All India Sc & St Employees Assn.& Anr vs A. Arthur Jeen & Ors on 12 April, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1851, 2001 (6) SCC 380, 2001 AIR SCW 1720, 2001 LAB. I. C. 1726, (2002) 1 JCR 150 (SC), (2001) 5 JT 42 (SC), 2001 (5) JT 42, 2001 (3) SERVLJ 84 SC, 2001 (3) SCALE 378, 2001 (5) SRJ 507, (2001) 3 SERVLJ 84, (2001) 2 ESC 415, (2001) 3 SUPREME 427, (2001) 89 FACLR 1051, (2001) 2 LAB LN 799, (2001) 2 SCT 737, (2001) 3 SERVLR 631, (2001) 3 SCALE 378

Author: Shivaraj V. Patil

Bench: S. Rajendra Babu, Shivaraj V. Patil

CASE NO.:
Special Leave Petition (civil) 14656 of 2000

PETITIONER:
ALL INDIA SC & ST EMPLOYEES ASSN.& ANR.

Vs.

RESPONDENT:
A. ARTHUR JEEN & ORS.

DATE OF JUDGMENT: 12/04/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

WITH SPECIAL LEAVE PETITION (C) NO. 2377 OF 2001 J U D G M E N T Shivaraj V. Patil, J.

L...I...T.....T.....T.....T.....T.....T.....T..J In these Special Leave Petitions, the judgment and order dated 10.4.2000 passed by the Division Bench of Madras High Court in Writ Petition Nos.16766-16772 of 1999, 17167, 17878, 18834 & 20598 of 1999 and 4064 of 2000 are under challenge. S.L.P. No. 14656 of 2000 is filed by the applicants in O.A. No. 93/99 before the Central Administrative Tribunal, Chennai Bench who were the respondents in the writ petition before the High Court. S.L.P. No. 2377 of 2001 is filed by the petitioners in W.P. No. 16766 of 2000 in the writ

petition before the High Court.

In short, the facts and events leading to filing of these Special Leave Petitions are :-

> The Railway Board issued Employment Notification No. 1 of 1995 dated 7.9.1995 inviting applications for 330 posts of Khalasis (Group-D) reserving 19% of posts for Scheduled Castes, 1% for Scheduled Tribes and 27% for OBCs besides 3% for Physically Handicapped and 20% for Ex-Servicemen. In response to the Notification, 58,675 applications were received, out of them 32,563 candidates were found eligible and called for interview. The Railway Board by its letter dated 17.5.1996 communicated its decision to prepare a panel for 917 vacancies on the ground of increase of vacancies from 330 to 917. The selection of candidates was to be made on viva voce test only. The candidates were interviewed from July 1996 to February 1997 by different committees. The composition of the committees was challenged in O.A. No. 28/1997 before the Central Administrative Tribunal, Chennai Bench. The Tribunal by its order dated 17.9.1997 struck down the Railway Boards instructions on the basis of which committees were constituted for interview. Thereafter the Railway board issued fresh instructions on 29.4.1998 for constituting committees as per para 179 of the Indian Railway Establishment Manual (I.R.E.M.). The second round of interviews were conducted afresh from 26.06.1998 to 28.09.1998 for 75 days by different committees. Out of 32,563 candidates, only 25,271 candidates appeared for the interview. Another O.A. No. 543/1998 was filed seeking direction that the course completed Act Apprentices should be given preference but the same was dismissed on 17.9.1998.

Ultimately merit list was published on 22.12.1998 and a panel of 917 selected candidates was published in the newspapers on 30.1.1999. The candidates selected were informed about their selection.

O.A. No.93 of 1999, O.A. No. 103 of 1999, O.A. No. 153 of 1999, O.A. No. 202 of 1999, O.A. No. 260 of 1999 and O.A. No. 294 of 1999 were filed before the Tribunal challenging the selection of the candidates. O.A. No. 367 of 1999 was filed by a selected candidate seeking direction to complete the process and to issue appointment. The respondents resisted these O.As. on the grounds that O.As. filed in the nature of PIL were not maintainable; the applicants could not be said to be aggrieved persons without showing whether they were members of the association and whether they applied for the said posts; all the material allegations contrary to their stand made in the O.As. were denied; that the Railway Administration did not give any particular direction or instruction in the matter of selection and that no mala fide practice was followed. It was also pleaded that there was no violation of settled procedure and guidelines; the selection was made on the basis of performance of the candidates in the viva voce; further there was no arbitrariness in the selection of candidates and that the procedure followed in the earlier selection made in 1989-90 was followed in the present selection as well.

The Tribunal quashed the panel of selected candidates giving the reasons that number of vacancies originally notified were 330 but the panel of selected candidates had been drawn for 917 without earlier notifying the increase in vacancies; only 18 Physically Handicapped candidates had been selected instead of 27 candidates on the basis of 3% reservation for the entire 917 posts; instead of finding the selection zone, applications of SC/STs were received on inter-State basis and that the marking pattern in the selection in the absence of guidelines to 80% marks had led to wide variations. The Tribunal, however, noticed that allegations of mala fide and bias had not been established.

Aggrieved and affected by the order of the Tribunal, the successful candidates, who were provisionally selected, filed the writ petitions in the High Court challenging the order passed by the Tribunal. The High Court, on a detailed examination of respective contentions raised by the contesting parties, held that the rule of reservation was properly followed except to the extent of shortfall by 1% in regard to the Physically Handicapped category; the procedure prescribed in para 179 of I.R.E.M. was substantially complied with; the awarding of marks in two categories to the extent of 80% was in order; that association could not agitate the case of all persons as it depended on the facts of each individual member and that no resolution of authorization to file the O.A. was produced. The High Court also observed that the Tribunal could not act as a court of appeal in appreciating the contentions urged before it. Having due regard to the long-drawn process involved in the selection of candidates, the revised assessment of vacancies coming to only 382 in Group `D for the period upto March 2002 and considering totality of facts and circumstances of the case as indicated in the order under challenge, the High Court directed the authorities to proceed with the selection made and to appoint the selected candidates in the available vacancies. It was made clear that the authority concerned should select and appoint 3% Physically Handicapped candidates out of the candidates already selected instead of 2%.

Before us, Mr. K.R. Chowdhary, learned Senior Counsel appearing for petitioners in S.L.P. No. 14656 of 2000, urged that the High Court failed to appreciate that the writ petitions had become infructuous as stated in the counter affidavit filed by the respondents in view of the fact that the Indian Coach Factory (I.C.F.) Administration had accepted the order of the Tribunal and cancelled the employment notification dated 7.9.1995 itself, on 3.10.1999; after 3.10.1999 pursuant to the cancellation of the employment notification, no right subsisted to the writ petitioners before the High Court and as such the High Court committed an error in proceeding to decide the case; the High Court also committed an error in holding that there was substantial compliance of para 179 IREM; the High Court was not right in holding that non-shortlisting and not confining preference to local candidates did not affect the selection.

On the other hand, Mr. A.L. Somayaji, learned Senior Counsel for petitioners in SLP No. 2377/2001, made submissions supporting the order of the High Court except to the extent of the observation made in para 34 taking note of revised assessment of vacancies coming to only 382 in Group `D for the period upto 2002, and confining appointment to the available vacancies only. Although originally the notification was issued to fill up 330 vacancies, later they were increased to 917 after getting the approval of the Railway Board for additional 587 vacancies; since as many as 58,675 applications were received, out of them 32,563 candidates were called for interview and 25,271

candidates actually attended interview including large number of local candidates, no prejudice was caused by not inviting applications for additional vacancies; as observed by the High court, selected candidates were made to run from pillar to post for one reason or the other and they were asked to appear twice for the interview in pursuance of the notification No. 1/95 and that after a long drawn process the panel of selected candidates was prepared; the Tribunal committed a serious error in quashing the panel of selected candidates in its entirety when the selected candidates were not impleaded in the O.As. On this short ground alone, the High Court ought to have granted relief to the successful candidates fully covering all the 917 candidates. The learned Senior Counsel also submitted that no mala fides or arbitrariness was found in the procedure of selection of candidates. He urged that there was no justification to reduce the vacancies to be filed from 917 to 382, having prepared and published a panel of 917 selected candidates. He added that after the High Court passed the order, some candidates have been appointed; it may not be appropriate to upset the selection of candidates at this stage.

Mr. Ranjit Kumar, learned Senior Counsel appearing on behalf of the Union of India, made submissions drawing our attention to counter-affidavit filed by the Union of India and urged that the selected candidates did not acquire any indefeasible right to be appointed against the existing vacancies and the authorities are under no legal duty to fill up all or any of the vacancies and particularly so when there are no vacancies to accommodate all the candidates; the authorities accepting the decision of the Tribunal cancelled the employment notification and subsequently after the High Court passed the order, further steps were taken and about 100 out of the selected candidates are already appointed.

We have given our consideration to the rival contentions urged on behalf of the contesting parties. It is clear from the counter affidavits filed on behalf of Union of India and I.C.F. Administration that after the Tribunal passed the order in O.As. on 23.8.1999 and on implementation of the decision of the Ministry of Railways to enhance the hourly rate of incentive, concurrently by reducing the allowed time and in terms of their letter No. PC-V/98/1/7/4/1 dated 21.6.1999 with effect from.1.9.1999, there was drastic reduction of vacancies leading to surrendering of 866 posts of technicians (artisans) and 327 posts of Khalasis(helpers). In the changed situation, the I.C.F. Administration decided to implement the order of the Tribunal quashing the selection and issued press notification on 3.10.1999 canceling the employment notification dated 7.9.1995 and canceling the panel of the selected candidates. After issuing employment notification on 7.9.1995 to cover further two years recruitment for subsequent years, with the approval of the Ministry of Railways in 1996, it was decided to empanel 587 more candidates in the same recruitment process. The recruitment process was getting prolonged due to litigation. A number of appointments on compassionate grounds had to be made in the intervening period; owing to the raising of the age of superannuation from 58 to 60 years by the Government, there were no retirements from May, 1998 to April, 2000; more than these, implementation of Railway Boards decision to enhance the hourly rate of incentive and reduce the allowed time by 12% resulted in reduction of vacancies both in Group `C and Group `D. Vacancies in Group `D depend on arising of vacancies in Group `C technicians cadre and the progression of Khalasis (helpers) by Khalasis against 75% of technician vacancies; because of these reasons the anticipated vacancies did not materialize and the exercise of reassessment of vacancies made in September, 1999 indicated that only 382 vacancies would be

available upto March, 2002. Responding to the allegation that these facts were not brought to the notice of the Tribunal during the arguments in O.A. No. 93/99, it was pointed out that after the closing of arguments before the Tribunal and on receipt of Boards instructions dated 21.6.1999 effective from 1.9.1999, the vacancies had to be re-assessed having regard to the reduction of manpower requirements and the vacancies so reduced came to 382 for the period upto March, 2002; the variance between the vacancies notified at 330 and the revised vacancies at 382 was not much. Neither any mala fides were attributed nor any arbitrariness was established on the part of the Railway Administration in re-assessing the vacancy position.

Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash Vs. Union of India [1991 (3) SCC 47]. Para 7 of the said judgment reads thus :-

> 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 be 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 Haryana vs. Subhash Chander Marwaha [(1974) 3 SCC 220], Neelima Shangla vs. State of Haryana [(1986) 4 SCC 268] or Jatendra Kumar vs. State of Punjab [(1985) 1 SCC 122].
>
> Hence the contentions raised in SLP No. 2377/2001 are untenable.
>
> Similarly the contention that the vacancies to be filled up could not be increased to 917 from 330 originally notified without there being subsequent notification is untenable in view of the changed situation as explained above. No fault can be found with the direction of the High Court to issue appointments only to available vacancies on merit out of the candidates included in the panel of selected candidates following rules of reservation and that too reserving 3% seats to Physically Handicapped instead of 2%. 382 vacancies would be available upto March 2002 possibly as of now all the 382 candidates may not be given appointment; the appointments may be given upto 330 or less. Further, the purpose of issuing notification and giving due publicity is to provide opportunity to as many eligible candidates as possible. The employment notification No. 1/1995 was issued on 7.9.1995 and the decision was taken to increase

the posts on 17.5.1996, the time gap was hardly 8 months; as many as 58,675 made applications and 32,563 were called for interview. It was quite probable that all candidates eligible and interested including large number of local candidates, applied for the posts. The time gap of about 8 months between the original notification and the decision to increase posts not being much, it cannot be said that many of the eligible candidates were deprived of applying for the posts looking to the requirements of eligibility. As already stated above, in the changed situation only 382 posts are to be filed up upto March, 2002. The selected candidates are to be appointed on the basis of merit following rules of reservation applicable to different categories. The process of selection was long-drawn and the candidates were made to appear for interview twice. The candidates and their families have been waiting for long time from 1995 with great hope of getting jobs. Enormous money and man hours have been spent in completing the process of selection in preparing the panel of selected candidates. In this view there was no justification for the Tribunal to quash the entire panel of selected candidates.

Although the candidates included in the panel showing their provisional selection do not get vested right to appointment, they will be surely interested in protecting and defending the select list. It is the admitted position that before the Tribunal the successful candidates whose names were included in the panel of selection were not made parties. The argument of the learned counsel that since the names and particulars of the successful candidates included in the panel were not given, they could not be made parties, has no force. The applicants before the Tribunal could have made efforts to get the particulars; at least they ought to have impleaded some of the successful candidates may be in a representative capacity; if the large number of candidates were there and if there was any difficulty in service of notices on them, they could have taken appropriate steps to serve them by any one of the modes permissible in law with the leave of the Tribunal. This Court in Prabodh Verma and Ors. Vs. State of Uttar Pradesh & Ors. [1984 (4) SCC 251] has held that in writ petitions filed against the State questioning the validity of recruitment of a large number of persons in service could not be proceeded with to hear and take decision adverse to those affected persons without getting them or their representatives impleaded as parties. In para 50 of the said judgment, summarizing the conclusions this Court in regard to impleading of respondents has stated that :-

A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High court ought to dismiss the petition for non-joinder of necessary parties.

This court in para 4 of the judgment in A.M.S. Sushanth & Ors. Vs. M.Sujatha & Ors. (2000 (10) SCC 197) has stated thus:-

We find that none of the persons who were selected and whose appointments were set aside by the High Court had been impleaded as a party-respondent. It appears that a public notice was given in a representative capacity only with regard to the appointment to the post of Assistant Sericulture Officer. The direction of the High Court, however, is not confined to that post alone and it is the appointments to the other posts also which have been set aside. This could not be done. The principles of natural justice demanded that any person who was going to be adversely affected by the order should have had an opportunity of being heard. That apart, one would have expected the High Court to have considered the report submitted under Section 65 on its merits and then decided whether the said report should be accepted or not.

Be that as it may, on the facts and in the circumstances of the present cases, we do not find any merit in any one of the contentions urged on behalf of the petitioners in S.L.P. No. 14656 of 2000.

The High Court found that rules of reservation in regard to all other categories were followed and the Tribunal also found so; as regards Physically Handicapped, the reservation was to be increased to 3% instead of 2% among the candidates included in the panel on the basis of merits. Hence the grievance as to increase of posts from 330 to 917 without issuing notification was of no consequence. It is also noticed by the High Court that the large number of applications were received and interviewed including a large number of local candidates; the employment notification of 95 had been published in the employment exchanges in Chennai, Kanchipuram and Tiruvallur of the local unit of I.C.F., Chennai. Further it is also stated in the counter affidavit that the upper age limit itself has been raised upto to 33 years besides relaxation in the age limit for reserved community candidates and P.H./Ex.Servicemen etc. In our view, no prejudice was caused to the petitioners in S.L.P. No. 14656/2000.

In regard to the other contention that 80% marks were awarded to the candidates without any guidelines, the High Court has taken the view that there was no arbitrariness in awarding 80% marks under two heads. We will do well to remember that The candidates were interviewed for Group `D posts (Khalasis); the selection was to be made only on the basis of viva voce test. The marks were to be awarded under the four heads as stated below.

i) Personality / address - 40 marks

ii) Ability to do the job - 40 marks.

iii) Technical / academic qualification-10 marks.

iv) Sports etc. - 10 marks.

Under the head ability to do the job, marks to be awarded was on the basis of the candidates ability to lift a weight of 35 kg. without any physical strain. Marks were to be awarded looking to the technical /academic qualifications; so also for sports and marks were to be awarded for personality and address. Having regard to the nature of different heads for which marks were to be awarded that too for filling up Group D posts of Khalasis, it cannot be said that there could be wide variance or arbitrariness in awarding narks. The procedure followed in viva voce test is again indicated in the reply statement filed on behalf of the Railway Administration before the Tribunal itself. It is stated that the interview was conducted by 3 committees with 4 members each representing SC/ST/Minority/OBC for 75 days. To maintain secrecy, a system which was evolved in the previous selection with the approval of the then Chief Personnel Officer (CPO) in the year 1989-90 for nomination of the Committee Members was adopted this time also, as detailed below:-

> On the previous day afternoon, the three selection committees with four officers will be formed by Deputy Chief Personnel Officer/General [Dy. CPO/G] with due representation of SC/ST/OBC/Minority. These 12 officers will be intimated over phone by Dy. CPO/G or through his Confidential Assistant without mentioning which committee they belong to. The sealed cover containing three committees will be handed over to Senor Personnel Officer/Recruitment and training (SPO/R&T) and the same will be opened by SPO/R&T in the presence of the all twelve officers on the day of viva voce after getting signature from one or two offices on the sealed cover to acknowledge that the sealed cover is in tact. On the first two days [viz. 22nd and 23rd June 1998] CPO has nominated the committees. Thereafter the Dy. CPO/G. had nominated the committees. In pursuance there of, the committee members will take position in their respective committee rooms allocated and conduct the interviews. After the closure of the interview, on each day, the signed mark statements of each committee will be kept in a cover duly signed by the officers in the outer cover and sealed. These sealed covers will be handed over to Dy. CPO/G by the Personal Officer of the respective committee, for safe custody. In the absence of Dy. CPO/G, SPO/R&T will receive and hand over the same to Dy. CPO/G, when he resumes duty. After the interview were over, a decision was taken to hand over the mark statement in 220 sealed covers to Railway Recruitment board/Chennai[RRB] for data entry and form a draft panel following all the reservation rules for SC/ST/OBC etc. The 220 sealed covers were taken to RRB by D.DPO/G and SPO/R&T in 2 sealed boxes and handed over on 12.10.1998. On 22.12.1998, the RRB returned the mark lists along with the merit lists an a floppy containing date for all the 25,271 candidates. The data entries were verified and a panel of 917 selected candidates formed with CPOs approval, after following the reservation rules for SC/ST/OBC/Physically Handicapped and Ex-servicemen. Thereafter, the panel was published in the Newspapers viz, Indian Express and Daily Thanthi on 30.01.1999. Simultaneously, the successful candidates were informed that they have been provisionally selected for Gr. D posts and further action will follow in due course. At this stage, the applicants have filed the present OA and this Honble Tribunal on 08.02.1999 passed an order directing the respondents to maintain `statusquo.

S.L.P. No. 14656 of 2000 is filed by the petitioners in O.A. No. 93 of 1999 before the Tribunal. In the said O.A., petitioner no. 1 was an association named All India Scheduled Caste and Scheduled Tribe Employees Association and petitioner no. 2 was an individual. The High Court has held that such a writ petition filed by an association was not maintainable. In our view it is unnecessary to examine this question in the light of conclusion reached on the merits of the respective contentions.

The contention urged on behalf of the petitioners in S.L.P. No. 14656 of 2000 that the writ petitions had become infructuous in view of the fact that I.F.C. Administration itself had cancelled the employment notification No. 1 of 1995 dated 7.9.1995 accepting the judgment of the Tribunal cannot be accepted. The selected candidates who were seriously affected had every right to challenge the decision of the Tribunal on all the grounds available to them. The I.C.F. administration by its decision to cancel the employment notification and the panel of selected candidates unilaterally could not defeat or destroy the interest of the successful candidates. It is also submitted before us that the I.C.F. Administration pursuant to the judgment of the High court passed in the writ petitions has given appointment to about 100 candidates from out of the panel of the selected candidates. This being the position, we are of the view that the writ petitions had not become infructuous. The High Court has also noticed that those candidates who had participated in the interview could not challenge the selection before the Tribunal. Thus having regard to all aspects including the changed situation as to the reduction of vacancies from 917 to 382 on the basis of the revised assessment of vacancies as already stated above, the impugned order passed by the High Court is just and appropriate. In the light of what is stated above, we do not find any justification or valid reason to interfere with the impugned order passed by the High Court. Therefore, both the S.L.Ps. being devoid of any merit are liable to be dismissed. Accordingly, they are dismissed but with no order as to costs in the circumstances of these cases.