a panel is two years or till next recruitment notice issued which ever is earlier. It is stated that in the instant case panel was prepared in the year 1999, therefore, it become more than two years old ,thus, respondent no.2 on the direction of competent authority scrapped the said panel by issuance of Annexure-3 series.

4. It is submitted by Sri Saurav Arun, learned counsel for the petitioner that amendment which have been brought into effect under Clause 5 and 15 of the Recruitment Instructions of 1993 would have no bearing on the panel prepared in the year 1999 because panel was prepared under old Instructions, therefore, it will governed by Instructions prevailing at the time of preparation of panel. It is submitted that an amendment in an statute is generally prospective in operation, unless it is expressly or by necessary implication made retrospective in operation. It is submitted that under Clause 5 and 15 of the amended Recruitment Instructions, there is nothing to show that it will apply retrospectively. It is submitted that said amendment will not apply in the present case as in this case panel was prepared in the year 1999. Accordingly, it is submitted that impugned order Annexure-3 series cannot be sustained and petitioners are entitled for absorption against future vacancy as per old instructions.

5. On the other hand, Mr. Sachin Kumar, learned counsel

for respondent no. 1 and 2, submitted that if a rule contemplates that unless all the candidates enumerated in a panel or select list are appointed, no other person can be selected, then same is unjust and violative of Articles 14 and 16 of the Constitution of India. He submitted that when this legal position was brought to the notice of the Corporation by legal experts, the Corporation with a view to cure illegality in the Instructions of 1993 had brought amendment by way of substitution new provision in place of old one. It is submitted that petitioners have no vested right to be appointed only because their names find place in panel. Under the said circumstance, it is open for the Corporation to amend the rule with retrospective effect. Accordingly, it is submitted that there is no illegality in the impugned order.

6. Having heard the submissions, I have gone through the record.

7. It is admitted position that panel of 1999 in which names of petitioners found place was prepared in pursuance of Employment Notice dated 14.3.1995. It is also an admitted position that the said panel prepared in pursuance of provisions contained in L.I.C. Recruitment (Class III and class IV Staff) Instructions 1993. Unamended clause 5 and 15 of aforesaid Instructions are quoted hereinafter for ready reference :

5. VACANCIES:

Recruitment shall be only against the vacancies in the sanctioned posts. For this purpose, a panel of candidates for appointment shall be prepared. In order to prepare such a panel the number of persons to be empanelled in the first year of recruitment under these instructions, shall be twice the number of posts that are likely to be filled in during the year and, thereafter, the panel will be augmented by twice the number of posts that are likely to be filled in during the year less the number already available in the panel. In the notification it should be made clear that those who are

empanelled will be considered for appointment against regular vacancies as and when the need arises and that in the meanwhile if occasion demands, they will be offered appointment on a purely temporary basis. While notifying the number to be empanelled to the Employment Exchange or while submitting the returns this fact should be made clear."

15. APPOINTMENT FROM PANEL

All the appointment against permanent posts shall be strictly in accordance with the ranking list duly published. A candidate who does not accept the offer of appointment is liable to have his name removed from the list. While the candidates in the ranking list will be given permanent appointment immediately to the extent of the vacancies available, the remaining candidates will be considered for appointment on regular basis as and when the vacancies arise. In the meanwhile, in case of need for any temporary appointment, the same shall be made from among those candidates in the published ranking list. When the number of candidates in the ranking list reduces by more than 50%, the office shall initiate the process for the next round or recruitment provided that there shall not be more than one recruitment during a financial year. At that time the vacancies to be notified will be twice the number of posts that are likely to be filled during the financial year less the number already available in the panel. The person who are selected in that round shall be considered for regular appointment only after all the candidates in the earlier list are offered appointment. In other words, names of the candidates who are selected as a result of a fresh round of selection shall be added below the existing ranking list."

8. From plain reading of aforesaid two clauses of Instructions, it appears that said Rules contemplates that till the appointment of all the candidates named in the said panel the same will remain alive.

9. From perusal of Annexure- 'C' to the counter affidavit it appears that when Patna High Court in C.W.J.C. no. 1063 of 2001 directed the Central Office of the Corporation to take final decision with respect to filling up of subsequent vacancy from the panel prepared in the year 1996 for Bhagalpur Division of the Corporation, it

took legal opinion from Senior Advocate. Annexure-'C' further reveals that senior advocate opined that Clause 5 and 15 of Recruitment Instructions 1993 are *ultra vires* to Articles 14 and 16 of the Constitution of India. It further appears from Annexure-'C' that thereafter, Corporation agreed to examine the matter and if found necessary will amend Recruitment Instructions 1993 with a view to make them consistent with Articles 14 and 16 of the Constitution of India. It appears that ultimately by Annexure-'D' Clause 5 and 15 of the Recruitment Instructions 1993 have been amended. The amended Clause 5 and 15 of the Recruitment Instructions, 1993 are quoted hereinafter :

"Clause 5. Vacancies

Recruitment shall be only against the vacancies in the sanctioned posts. For this purpose a ranking list of candidates for appointment shall be prepared. In order to prepare such a ranking list the number of persons to be empaneled under these instructions shall be 20% above notified vacancies. The validity period of the ranking list shall be maximum of two years from the date of its publication or till the next recruitment notification whichever is earlier. In the notification it should be made clear that only after filling up the notified vacancies the persons who are remaining in the ranking list will be considered for appointment against permanent vacancies as and when the need arises and that in the meanwhile if occasion demands they will be offered appointment on purely temporary basis within the stipulated time limit as mentioned in clause 15. While notifying the vacancies to the Employment Exchange or while submitting the returns this fact should be made clear."

"Clause 15. Appointment from ranking list:

All appointments shall be made strictly in order of merit in accordance with the ranking list prepared and approved by the competent authority. A candidate who does not accept the offer of appointment is liable to have his name removed from such list. While the candidates in the ranking list will be given permanent appointment to the extent of vacancies notified, the remaining candidates in the list will be considered for appointment against permanent vacancies as and when the need arises within a period of maximum two years from the date of publishing of ranking list

or till the next recruitment notification whichever is earlier. The ranking list shall remain valid for maximum two years from the date of its publication or till the next recruitment notification whichever is earlier. In the meanwhile in case of need for any temporary appointment the same shall be made from those candidates in the published ranking list."

10. As noticed above, according to unamended Clause 5 and 15 of the Recruitment Instructions, 1993 a panel prepared will remain alive for unlimited period and during same period no other person can be selected. It has been held by their Lordships of Supreme Court in ***State of U.P. and another.Vs. Ram Gopal Shukla*** , reported in (1981) 3 SCC-01 that :-

"There is no denying the fact that rules regulating the conditions of service are within the executive power of the State or its legislative power under the proviso to Article 309 but even so, such rules have to be reasonable, fair and not grossly unjust, if they are to survive the test of Articles 14 and 16 of the Constitution. A rule which contemplates that unless the list of 300 persons is exhausted no other person can be selected , obviously is unjust and it deprives other persons in the same situation of the opportunity of being considered for promotion."

11. Thus, in view of aforesaid law laid down by their Lordships of Supreme Court, unamended Clause 5 and 15 of the Recruitment Instructions, 1993 was violative of Articles 14 and 16 of the Constitution of India.

12. From perusal of Annexure-'C', it appears that through legal opinion it comes to the knowledge of the Corporation that unamended Clauses 5 and 15 of Recruitment Instructions 1993 are violative of Articles 14 and 16 of the Constitution of India. Accordingly, Corporation decided to amend these clauses with a view to make them consistent with the provision of Articles 14 and 16 of the Constitution of India. Under the said circumstance, it appears that Corporation had amended Clause 5 and 15 with a view to cure legal defect in the Instructions.

13. The cardinal principle of construction of statute is that a statute will always prospective in operation, unless it is expressly or by necessary implication made retrospective. But it is equally well settled that when a statute is curative of the previous law the retrospective operation is generally intended. Reference in this respect may be made to the decisions of Supreme Court in "***Sri Chaman Singh and another..Vs..Srimathi Jai Kaur***" reported in (1969)2 SCC-429, and ***Zile Singh.Vs. State of Haryana and others*** reported in (2004)8 SCC-01.

14. As noticed above, in the instant case, the Corporation brought amendment in Recruitment Instructions, 1993 with a view to make the Instructions in consistent with the provision of Article 14 and 16 of the Constitution of India. Thus, it is clear that Corporation brought the said amendment to cure legal defects in unamended Clause 5 and 15 of Recruitment Instruction 1993.

15. It is well settled that a candidate has no vested right for appointment only because he has been selected and his names find place in select list. The employer is under no legal duty to fill up all or any of the vacancy. Reference in this connection may be made to a Constitution Bench Judgment of the Hon'ble Supreme Court in ***Shankarsan Dash.Vs.. Union of India***, reported in (1991)3 SCC-47. Under the said circumstance, even if amendment will be given retrospective operation no vested right of petitioners are going to be affected. Thus, I have no hesitation in holding that amendment in question is retrospective in operation.

16. As per amendment Clause 5 and 15 of Recruitment Instructions, 1993 life of a panel is maximum for two years. Thus, the panel prepared in the year 1999 has lost its force by efflux of time. Accordingly, same has been rightly scrapped by Corporation.

17. As notice above, since, petitioners have no vested legal right, therefore, no direction can be issued commanding the respondents to appoint petitioners against present vacancies.

18. In view of the discussions made above, I find no merit in this application. Accordingly, the same is dismissed.

(Prashant Kumar,J.)

Jharkhand High Court, Ranchi.
The 2nd February, 2012

Raman/