

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

Writ Petition No. 8517/2009

Ms. Usha Damar

Petitioner

Versus

State of Madhya Pradesh & another

Respondents

Shri Sankalp Kochar learned counsel for the petitioner.
Shri Akash Sharma learned counsel for the respondent
no.1.
Shri V.P. Khare learned counsel for respondent no.2.

Whether approved for reporting :

ORDER

(Passed on 9/5/2009)

By this writ petition under Article 226 of the Constitution of India petitioner has prayed for a direction to the respondents to appoint her on the post of Dy. Superintendent of Police and extend all consequential benefits.

2/ Case of petitioner is that in pursuance to the advertisement issued by respondent no.2/PSC in the year 1998, the petitioner had participated in the selection process for the post of Dy. Superintendent of Police and was placed at Sr. No. 1 in the waiting list of Schedule Tribe candidate and this intimation was conveyed to petitioner on 19/7/2000. Further case of petitioner is that one Ms. Geeta Nishad was appointed as Dy. Superintendent of Police in ST category but later on her case certificate was found to be forged and her services were

terminated which was challenged by her in WP No. 28707/2003 and the matter had travelled up to the Hon'ble Supreme court and Supreme court vide order dated 16th May 2007 had upheld the termination. On dismissal of petition of Ms. Geeta Nishad, petitioner had submitted repeated representations for appointment to the post of Dy. Superintendent of Police and State government had sent the communication dated 11th June 2008 for extending the validity of select/waiting list but the same was turned down by respondent/PSC vide communication dated 29/8/2008. Further case of petitioner is that in similar circumstances in respect of another selection process one Mr. Raj Kumar Tamrakar was given appointment on cancellation of appointment of selected candidate on similar ground and that since the post has fallen vacant, therefore, petitioner was appointed.

3/ Respondent no.1/State had initially filed formal reply taking the stand that issue is concerned with the respondent no. 2/ PSC and thereafter reply on merit has been filed opposing the petition by taking the plea that validity of select list had already expired.

4/ Respondent no.2/PSC has also filed reply with the plea that validity of select list had expired in 2001 whereas the request for extending validity was made in the year 2007 and said request was rejected and after expiry of validity of select list petitioner is not entitled.

5/ Learned counsel for petitioner submits that PSC has not disclosed any reason for not extending the validity of select list and that case of petitioner is at par with the case of Jitendra Singh Pawar who has been given appointment in similar circumstances and that petitioner had submitted representation

for appointment during the validity of select list, hence she is entitled to appointment on the post in question.

6/ As against this learned counsel for State and PSC have opposed the writ petition by submitting that after expiry of validity period of select list petitioner is not entitled for appointment. Further plea has been taken that recruitment for the post in question takes place every year and with the lapse of so many years, said vacancy has now been filled up.

7/ I have heard the learned counsel for parties and perused the record.

8/ The recruitment process had undisputedly started in 1998 and petitioner was placed at Sr.No. 1 in the supplementary list of ST candidate as reflected in communication dated 19th July 2000.

9/ The record further reflects that Ms. Geeta Nishad who was appointed on the post of Dy. Superintendent of Police in ST Category a dispute has arisen in respect of her caste certificate and her appointment was cancelled which led to filing of WP No. 2237/01 by her in which interim order was passed on 30th June 2001 and in pursuance thereto she was allowed to continue on the post. The writ petition was dismissed by learned Single Judge by order dated 25/8/2004 and LPA No. 655/04 was dismissed as not maintainable by Division Bench by order dated 27/9/2004. Hence Ms. Geeta Nishad had approached the Hon'ble Supreme court and Civil Appeal No. 6055/05 was dismissed by Hon'ble Supreme court vide order dated 16th May 2007. During the pendency of this litigation she was continuing in service and after judgment of the Supreme court her services were terminated on 19/6/2007.

10/ The record further reflects that in the meanwhile the validity of select list had expired on 30th June 2001. On the representation of petitioner the state government had sent the communication dated 1/8/2007 to PSC for extending the validity of the select list and PSC vide communication dated 31/1/2008 conveyed the rejection of request to extend the validity period of select list. The request was reiterated by the state government vide communication dated 11/6/2008 and rejection was again conveyed by PSC vide communication dated 29th August 2008. The decision of PSC not to extend the validity of select list is not under challenge in this writ petition. The present writ petition has been filed on 18/11/2009 almost after 8 years of expiry of validity of select list.

11/ Since the select list had already expired much before petitioner had approached this court and PSC had also refused to extend the validity therefore, on the date of filing of petition it was not open to petitioner to seek appointment on the basis of select list which was no longer in existence.

12/ The record further reflects that even the state government had not made a request to PSC to extend the validity of select list during existence of list but request itself was made by the state government to PSC almost after 6 years of expiry of validity of select list. Hence even otherwise no fault can be found in the decision of PSC to reject such a prayer.

13/ The petitioner is claiming parity with case of another candidate Mr. Raj Kumar Tamrakar in respect of different selection process.

14/ The reply of State as well as PSC reveal that in case of Raj Kumar Tamrakar the state government had made a request to PSC to extend the validity period before expiry of validity of

list and appointment of Raj Kumar Tamrakar on the post of Dy. Superintendent of Police was during the validity period of list.

15/ That apart the petitioner being a wait list candidate and there was no vacancy during the period of validity of list and on arisen of vacancy due to termination of services of Ms. Geeta Nishad after expiry of select list does not give any legally enforceable right to petitioner to claim appointment on the post of in question on the basis of her position as wait list no. 1 candidate.

16/ Supreme court in the matter of State of **Orissa & another Vs. Rajkishore Nanda & others reported in AIR 2010 SC 2100** in this regard has held that a person on the basis of his name in the select list does not get any indefeasible right for appointment by observing as under:

“ 13. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

14. A Constitution Bench of this Court in Shankarsan Dash Vs. Union of India, (AIR 1991 SC 1612), held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (See also Asha Kaul & Anr. Vs. State of J & K & Ors., (1993) 2 SCC 573; (1993 AIR SCW 2314); Union of India Vs. S.S.Uppal, AIR 1996 SC 2340; (1996 AIR SCW 848); Bihar Public Service Commission Vs. State of Bihar AIR 1997 SC 2280; (1997 AIR SCW 2154); Simanchal Panda Vs. State of Orissa & Ors., (2002) 2 SCC 669; (AIR 2002 SC 2444; (2002 AIR SCW 2689); Punjab State Electricity Board &

Ors. Vs. Malkiat Singh (2005) 9 SCC 22; (AIR 2004 SC 5061; (2004 AIR SCW 5768); Union of India & Ors. Vs. Kali Dass Batish & Anr. AIR 2006 SC 789; (2006 AIR SCW 227); Divisional Forests Officers & Ors. Vs. M. Ramalinga Reddy AIR 2007 SC 2226; (2007 AIR SCW 3896); Subha B. Nair & Ors. Vs. State of Kerala & Ors., (2008) 7 SCC 210; (AIR 2008 SC 2760; 2008 AIR SCW 4591); Mukul Saikia & Ors. Vs. State of Assam & Ors., (2009) 1 SCC 386; (AIR 2009 SC 747 : 2008 AIR SCW 7971); and S.S. Balu & Anr. Vs. State of Kerala & Ors., (2009) 2 SCC 479 (AIR 2009 SC 1994 : 2009 AIR SCW 1644);

15. Select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required.

It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage. (Vide J.Ashok Kumar Vs. State of Andhra Pradesh & Ors., (1996) 3 SCC 225; State of Bihar & Ors. Vs. Md. Kalimuddin & Ors., AIR 1996 SC 1145; (1996 AIR SCW 691); State of U.P. & Ors. Vs. Harish Chandra & Ors., AIR 1996 SC 2173; (1996 AIR SCW 2785); Sushma Suri Vs. Government of National Capital Territory of Delhi & Anr., (1999) 1 SCC 330; State of U.P. & Ors. Vs. Ram Swarup Saroj, (2000) 3 SCC 699; (AIR 2000 SC 1097 : 2000 AIR SCW 779); K. Thulaseedharan Vs. Kerala State Public Service Commission, Trivendrum & Ors., (2007) 6 SCC 190; (AIR 2007 SC (supp) 253 : 2007 AIR SCW 3211); Deepa Keyes Vs. Kerala State Electricity Board & Anr., (2007) 6 SCC 194 (2007 AIR SCW 7311); and Subha B. Nair & Ors. (AIR 2008 SC 2760 : 2008 AIR SCW 4591) (supra). “

17/ It is also the settled position in law that after expiry of validity of select list a mandamus to appoint on the basis of such a select list cannot be issued.

18/ In the matter of **Uttar Pradesh Public Service Commission Vs. Surendra Kumar and others reported in (2019) 2 SCC 195** in a case where the High court had quashed the communication of PSC rejecting the request to recommend the names of some more candidate on the ground that validity of wait list had expired, has set aside the said direction of the High court finding it to be unsustainable as the list has already expired.

19/ Similarly in the matter of Rajkishore Nanda (supra) the Hon'ble Supreme court has set aside the direction given by the High court to state government to appoint select list candidate who had approached the court after expiry of the list.

20/ In the matter of **Secretary, Kerala Public Service Commission Vs. Sheeja P.R. And another reported in (2013) 2 SCC 56** it has been held that once the main list is exhausted the supplementary list has no existence of its own.

21/ In the matter of **State of UP and others Vs. Harish Chandra and others reported in (1996) 9 SCC 309** in a case where panel/select list had expired has held that no mandamus can be issued as there was no subsisting right on the date of petition by observing as under:

“10. Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid 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 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 provision 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 4.4.87 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 occasion 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 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 4.4.87 had expired long since and 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.”

22/ The present case also stands on same footing because the petitioner has filed writ petition after expiry of validity of select list.

23/ So far as the judgment in the matter of **Purushottam Vs. Chairman, M.S.E.B. And another reported in (1999) 6 SCC 49** relied upon by counsel for petitioner is concerned, in that case though the petitioner was duly selected against the ST post but denied the appointment doubting his status as ST and High court had finally found him to be a ST candidate and in this background the denial of appointment on the ground that meanwhile someone else was appointed was held to be bad in law.

24/ In the matter of **State of UP Vs. Ram Swarup Saroj reported in (2000) 3 SCC 699** relied upon by counsel for petitioner the currency of panel had expired during pendency of writ petition but in the present case writ petition itself has been filed after several years.

25/ In the matter of State of **Jammu and Kashmir and others Vs. Sat Pal reported in (2013) 11 SCC 737** relied upon by counsel for petitioner it has been held that wait list starts to operate only after vacancies for which recruitment process was conducted are filled and in that case one post was not filled up and even otherwise it has been clarified in that judgment that where appointing authority decides not to fill up available vacancy, despite availability of candidates on wait list, that

would be a different preposition.

26/ The reliance of counsel for petitioner on the Division Bench judgment of this court in the matter of **Rekha Dhurve (Markam) Vs. State of MP and others reported in 2009(2) MPLJ 382** is also misplaced because in that case the writ petition was filed during the validity of select list and Division Bench had found that respondents no. 3 & 4 even otherwise were entitled for their placement in the select list.

27/ So far as the Single bench judgment in the matter of **Pallavi Shukla Vs. State of MP and others reported in 2015 SC Online MP 2110** is concerned, the same also stands on different footing because in that case the petitioner was found fit for appointment and she had filed writ petition challenging her exclusion from select list and during pendency of petition one of the candidate had resigned and post had fallen vacant and immediately within 2 days she had filed the representation and there was a corrigendum amending the list. Hence her claim was found to be well within time of the period of wait list.

28/ Similarly the Single Bench judgment of Gujarat High court in the matter of **Patel Rakeshkumar Dharamdas Vs. State of Gujarat through Secretary and others reported in 2011 SCC Online Guj 2544** also stands on different footing.

29/ So far as the petitioner's contention that she had filed representation dated 16/4/2001 before the state government for appointment is concerned, at that time the litigation at the instance of Ms. Geeta Nishad was pending.

30/ That apart the record reflects that recruitment process was of the year 2000, now almost 19 years have passed and petitioner has also undisputedly aged about 47 years and meanwhile she has obtained employment on another post in

the government service.

Having regard to the aforesaid, I find no ground to interfere in the present writ petition which is accordingly dismissed.

(Prakash Shrivastava)
Judge

BDJ