Mrs. Asha Kaul And Anr. Etc vs State Of Jammu And Kashmir And Ors on 15 April, 1993

Equivalent citations: 1993 SCR (3) 94, 1993 SCC (2) 573, 1993 AIR SCW 2314, (1993) 3 SCR 94 (SC), (1993) 2 LAB LN 64, (1994) 1 MAD LJ 29, (1993) 2 SCT 744, 1993 SCC (L&S) 637, (1993) 2 SERVLR 560, (1993) 24 ATC 576, (1993) 1 CURLR 966, 1993 (2) SCC 573, (1993) 2 JT 688 (SC)

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, N Venkatachala

PETITIONER:
MRS. ASHA KAUL AND ANR. ETC.

Vs.

RESPONDENT:
STATE OF JAMMU AND KASHMIR AND ORS.

DATE OF JUDGMENT15/04/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
VENKATACHALA N. (J)

CITATION:
1993 SCR (3) 94 1993 SCC (2) 573
JT 1993 (2) 688 1993 SCALE (2)545

ACT:
Jammu & Kashmir Civil Service (Judicial) Recruitment Rule 1967: Rules 39. 41 read with Articles 317-320.
Constitution of India, 1950--Appointment of Munsifs--Select list of twenty names by Public Service Commission--Government's power to disapprove or cancel--Scope of--Effect of Select list after one year--Inclusion in select list--whether confers a right to appointment.
Constitution of India, 1950 : Article 136--Appeal--Appointment of Munsifs--Government's action of not approving remaining names in select list-Interference by Supreme Court under the circumstances whether called for.

HEADNOTE:

On 28.5.1984, the High Court intimated the government of ten vacancies in the category of Munsifs and requested it to initiate appropriate steps for selection of candidates.

Written test was held in the year 1985 and viva voce was also held by the Public Service Commission.

On 10.12.1985 the High Court requested the Government to select twenty candidates in the place of ten. On 27.12.1885 the Government requested the public Service Commission to select twenty candidates. On 11.3.1986 the public service commission sent three select lists, one containing twenty candidates the other containing three Scheduled castes candidates and a waiting list of ten candidates.

The Government received several complaints against the process of selection. It was toying with the idea of scrapping the entire list and asking for a fresh selection.

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On 23.12.1986, as the High Court said that there was urgent need for at least thirteen Munsifs, the government approved the name,,,- of thirteen persons out of the list recommended by the Public Service commission and published the same. They were appointed on 30.12. 1986.

Meanwhile a writ petition had been riled in the High Court for a direction to the Government to approve and publish the list recommended by the Public Service Commission.

On 30.12.1986, the State stated before the High court that it has already approved thirteen names and approval of the remaining seven persons was under its active consideration. The High Court dismissed the writ petition as settled. The Government did not approve any other names in the list in view of the complaints against the selection process by the Public Service Commission.

The candidates in the select list below serial No. 13 were pressing the Government to approve and publish the list and the High Court was also pressing the Government to approve the list in view of the vacancies.

Another writ petition was riled to direct the Government to approve the remaining seven names from the select list.

The High Court (Single judge) allowed the writ petition and directed the Government to approve and publish the list of the remaining candidates submitted by the Public Service Commission to it for appointment as Munsifs, immediately in accordance with the Jammu and Kashmir Civil Services (judicial) Recruitment Rules, 1967 and to consider the appointment of the candidates (including the writ petitioner-.) as Munsifs in the vacancies existing or likely to arise, in accordance with the recommendations to he made by the High Court.

On appeal, the division Bench of the High Court reversed the decision of the Single Judge.

The present appeals by special leave were flied against the

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decision of the Division Bench,. contending that once the

Public Service Commission prepared and recommended a select list, the Government had no power to sit in judgment over it; that the Government was bound to approve the list as recommended; that the function of the Government under Rule 39 of the 1967 Rules was merely ministerial and formal; that the Government's action was arbitrary and capricious and vitiated by any admissible and extraneous consideration.

The State Government submitted that the function of the Gov-ernment under Rule 39 was not merelY formal or ministerial; that the Government, being the appointing authority, was entitled to scrutinies the list open to the Government either to approve or disapprove the list, either wholly or in part-, that a number of complaints were received bY the Government against the selection and many of them were found to he not without substance; that in view of the pressing need expressed by the High Court, the first thirteen candidates in the list were approved in the interest of judicial administration; that refusal to approve the remaining seven names inasmuch as no vacancies were available at that time was a valid and bonafide exercise of power and discretion ton the part of the Government; that the appellants had no legal right to be appointed just because their names were included in the select list prepared by the Public Service Commission.

Dismissing the appeals. this Court.

HELD: 1.1. It is true that the Government is the appointing authority for the munsifs but it is misleading to assert that in the matter of selection and appointment the Government has an absolute power. Such an argument does violence to the constitutional scheme. (102-F)

1.2. Rule 39 does not confer an absolute power upon the Government to disapprove or cancel the select list sent by the Public Service Commission Where, however, the Government is satisfied, after due enquiry that the selection has been vitiated either (on account of violation of a fundamental procedural requirement or is vitiated by consideration or corruption. favourtism or nepotism. it can refuse to

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approve the select list. In such a case, the Government is bound to record the reasons for its action, and produce the same before a Court, if and when summoned to do so, apart from placing the same before the Legislature as required by clause (2) of Article 323. (103-F-H)

1.3. Art. 323 (2) is meant as a check upon the power of the Government. The provision militates against the theory of absolute power in the Government to disapprove or reject the recommendations of the commission. For the same reason, it must he held that the Government cannot pick and choose candidates out of the list. It is equally not open to the Government to approve a part of the list and disapprove the balance. (104-B)

1.4. Where is respect of any particular candidates an), material is discovered disclosing his involvement in any

criminal activity the Government can always refuse to appoint such person but this would not he a case touching the select list prepared and recommended by the commission. (104-C)

1.5. In this case the Government itself had asked for a list of twenty and the commission had sent a list of twenty. It could not have been approved in part and rejected in part. The number of vacancies available on the date of approval and publication of the list is not material. By merely approving the list of twenty, there was no obligation upon the Government to appoint them forthwith. Their appointment depended upon the availability of vacancies. The list remains valid for one year from the date of its approval and publication, if within such one year, any of the candidates therein is not appointed, the list lapses and a fresh list has to be prepared. (104-E-F)

1.6. If the Government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that and having approved the list partly (thirteen out of twenty names), they cannot put forward any ground for not approving the remaining list. Indeed, when it approved the list to the extent of thirteen, it ought to have approved the entire list of twenty or to have disapproved the

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entire list of twenty. The objection, the Government have pertains to the very process of selection i.e., to the entire list and not individually to any of the remaining seven candidates. (104-G)

1.7. Mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment. (104-H)

State of Haryana v. Subhash Chandara Marwaha, A.I.R. 1973 SC. 2216, M. S. Jain v. State of Haryana , A.I.R. 1977 S.C. and State of Kerala v. A. Lakshmikutty: A.I.R. 1987 S.C. 331, referred to. (111 -E)

1.8. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a more farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category,-in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government-the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. (105-B-C)

Shankarsan Dash v. Union of India. 1991 (3) SCC 47, referred to.

2. The Government's action In not approving the rest of the seven names in the select list is unsustainable but there are certain circumstances which induce the Court not

to interfere in this matter. They are: (1) During the period of one year from the date of approval of thirteen names (23.12.1986/30.121986) no vacancy had arisen, which means that even if the list of twenty had been approved and published on December 23 or December 30, 1986 none of the seven persons would have been appointed. At the end of one year, the list lapses and becomes inoperative. (II) When the Government failed to act within a reasonable period from the date of the order (December 30, 1986) of the High Court in writ petition 1316/84 (which was disposed of recording the statement of the Advocate General) the petitioners ought to have moved in the matter. They did not do so. They waited for more than twenty months and approached the High Court only on
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September 14, 1988. This delay disentitles the petitioners from any relief in the facts and circumstances of the case. (106-C-G)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 173031/1993. From the Judgment and Order dated 30.6.1992 and 2.9.1992 of the Jammu and Kashmir High Court in L.P.A. No 161/90. and C.W. P. No. 1352/88.

D.D. Thakur, M.H. Baig. Rajendra Mal Tatia, Indra Makwana and K. K. Gupta (for Suresh A. Shroff & Co.) for the Appellants.

V.R. Reddy, Addl. Solicitor General and Ashok Mathur for the Respondents.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. Heard counsel for the parties. Leave granted in S.L.Ps. 12608/92 and 16418/92.

The appeals are directed against the judgment of the Division Bench of the Jammu and Kashmir High Court allowing a special appeal preferred by the State of Jammu and Kashmir against the judgement of the learned Single Judge. The learned Single Judge had allowed the writ petition filed by the appellants herein. The matter pertains to approval and publication of the select list of District Munsifs prepared by the Jammu and Kashmir Public Service Commission. On May, 28. 1984 the High court intimated the Government of ten vacancies in the category of munsifs and requested the Government to initiate appropriate steps for selection of candidates. The government wrote to the public service commission and the latter issued the notification and put the process in motion. Written test was held in the year 1985. viva-voce was also held. At that stage, the High Court requested the government (with a copy forwarded to the public service commission) to select twenty candidates in the place of ten. This was done on December 10, 1985. The government, in turn, requested the public service commission on December 27, 1985 to select twenty candidates. On March 11, 1986 the Public Service Commission sent three select lists,. one containing twenty

candidates, the other containing three scheduled castes candidates and a waiting list of ten candidates.

From the record placed before us by the learned counsel for the State of Jammu and Kashmir, it appears that the government received several complaints against the selection process. The government appears to have been satisfied prima facie with some of those complaints and was toying with the idea of scrapping the entire list and asking for a fresh selection. The select list sent by the commission was kept pending without being approved as required by Rule 39 of the Jammu and Kashmir Civil Service,, (.Judicial) Recruitment Rules, 1967. Meanwhile, the High Court had been pressing for approval of the names in view of a number of vacancies and the consequent accumulation of work. Number of courts were without presiding officers. In particular, the High Court said, there was urgent need for at least thirteen Munsifs. In the circumstances, the government approved, on December 23, 1986. tile names of thirteen persons out of the list recommended by the public service commission and Published the same. They were appointed on December 30, 1986. Meanwhile, a writ petition had been tiled in the High Court for a direction to the Government to approve and publish the list recommended by the public Service commission. On December 30, 1986. the Advocate General for the State stated before the court that the Government has already approved thirteen entries and that the question of approval of the remaining, persons in the list was under the active consideration of the Government. Recording the said statement, the writ petition was dismissed as settled. The Government however, did not approve any of the other names in the lists. evidently in view of the very same reasons for which they were disinclined initially to approve the said lists. Meanwhile, the candidates in the select list below serial No. 13 were pressing the Government to approve and publish the list. The High Court was also addressing the government from time to time to approve the list in view of certain vacancies arising since the appointment of the thirteen Munsifs aforementioned. Since no further names were being approved by the Government, the writ petition, from which these appeals arise, was filed on September 14, 1988. The writ petition was allowed on July 11,1990 by a learned Single Judge and a direction was issued to the State Government to approve and publish the list of the remaining candidates submitted by the public service commission to it for appointment as munsifs immediately in accordance with the Rules of 1967 and to consider the appointment of such candidates (including the writ petitioners) as munsifs in the vacancies existing or likely to exist in accordance with the recommendations to be made by the High Court. On appeal, the Division Bench disagreed with the learned Single Judge. The Bench held that approval and publication of the select list by the Government under Rule 39 is not a mere ministerial act but a meaningful one. It is open to the government to examine the select list carefully and to reach its own conclusion regarding the suitability and merits of the candidates and publish the names of only those candidates who are found suitable. While approving the list, the Division Bench held, the State Government cannot alter or temper with the order of merit determined by the commission but it is certainly open to the government to stop at a particular point where it feels that a particular candidate is not meritorious and not to approve the remaining list. The government is not bound to fill up the existing vacancies within a particular time-frame. The mere inclusion in the select list also does not confer upon the candidates any indefeasible right to appointment. The recommendations of the commission are not binding upon the State Government-held the Division Bench. In the facts and circumstances of the case, it must be held that the remaining seven names in the select list have been disapproved by the

government. The writ petition also suffers from leaches. The persons who had meanwhile become eligible and qualified to apply for the said post should also be given a chance. A list prepared as far back as 1985-86 cannot be directed to be approved in the year 1992. In these appeals, it is submitted by the learned counsel for the appellants that once the public service commission prepares and recommends a select list, the government has no power to sit in judgment over it. It is bound to approve the list as recommended. The function of the government under Rule 39 of the 1967 Rules is merely ministerial and formal. Even otherwise, the government has not disclosed any reasons for not approving the seven names while approving the first thirteen. The government's action is arbitrary and capricious. It is indeed vitiated by inadmissible and extraneous considerations. The government cannot be allowed an absolute power in the matter. On the other hand, it is contended by Sri Dipankar Gupta, learned Solicitor-General appearing for the State of Jammu and Kashmir that the function of the government under Rule 39 is not merely formal or ministerial. The government being the appointing authority, is entitled to scrutinise the list prepared by the public service commission. It is open to the government either to approve or disapprove the list either wholly or in part. As a matter of fact, a large number of complaints were received by the government against the said selection and many of them were also found to be not without substance. However, in view of the pressing need expressed by the High Court, the first thirteen candidates in the list were approved in the interest of judicial administration. The remaining seven names were not approved inasmuch as no vacancies were available at that time. In all the circumstances of the case, the Hon'ble Chief Minister took a decision on March 28, 1988 not to approve any further names and to go in for fresh selection. Inasmuch as the vacancies at the end of the year 1986 were not more than thirteen, the refusal to approve the remaining seven is a valid and bonafide exercise of power and discretion on the part of the government. The appellants have no legal right to be appointed just because their names have been included in the select list prepared by the public service commission. The first requisition by the High court was sent in May, 1984. The written test was held in 1985. The select list was recommended in March, 1986. After a lapse of more than seven years, the said list cannot now be directed to be given effect to, the learned Solicitor- general submitted. Such a direction would deprive a large number of persons, who have become qualified and eligible to apply and complete for the said post meanwhile of the opportunity of applying for the said post. Many of them may even become age-barred meanwhile, he submitted. It is true that the government is the appointing authority for the munsifs but it is misleading to assert that in the matter of selection and appointment the government has an absolute power. Such an argument does violence to the constitutional scheme. The Constitution has created a public service commission and assigned it the function of Conducting examinations for appointments to the services of the Union or to the services of the State, as the case may be. According to Article 320 clause (1) this is the primary function of the commission. The Government is directed to consult the public service commission on all matters relating to methods of recruitment to civil services and to civil posts and on the principles to be followed in making. appointment to civil services and posts and on the suitability of candidates for such appointment, among other matters. An examination of Articles 317 to 320 makes it evident that the constitution Contemplates the commission to he an independent and effective body outside the governmental control. This is an instance of application of the basic tenet of democratic form of government viz., diffusion of governing power, The idea is not to allow the concentration of governing power in the hands of one person, authority or organ. It is in the light of this constitutional scheme that one has to construe Rules 39 and 41 of the 1967 Rules. They read as

follows:

> 39.Final List: The list of selected candidates after it is approved shall be published by the Government Gazette and a copy thereof shall be sent to the court along with the Waiting list, if any, furnished by the commission for record in their office."
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> 41. Security to the list:
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> The list and the Waiting list of the selected candidates shall remain in operation for a period of one year from the date of its publication in the, Govt. Gazette or till it is exhausted by appointment of the candidates whichever is earlier, provided that nothing in this Rule shall apply to the list and the waiting list prepared as a result of the examination held in 1981 which will in operation till the list or the waiting list is exhausted."
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> Construed in the above light, Rule 39, in our opinion, does not confer an absolute power upon the government to disapprove or cancel the select list sent by the public service commission. Where, however, the government is satisfied, after due enquiry that the selection has been vitiated either on account of violation of a fundamental procedural requirement or is vitiated by consideration of corruption, favourtism or nepotism, it can refuse to approve the select list. In such a case, the government is bound to record the reasons for its action, and produce the same before a Court, if and when summoned to do so, apart from placing the same before the Legislature as required by clause (2) of Article 323. Indeed, clause (2) of Article 323 obliges the Governor of a State to ray a copy of the annual report received from the commission before the Legislature "together with a memorandum explaining, as respect the cases, if any, where the advice of the commission was not accepted (and) the reasons for such non-acceptance." Evidently, this is meant as a check upon the power of the government. This provision too militates against the theory of absolute power in the government to disapprove or reject the recommendations of the commission. For the same reason, it must be held that the government cannot pick and choose candidates out of the list. Of course, where in respect of any particular candidate any material is discovered disclosing his involvement in any criminal activity, the government can.

always refuse to appoint such person but this would not be a case touching the select list prepared and recommended by the commission. It is equally not open to the government to approve a part of the list and disapprove the balance. In this case, it may be remembered that the government itself had asked for a list of twenty and the commission had sent a list of twenty. (we are not concerned with the waiting list sent by the commission, at this stage). It could not have been approved in part and rejected in part. The number of vacancies available on the date of approval and publication of the list is not material. By merely approving the list of twenty, there was no obligation upon the government to appoint them forthwith. Their appointment depended upon the availability of vacancies. A reading of Rule 41 makes this aspect clear. The list remains valid for one year from the date of its approval and publication. If within such one year, any of the candidates therein is not

appointed, the list lapses and a fresh list has to be prepared. In this case, no doubt, a number of complaints appears to have been received by the government about the selection process. We have seen the note file placed before us. It refers to certain facts and complaints. But if the government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that and having approved the list partly (thirteen out of twenty names) the\ cannot put forward any ground for not approving the remaining list. I indeed, when it approved the list to the extent of thirteen, it ought to have approved the entire list of twenty or have disapproved the entire list of twenty. The objection, the government have pertains to the very process of selection i.e., to the entire list, and not individually to any of the remaining seven candidates. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment State of Haryana v. Subhash Chandra Marwaha A.I.R. 1 973 S.C.2216; M.S, Jain v.State of Haryana A.I.R. 1977 S.C. 276 and State of Kerala v. A. Lakshmikutty A.I.R. 1987 S.C 331 but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government-the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India 1991 1 3 S.C.C.47 where the earlier decisions of this court are also noted. The following observations of the court are apposite:

> "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to he taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Hary-
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> ana v. Subhash Chander Marwahs, Neelima. Shangla v. State of Haryana or- Jatendra Kumar v. State of Punjab."

We may reiterate that the principle of Article 323, referred to hereinabove, is equally relevant on the nature of the power of the government in such a matter.

Looked at from the above stand-point, it appears that the government's action in not approving the rest of the seven names in the Select list is unsustainable but there are certain circumstances which induce us not to interfere in this matter. They are:

> (i) During the period of one year from the date of approval of' thirteen names (23.12.1986/30.12.1986) no vacancy bid arisen. which means that even if the list of twenty had been approved and published on December 23 or December 30. 1986 none of the seven persons would have been appointed. At the end of one year. the list lapis and becomes inoperative.

The first letter of the High Court stating that one or two more vacancies have arisen and requesting the Government to approve the remaining names, was sent only on August 13,1988 i.e., long after the expiry of the one year period. Any direction at this stage to approve the list would be a futile exercise. The list cannot be operated with respect to the vacancies existing as on today; and

(ii) When the government failed to act within a reasonable period from the date of the order December 30, 1986) of the High Court in writ petition 1316/84 (which was disposed of recording the statement of the Advocate General) the petitioners ought to have moved in the matter. They did not do so. They waited for more then twenty months and approached the High Court only on September 14. 1988. This delay in our opinion, disentitles the petitioners from any relief in the facts and circumstances of the case. For the above reasons, the appeals fail and are dismissed. No costs.

WRIT PETITION (C) NO. 81 OF 1993:

> The petitioner in this writ petition was included in the waiting list prepared by the public service commission. Since the appeals preferred by the candidates at serial No. 14 onwards in the main list have themselves failed. there is no question of giving any relief to this petitioner.

The writ petition accordingly fails and is dismissed. No costs.

V. P. R. Appeals dismissed.