

Azhar Ali Khan And Ors. vs Commissioner, Municipal Corporation ... on 18 April, 1984

Equivalent citations: AIR1984SC1240, [1984(49)FLR195], 1984LABLC896, 1984(1)SCALE666, (1984)3SCC549, 1984(2)SLJ463(SC), 1984(16)UJ711(SC), AIR 1984 SUPREME COURT 1240, 1984 LAB. I. C. 896, 1984 UJ (SC) 711, (1984) 26 DLT 19.2, 1984 SCC(CRI) 438, 1984 SCC (L&S) 588, (1984) 2 SERVLJ 463, (1984) 2 LAB LN 42, 1984 (3) SCC 549

Bench: A. Varadarajan, V.D. Tulzapurkar

JUDGMENT

1. CM.P. No. 3068 of 1984 is by the first respondent in Writ Petition No. 1194 of 1979 (Municipal Corporation of Delhi) for a direction that having regard to changed circumstance the Corporation need not fill in the gaps in the seniority list of 1978-79 relating to Assistant Engineers by direct recruitment. C.M.P. No. 3069 of 1984 is by the petitioners in the same writ petition for taking proceedings against respondents 1 and 2 in the writ petition for contempt of this Court's order dated 13.7.1983 made in the writ petition and for directing those two respondents to forthwith implement that order and fill up the available 32 posts of Assistant Engineers from amongst the petitioners "who were qualified and eligible according to the recruitment rules" and to restrain those respondents from filling up the post in the direct recruitment quota from amongst diploma holders on current duty charge or on ad hoc basis or in any other manner.

2. By our order dated 13.7.1983 we allowed prayers Nos. 1, 2, 3 and 5 in the writ petition as indicated in our judgment with costs and dismissed the writ petition in other respects. Prayer No. 1 in the writ petition was to direct respondent No. 1 in the writ petition to fill up 8 posts of Assistant Engineers from amongst those in the select panel approved on 2.5.1979. As regards that prayer what has been ordered by us is this :

There is nothing wrong in respondent 1, the Corporation, proceeding to appoint Assistant Engineers (Civil) by direct recruitment as per the Recruitment Regulations or in fixing the 50:50 quota and working it out or in the selection of petitioners in Writ Petition No. 1194 of 1979 as Assistant Engineers pursuant to the decision to appoint 8 Assistant Engineers (Civil) by direct recruitment in the interviews held for that purpose on 6th and 7th March, 1979 and the respondents 1 and 2 should issue orders of appointment to those posts to 8 of the petitioners in Writ Petition No. 1194 of 1979 who are in the select list within 6 weeks from this date (13.7.1983), if not already issued as undertaken by Mr. U.R. Lalit (Senior Counsel of respondents 1 and 2) on 29.7.1981 within five months from that date.

3. Prayer No. 2 in the writ petition was to quash the office order dated 11.4.1978 entrusting Junior

Engineers with current duty charge of the posts of Assistant Engineers and the office order dated 21.6.1979 promoting 2 Junior Engineers as Assistant Engineers on current duty charge on their own pay scale. As regards that prayer what we have stated in our order in the writ petition is this :

Continuing current duty charge and ad hoc appointments for such a long period exceeding the period of one year mentioned in the said memorandum dated 30.10.1976 of the Government of India is irregular though that memorandum could not be said to be automatically binding on respondent 1. What is totally wrong is that appointment of Junior Engineers on current duty charge as Assistant Engineers has been made by the impugned order dated 21.6.1979 even after the approval of the select list prepared for the appointment of 8 Assistant Engineers without issuing orders for the appointment of even to 8 out of those persons who were in the select list. In the circumstances we hold that the appointment of those Diploma holder-Junior Engineers by the order dated 10.4.1978 and of two such Junior Engineers by the order dated 21.6.1979 as Junior Engineers on current duty charge for periods which are proved to be too long is irregular and we quash the same.

4. Prayer No. 3 in the writ petition was to direct respondent 1 to fill up the remaining posts of Assistant Engineers in the direct recruitment quota from amongst the empanelled petitioners who were graduate Junior Engineers. As regards that prayer what we have ordered in the writ petition is this :

Respondent I is admittedly bound by the Recruitment Regulations made with the approval of the Central Government as required by Section 480(2) of the Act, and it shall fill up the remaining posts of Assistant Engineers (after filling up the 8 posts of Assistant Engineers as aforesaid in regard to prayer No. 1) in the direct recruitment quota which are kept vacant in the seniority list dated 2.9.1978 and any further posts which might have become available thereafter or may become available in view of our decisions in these writ petitions or otherwise in accordance with those Recruitment Regulations within 6 months from today (13.7.1983) or from the date on which further vacancies to the posts of Assistant Engineers in the direct recruitment quota arise as the case may be if permissible from out of the select list approved on 2.5.1979.

5. Prayer No. 5 in the writ petition was to restrain respondent I from giving ad hoc promotions to current duly charge holders amongst Junior Engineers. As regards that prayer what we have ordered in the writ petition is this :

Respondent 1 shall not make current duty charge/ad hoc appointments and promotions except strictly and truly in accordance with the instructions and regulations referred to above and other instructions, if any, issued in that regard.

6. In C.M.P. No. 3069 of 1984 filed by the petitioners in the writ petition for taking proceedings for contempt of this Court's order dated 13.7.1983 made in the writ petition and for giving directions it

is alleged that the respondent 1 has not complied with this Court's order to fill up the remaining posts of Assistant Engineers (remaining after filling up 8 posts of Assistant Engineers as mentioned above). It is stated that the total number of posts still available as on the date of C.M.P. No. 3069 of 1984 is 32, that there were 26 direct recruitment quota posts as on the date of the writ petition as detailed therein, that 11 out of those 26 posts have been filled up already leaving 15 posts and that those 15 posts are to be filled up from amongst the remaining empanelled petitioners/Graduate Junior Engineers viz., petitioners 1, 2, 4, 6 to 9, 11, 13, 16, 20 and 29 in accordance with this Court's order made in the writ petition. The petitioners' complaint is that it has not been done in spite of letters and telegram dated 13.7.1983, 19.8.1983, 7.9.1983, 5.10.1983 and 7.10.1983 sent by the petitioners and their Counsel and union and that on the other hand it appears from C.M.P. No. 3068 of 1984 filed by respondent 1 for directions that a Resolution No. 493 dated 26.9.1983 has been passed for filling up all the posts of Assistant Engineers by promotion and not by direct recruitment. It is also alleged in C.M.P. No. 3069 of 1984 that respondent 1 has not reverted the Diploma holders/Junior Engineers mentioned in the office orders dated 10.4.1978 and 21.6.1979 in spite of the fact that those orders have been quashed by our order dated 13.7. 1983 made in the writ petition. It is in these circumstances that the prayers in C.M.P. No. 3069 of 1984 mentioned above have been made.

7. In C.M.P. No. 3068 of 1984 it is alleged that 8 posts of Assistant Engineers have been filled up as per this Court's order and that as per the recommendations of the Appointment, Promotion, Disciplinary and Allied Matters Committee of the Corporation that the Recruitment Regulations for the posts of Assistant Engineers in the general wing be amended so as to provide for 100 per cent departmental promotion. Resolution No. 493 dated 26.9.1983 has been passed by the Corporation and the Commissioner of the Corporation has thereby been prohibited from filling up any post of Assistant Engineer by direct recruitment even while the recruitment rules are to be approved by the Union Public Service Commission and therefore it has become necessary for the Corporation to approach this Court for a direction that in view of the change in the circumstances the Corporation need not fill up the gaps in the seniority list of 1978-79 relating to Assistant Engineers by direct recruitment.

8. No counter-affidavit had been filed in C.M.P. No. 3068 of 1984 evidently because the stand of the respondents in that petition is reflected by the allegations made in C.M.P. No. 3069 of 1984. In the counter-affidavit of the Assistant Commissioner (Engineering) of the Municipal Corporation of Delhi filed in C.M.P. No. 3069 of 1984 it is stated that the order of this Court to issue orders of appointment to 8 Degree holder/Junior Engineers out of those in the select list approved on 2.5.1979 has been complied with and that the appointment for the remaining posts of Assistant Engineers in the direct recruitment quota could not be made in view of the said Resolution No. 493 of 1983 dated 26.9.1983 to fill up all the posts of Assistant Engineers only by promotion and not by direct recruitment. It is further stated in the counter-affidavit that this Court has ordered that the vacant posts of Assistant Engineers remaining after absorbing 8 Graduate Junior Engineers from the select list approved on 2.5.1979 may be filled from that select list if it is permissible to make the appointments from out of that list. It is contended that the select panel was for a period of two years as per a circular issued by the Commissioner and therefore the panel should have got exhausted by 1.5.1981. As regards the non-reversion of ad hoc appointees/promotees mentioned in the orders

dated 10.4.1978 and 21.6.1979 it is stated in the counter-affidavit that their reversion is dependent upon appointments to the posts of Assistant Engineers being made, which could not be done in view of the supervening circumstance viz., Resolution No. 493 dated 26.9.1983, and that it is wrong to say that the representations made in the letters etc. referred to in C.M.P. No. 3069 of 1984 were not considered from the point of view of implementing the judgment of this Court, but they were considered before the Corporation approached this Court for directions in C.M.P. No. 3068 of 1984.

9. Dr. Y.S. Chitale, appearing for the persons whose appointments/promotions were made by those orders dated 10.4.1978 and 21.6.1979 submitted that those persons would have to be reverted as per this Court's order dated 13.7.1983 in the writ petition and he invited our attention to the said Resolution No. 493 dated 26.9.1983 as being a bar to the Corporation making appointments as per this Court's order. Mr. Ghosh appearing for respondents 1 and 2 also relied upon the said Resolution and prayed for the direction asked for in C.M.P. No. 3068 of 1984 being given. There is no substance in the explanation given by respondent 1 for not reverting the Junior Engineers who were appointed/promoted by those orders dated 10.4.1978 and 21.6. 1979 which have been quashed by our order dated 13.7.1983. There is no direction in our order that the quashing in subject to any condition, much less to appointments being made as per our order dated 13.7.1983 to the posts of Assistant Engineers. The reversion of those incumbents should have been made forthwith in compliance with our order dated 13.7.1983 quashing those office orders dated 10.4.1978 and 21.6.1979. We hereby direct respondents 1 and 2 to comply with this Court's order quashing those two office orders by reverting the concerned officers within 10 days from this date. If this is not done within 10 days from the date of this order the petitioners in C.M.P. No. 3069 of 1984 may draw this Court's attention and move afresh for action being taken against respondents 1 and 2 for contempt of this Court's order.

10. Respondents 1 and 2 cannot be allowed to circumvent this Court's order dated 13.7.1983 made in the writ petition regarding the appointment of Assistant Engineers from the select panel of Graduate Junior Engineers approved on 2.5.1979 by pleading the Resolution dated 26.9.1983 as a supervening circumstance or by contending that the select list approved on 2.5.1979 got exhausted or had expired on 1.5.1981. When Mr. U.R. Lalit made the offer on 29.7.1981 to make the appointments of Assistant Engineers from that select list approved on 2.5. 1979 it was evidently in force and the appointments to those 8 posts were made only from out of that list thereafter. Now it is not open to respondent 1 to contend that the select list was valid only for 2 years and had expired on 1.5.1981. Resolution No. 493 dated 26.9. 1983 has been passed in the face of our clear direction to fill up the remaining posts of Assistant Engineers in the direct recruitment quota as per the Recruitment Regulations made with the approval of the Central Government as required by Section 480(2) of the Act which were in force. That Resolution is said to have been submitted to the Union Public Service Commission for its approval. The validity of that Resolution and the question whether it could override the said Recruitment Regulations already in force was not canvassed by the learned Counsel for respondents 1 and 2 or the learned Counsel appearing for the promotees covered by those orders dated 10.4.1978 and 21.6. 1979. The Resolution which is of its own making cannot be pleaded by respondent 1 as any inability or bar to comply with this Court's direction given in the writ petition on 13.7.1983. Respondents 1 and 2 shall make the appointments of Assistant Engineers for the remaining posts of Assistant Engineers in the direct recruitment quota as per our order dated 13.7.1983 and out of the

select list approved on 2.5.1979 within one month from today failing which the petitioners in C.M.P. No. 3069 of 1984 may draw this Court's attention to that fact and move a fresh petition for taking proceedings against respondents 1 and 2 for contempt of this Court's order dated 13.7.1983. C.M.P. No. 3069 of 1984 is allowed accordingly to that extent. C.M.P. No. 3068 of 1984 is dismissed. There will be no order as to costs.