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JATINDER KUMAR & ORS.

v.

STATE OF PUNJAB & ORS.

September 28, 1984

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[D. A. DESAI, AMARENDRA NATH SEN AND R. B. MISRA, JJ.]

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*Right to be appointed to posts for which one was selected and recommended by the Subordinate Service Selection Board, nature of—Whether selection for the purpose of recruitment against anticipated vacancies create an enforceable right by Writ of Mandamus—Whether non-appointment on the ground of non-existence of post amount to malafides and in violation of Articles 14 and 16 of the Constitution and the principles of Promissory Estoppel—Constitution of India 1950, Article 320(3), whether mandatory or directory.*

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Pursuant to a requisition of the Inspector General of Police Punjab to select and recommend suitable persons for the post of Assistant Sub-Inspectors of Police against 57 available vacancies and 170 anticipated vacancies likely to occur as a result of expected re-organisation of the Police Force by disbandment of the Punjab Armed Police Battalion, the appellant alongwith many others were interviewed and physically tested on various dates and the Board recommended panel of 144 candidates on 22nd December, 1979. The proposal for disbandment of the Punjab Armed Police Battalion and creation instead of additional posts in the Districts was turned down by the Government with the result that there were only 57 posts out of which 9 were offered to the wards of the deceased Police Officers in accordance with the Punjab Government Instructions regarding priority appointments issued vide the letter No. 80(GOJ)-SII(3)/73/12092 dated 18th April, 1973 and the remaining 48 posts were offered to the candidates recommended by the Board in order of merit determined by the Board. Since remaining candidates recommended by the Board pursuant to the requisition against anticipated vacancies were not appointed as there were no vacancies, the disgruntled candidates filed two petitions under Article 226 of the Constitution before the High Court. The petitions having been dismissed, two appeals were preferred under the Letters Patent which were also dismissed. Hence the appeals by Special Leave.

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Dismissing the appeals, the Court

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HELD : 1. The fact that there is no provision in the Constitution which makes the acceptance of the advice tendered by the Public Service Commission when consulted, obligatory renders the provisions of Article 320(3) only directory and not mandatory. [905 E]

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2. The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment to the post to avoid arbitrariness and nepotism in the matter of appointment. The selection by the Commission, however, is only a recommendation of the Com-

**A** mission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendations of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reason and report for doing so. Thus the Government is made answerable to the House for any departure *vide Article 323* of the Constitution. This, however, does not clothe the appellants with any such right in the instant case. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission, it cannot disturb the order of merit according to its own sweet-will except for other good reasons namely bad conduct or character. The Government cannot appoint person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a Mandamus. [905 F-H; 906 A-D]

*A.N.D.' Silva v. Union of India*, [1962] Supp 1 S.C.R. 968; *State of Haryana v. Subash Chander Marwaha & Ors.*, [1974] 1 SCR 165; applied.

**D** *G.S. Kalkat v. State of Punjab & Ors.* (Punjab and Haryana) decided on 15th July, 1980; held inapplicable.

**E** 3:1. The allegation about the malafides are more easily made than made out. In the instant case, there are no materials to warrant the conclusion that the action of the State Government in not appointing the appellants was malafide especially when the post in anticipation whereof the Board was asked to select more candidates came to an end. There was no question of their appointment against these vacancies. [906 G; 907 A]

3:2. The action of the Government is not hit by Articles 14 and 16 of the Constitution and the case of the appellants is not identical with those of the persons who were appointed as against 57 vacancies for which original requisition was made to the Board for selecting them [907 B]

**F** 3:3. The notification issued by the Selection Board in this case was only an invitation to candidates possessing specified qualifications to apply for selection for recruitment for certain posts. It did not hold out any promise that the selection would be made or if it was made the selected candidates would be appointed. The candidates did not acquire any right merely by applying for selection or for appointment after selection. When the proposal for disbandment of the Punjab Armed Police Battalion and instead creation of additional posts for the district police was turned down by the State Government, the appellants were only informed of the situation and there was no question of any promissory estoppel against the State. [907 C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1194 of 1984.

**H** Appeal by Special leave from the Judgment and Order dated the 1st and 3rd March, 1982 of the Punjab and Haryana High Court in

L.P.A. No. 188 of 1982

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*Frank Anthony and Susheel Kumar* for the Appellant.*M.S. Gujral and S.K. Bagga* for the Respondent.

The Judgment of the Court was delivered by

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MISRA, J. The main question for consideration in this appeal by special leave is whether a person selected by the Subordinate Service Selection Board for direct appointment to the post of Assistant Sub-inspector of Police has got an unfettered right to be appointed on the basis of the recommendation made by the said Board.

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The material facts to bring out the point in controversy are as follows. On 31st of March, 1978 the Inspector General of Police, Punjab, respondent No.2, sent a requisition to the Subordinate Service Selection Board (for short, the Board), respondent No. 3, to select and recommend 7 suitable persons for the post of Assistant Sub-Inspectors of Police. While the matter was pending consideration 50 more posts of Assistant Sub-Inspectors of Police became available and, therefore, the Board was requested to recommend 57 suitable persons for these posts. The appellants along with many others were interviewed and physically tested on various dates ranging from 24th of October 1978 to 6th of February, 1979. Later on after the interviews were over but before the select list could be finalised by the Board the Inspector General of Police vide his letter dated 31st of August, 1979 requested the Board to recommend 170 more persons in addition to 57 already under consideration in anticipation of further vacancies likely to occur as a result of expected reorganisation of the Police force. In that connection a proposal for the disbandment of the Punjab Armed Police Battalion and instead creation of some additional posts for the District Police, had already been submitted. Thus, in all 277 candidates were to be recruited by the Board for the post of Assistant Sub-Inspectors of Police. The Board, however, recommended a panel of 144 candidates on 22nd of December, 1979.

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It appears that the proposal for disbandment of the Punjab Armed Police Battalion and creation of additional posts in the districts referred to above was turned down by the Government and, therefore, the anticipated 170 temporary vacancies of Assistant Sub-Inspectors against direct recruitment quota could not be available. Out of the earlier 57 posts, however, 9 were offered to the wards of

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**A** the deceased police officers in accordance with the Punjab Government instructions regarding priority appointments issued vide letter No. 80 (GOI) -SII (3)/73 12092 dated 18th April, 1973. The remaining 48 posts were offered to the candidates recommended by the Board in order of merit determined by the Board. Since the remaining candidates recommended by the Board pursuant to the latter requisition were not appointed as there were no vacancies, the disgruntled candidates filed two petitions under Art.226 of the Constitution before the High Court.

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The stand of the petitioners in the two petitions was :

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- (a) that the vacancies had already been communicated to the Board and it was on that basis that the Board had recommended their names for appointment and the State was bound to appoint them on the basis of the recommendation of the Board ;

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- (b) that the State was bound to follow the Punjab Police Rules and under rule 12.3 twenty-five per cent of the posts in the rank of Assistant Sub-Inspectors are to be filled in by direct recruitment and the remaining seventy-five per cent are to be filled by promotion ;

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- (c) that the State adopted a device of making *ad hoc* appointment of the Assistant Sub-Inspectors by posting Head-Constables as Assistant Sub-Inspectors and the whole action was *mala fide* as the State Government intended to select and appoint its own favourites ;

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- (d) that the action of the Government in not appointing them pursuant to the recommendation of the Board is violative of Arts. 14 and 16 of the Constitution ;

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- (e) that even after the abolition of the Board the candidates recommended by it could not be refused appointment on the ground that the Board later on became *functus officio* ; and

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- (f) that even after the expiry of six months fixed by the Government instructions the petitioners could be appointed on the basis of recommendation of the Board.

The petitions were resisted by the State Government on the ground *inter alia* that by 7th of January, 1980 only 57 posts in the direct recruitment quota became available and appointments were made. As regards the remaining vacancies of 170 temporary posts of Assistant Sub-Inspectors, proposal for disbandment of the Punjab Armed Police Battalion and instead creation of some additional posts for the District Police was eventually turned down by the State Government and so no additional vacancies became available and the petitioners could not be appointed. In any case the petitioners could not claim appointment as of right merely because the Board had recommended their names. It was further pleaded that according to the Government instructions issued vide letter No.1673-C-II-56 dated 22nd March, 1957 a time limit of six months had been prescribed for filling up the vacancies by persons recommended by the Board and after the expiry of six months a fresh reference had to be made to the Board. As six months prescribed had already expired the petitioners could not be appointed on the basis of the recommendation of the Board. They also denied the allegation of *malafides* in the *ad hoc* appointment of other persons and further pleaded that the refusal of the Government to appoint them was not hit by Articles 14 and 16 of the Constitution.

On a consideration of the material on the record the learned Single Judge came to the conclusion that there was neither any vacancy in the quota of direct recruits of Assistant Sub-Inspectors nor a single post meant for direct recruits is manned by an *ad hoc* employee, that no case of *malafides* or favouritism has been made out, and that there was no violation of Articles 14 and 16 of the Constitution. A letters patent appeal preferred by the petitioners before the High Court was also dismissed. The petitioners in the writ petition feeling aggrieved have filed the present appeal by special leave.

The petitioners before this Court in appeal categorically stated on oath that 500 promotions had been made by the State of Punjab and that the petitioners were entitled to 25 per cent of those posts according to quota rule. They also alleged that 250 vacancies of Assistant Sub-Inspectors were available in the C.I.D. wing alone in the Punjab Police and 250 persons had been promoted against those vacancies on *ad hoc* basis. This Court by its order dated 9th January, 1984 directed the State to supply detailed information to the petitioners of the names and designations of the Head Constables

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A promoted as Assistant Sub-Inspectors between the period from 1979 to 1983. Pursuant to that order the State gave full details of the various promotions made by them during the period 1979 to 1983. It revealed that the promotions made in various ranges totalled 646 and according to the State during 1979-1983, 576 vacancies of Assistant Sub-Inspectors in promotee quota became available on account of promotion of 576 Assistant Sub-Inspectors to the rank of Offg. Sub-Inspectors, 5 against retirement of such officers, 13 due to death, 2 due to dismissal and 4 due to reversion of promotee Assistant Sub-Inspectors. In addition, a total of 60 additional temporary posts of Assistant Sub-Inspectors were sanctioned by the Government during the period against which such promotions were made. Thus, out of the total 660 vacancies of promotee quota during the aforesaid period 646 promotions had been made and on 31 December, 1983 there were 14 vacancies in the rank of Assistant Sub-Inspectors against promotee quota.

D Before we deal with the points raised by Mr. Frank Anthony in support of the appellants we must record our disapproval of the inconsistent pleas taken by it at various stages. To start with, it took up the plea that there were no *ad hoc* appointments of Assistant Sub-Inspectors from 1979 but later on it went back upon its previous statement and admitted that there were ad hoc appointments made but explained the position by subsequent affidavits wherein it was stated that the C.I.D. has no cadre strength of its own and all the posts, except language Stenographers, are filled in by taking officers on deputation from other units of the Police department and no *ad hoc* appointments were made in the rank of Assistant Sub-Inspectors and that the petitioners could not be appointed as no posts for the petitioners were available with the department, but it is not necessary to refer to those explanations in any detail.

G Be that as it may, the fact remains that in anticipation of the proposal for disbandment of the Punjab Armed Police Battalion and instead creation of some additional posts for the district police a requisition was made for selecting 170 more candidates for direct appointment to the post of Assistant Sub-Inspectors. But the proposal having been turned down by the Government there were no vacancies and, therefore, the question arises whether the petitioners have got an unfettered right to be appointed even though the aforesaid proposal had not been accepted and consequently there were no vacancies.

We now take up the contentions raised by Mr. Frank Anthony counsel for the appellants, that they have a right to be appointed to the post of Assistant Sub-Inspectors on the basis of the selection made by the Board.

Article 320 of the Constitution enumerates the duties to be performed by the Union or the State Public Service Commissions :

- (i) to conduct examinations for appointments to the services of the Union and the services of the State respectively;
- (ii) if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required;
- (iii) to advise on matters enumerated under cl. (3) of Article 320; and
- (iv) to advise on any matters so referred to them and any other matter which the President, or as the case may be, the Governor of the State may refer to them.

The fact that there is no provision in the Constitution which makes the acceptance of the advice tendered by the Commission, when consulted, obligatory renders the provisions of Art. 320(3) only directory and not mandatory.

The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may

**A** accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character. The Government also cannot appoint a persons whose names does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a *mandamus*.

**D** We are supported in our view by the two earlier decisions of this Court in *A.N.D' Silva v. Union of India*<sup>(1)</sup> and *State of Haryana v. Subash Chander Marwaha & Ors.*<sup>(2)</sup> The contention of Mr. Anthony to the contrary cannot be accepted.

**E** It was next contended for the appellants that the Punjab and Haryana High Court itself had taken a different view in *G.S.Kalkat v. State of Punjab and Ors*<sup>(3)</sup>, from the one taken in the instant case and a copy of the judgment in that case has been filed. We have perused the judgment but find that the facts of the case were materially different from the facts of the case in hand.

**F** The next contention raised on behalf of the appellants was that the action of the Government in not appointing them in spite of the fact that they were selected and their names were recommended by the Board for appointment, was malafide. The allegations about malafides are more easily made than made out. There are no materials before us to warrant the conclusion that the action of the State Government in not appointing them was malafide especially when the posts in anticipation where of the Board was asked to select more

1. [1962] Supp. 1 S.C.R. 968.

2. [1974] 1 S.C.R. 165.

3. Pronounced on 15th July, 1980.

candidates came to an end. There was no question of their appointment against those vacancies.

Likewise, the contention that the action of the Government is hit by Art.14 and 16 of the Constitution has no substance. The case of the appellants is not identical with those of the persons who were appointed as against 57 vacancies for which original requisition was made to the Board for selecting them.

An argument of desperation was further advanced about promissory estoppel stopping the State Government from acting in the manner it did in not appointing the appellants although their names had been recommended. The notification issued by the Board in this case was only an invitation to candidates possessing specified qualifications to apply for selection for recruitment for certain posts. It did not hold out any promise that the selection would be made or if it was made the selected candidates would be appointed. The candidates did not acquire any right merely by applying for selection or for appointment after selection. When the proposal for disbandment of the Punjab Armed Police Battalion and instead creation of additional posts for the district police was turned down by the State Government, the appellants were duly informed of the situation and there was no question of any promissory estoppel against the State.

It was further contended by Mr. Anthony that the recommendation made by the Board would remain effective even after the body had become defunct. It is not necessary to go into detail in this contention in as much as the fate of the case depends upon whether the appellants had a right to get appointed on the basis of the selection and recommendation made by the Board. The appellants came to Court to vindicate their right but if they had no right there was no question of enforcing that right.

For the foregoing discussion the appeal has no force and therefore, it must fail. It is accordingly dismissed but in the circumstances of the case the parties should bear their own costs.