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MOHD. RASHID

v.

THE DIRECTOR, LOCAL BODIES, NEW SECRETARIAT &
ORS.

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(Civil Appeal No. 136 of 2020 etc.)

JANUARY 15, 2020

[L. NAGESHWARA RAO AND HEMANT GUPTA, JJ.]

Service Law:

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Selection/Recruitment – Advertisement for recruitment on the posts in question – Challenged before Administrative Tribunal on the ground that alternative process of direct recruitment could not have been resorted to without resorting to process of promotion – Application dismissed by the Tribunal – High Court, in writ petition, allowed the case of the writ petitioners – Appeal to Supreme Court by the candidates of direct recruitment – Held: As per Recruitment Rules, direct recruitment was to be resorted to only if the posts could not be filled by promotion/deputation quota – The candidates of direct recruitment have no right to dispute the action of filling up the posts by way of promotion or deputation – The candidates cannot claim any right of appointment merely because they had responded to an advertisement.

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Dismissing the appeals, the Court

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HELD : 1. The Recruitment Rules providing 50% quota to be filled up by promotion failing which by direct recruitment and another 50% by deputation quota failing which by direct recruitment are being followed by the Municipal Bodies. [Para 11] [82-B]

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2. The appellants who are aspirants for direct recruitment have no right for appointment merely because at one point of time the vacancies were advertised. The candidates such as the appellants cannot claim any right of appointment merely for the reason that they responded to an advertisement. Even after

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completion of the selection process, the candidates even on the merit list do not have any vested right to seek appointment only for the reason that their names appear on the merit list. [Para 12] [82-C-D] A

Shankarsan Dash v. Union of India (1991) 3 SCC 47 : [1991] 2 SCR 567 – followed. B

3. Since the selection process has not been completed and keeping in view the mandate of the Statutory Rules, the appellants have no right to dispute the action of the Municipal Bodies to fill up the posts either by way of promotion or by deputation as such posts are being filled up in terms of mandate of the Rules. It is always open to the Municipal Bodies to fill up the vacant posts by way of direct recruitment after the posts by way of promotion and/or deputation quota are not filled up either on the basis of recruitment process already initiated or to be initiated afresh. [Para 13] [83-B-C] C D

Case Law Reference

[1991] 2 SCR 567 followed Para 12
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 136 of 2020. E

From the Judgment and Order dated 01.09.2016 of the High Court of Delhi at New Delhi in W.P. (C) No. 5431 of 2016.

With

Civil Appeal No. 137 of 2020.

Dr. Harshvir Pratap Sharma, Sr. Adv., Ajay Sharma, Tejas Patel, Ms. Meera Kaura Patel, Ms. Rukhsar Khan, Pankaj Kumar, Gautam Jha, Advs. for the Appellant. F

S. Wasim A. Qadri, Sr. Adv., Zaid Ali Subzposh, Ajay Bansal, Praveen Swarup, Ms. Veena Bansal, Gaurav Yadava, Mrs. Archana Sharma, Hrishikesh Baruah, Ms. Radhika Gupta, Kshitij Paliwal, Ms. Memha Kaur, Vibhuti Sushant Gupta, Ram Naresh Yadav, Advs. for the Respondents. G

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A The Judgment of the Court was delivered by

HEMANT GUPTA, J.

B 1. The candidates for direct recruitment to the posts of Administrative Officer/Assistant Assessor and Collector¹ are in appeals before this Court directed against an order passed by the High Court of Delhi on 1st September, 2016.

C 2. The candidates who were initially appointed as Lower Division Clerks and promoted as Upper Division Clerks/Head Clerks invoked the jurisdiction of the Central Administrative Tribunal² challenging Advertisement No. 3 of 2013 dated 12th September, 2013 whereby, the respondents set in process to fill up the posts advertised by way of direct recruitment. The argument was that the Recruitment Regulations for the post of Administrative Officer/Assistant Assessor and Collector in North, South and East Delhi Municipal Corporations, 2013³ contemplate that the vacancies for the posts in question are to be filled up by promotion failing which by direct recruitment. It was thus alleged that without resorting to promotion by convening meeting of the Departmental Promotion Committee⁴, the alternative process of direct recruitment cannot be resorted to. The said Original Application was dismissed by the Tribunal on 28th May, 2015 by observing that the recruitment process is not against the constitutional provisions but the promotion must also not be tempered with. In the writ petition directed against such order, the High Court held that the respondents have failed to comply with the Recruitment Rules and that only after the respondents are unable to fill up the vacancies either by promotion or by transfer or by deputation, the Department would be entitled to publish the advertisement to fill up the vacancies. It was also found that no effort has been made to hold DPC to carry out promotions nor the respondents have explored the possibility to fill up the vacancies either by transfer or deputation.

G 3. The advertisement was published to fill up 30 vacancies by direct recruitment to the posts in question out of which 8 were reserved for Other Backward Classes, 4 for Scheduled Castes, 2 for Scheduled Tribes and 16 were meant for General category candidates including 1

¹ for short, 'posts in question'

² for short, 'Tribunal'

³ for short, 'Recruitment Rules'

H ⁴ for short, 'DPC'

post meant to be filled up by physically handicapped candidate which is a horizontal reservation. A

4. The Recruitment Rules were amended on 17th June, 2013 i.e. before the advertisement was issued on 12th September, 2013. The amended Rule reads as under:

1.	Name of the Post	Administrative Officer/Assistant Assessor and Collector	B
10.	Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and % of the vacancies to be filled by various method	i) 50% by promotion, failing which by direct recruitment. ii) 50% by deputation, failing which by direct recruitment.”	C

5. A perusal of the above Rule shows that 50% of the posts are to be filled up by promotion. If the posts are not filled up by promotion, the same are to be filled up by direct recruitment. Similarly, 50% of the posts are meant to be filled up by deputation. If the deputationists are not available, the same are to be filled up by direct recruitment. D

6. An affidavit dated 7th August, 2019 has been filed on behalf of North Delhi Municipal Corporation¹ as to how after the amendment of the Rules, the number of posts falling to the promotion quota have been filled up. The assertions in the affidavit are as under:

“5(i) After notification of new Recruitment Rules dated 17.06.2013, the promotion to the post of Admn. Officer/AA&C (2013) was held as under: E

	Sanction Post in promotion quota	Filled up	Vacant	Filled up after DSC dated 30.08.2013	Vacant after DSC dated 30.08.2013	F
Total	58	33	25	25	00	

(ii) The promotion to the post of Admn. Officer/AA&C (2014) was held as under :

	Sanction Post in promotion quota	Filled up	Vacant	Filled up after DSC dated 31.01.2014	Vacant after DSC dated 31.01.2014	G
Total	58	48	10	4	06	

⁵ for short, ‘North DMC’

A (iii) The promotion to the post of Admn. Officer/AA&C (2015) was held as under :

	Sanction Post in promotion quota	Filled up	Vacant	Filled up after DSC dated 22.07.2014	Vacant after DSC dated 22.07.2014
B	Total	58	23	35	31
					04

(iv) The promotion to the post of Admn. Officer/AA&C (2016) was held as under :

	Sanction Post in promotion quota	Filled up	Vacant	Filled up after DSC dated 08.07.2015	Vacant after DSC dated 08.07.2015
C	Total	58	34	24	22
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(v) The promotion to the post of Admn. Officer/AA&C (2017) was held as under :

	Sanction Post in promotion quota	Filled up	Vacant	Filled up after DSC dated 08.07.2015	Vacant after DSC dated 08.07.2015
D	Total	68	14	54	38
E					16 (including 3 SC & 1 ST)

(vi) That at present details of Vacancy position of Administrative Officer/AA&C in all three Corporations under Promotion Quota as on 01.07.2019 is as under, which is dealt by the North DMC being Nodal Corporation for promotion for all the three Corporation:-

	Sanctioned Post	Filled up post	Vacant Post
F	Promotion Quota	72	54 (including 23 LAC given by SDMC)
G			18

Note: A DSC is under process, wherein 94 Section Officers, Private Secretaries and Translators are being considered for promotion to the post of Admn. Officer/AA&C.”

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7. It is also mentioned that seniority list of feeder cadre has not been finalised on account of pendency of the matter before the Tribunal and the High Court and that in terms of directions of the High Court, recommendation of the review DPC has been placed before the High Court and the matter is pending consideration before the High Court. A

8. The said affidavit also gives the details of the manner of posts falling under the deputation quota. It is mentioned that each of the three Municipal Corporations deal with the deputation quota at their own level. However, the vacancies of the North DMC are stated to be as under: B

“(vii) Deputation Quota: The posts under deputation quota are being dealt by the concerned Corporation separately at their own level, the vacancy position of North DMC is as under: C

North DMC		
Sanctioned	Filled	Vacant
25	4	21

Note: As per Recruitment Rules North DMC has already invited applications for fill-up the post of Admn. Officer/AA&C under deputation quota vide circular dated 06.02.2019 and subsequent reminders dated 12.07.2019. 11 applications for appointment to the post of Admn. Officer/AA&C on deputation basis have been received till date. The last date of receipt of application is 31.08.2019. D

The above said table shows that the vacancy to the post of Admn. Officer/AA&C has been filled up by the department regularly after notification of new Recruitment Rules dated 17.06.2013.” E

9. Thus, in respect of 25 vacancies falling to the share of the North DMC, it is mentioned that there are 21 vacant posts and that applications have been invited to fill up the deputation quota vide Circular dated 6th February, 2019. 11 applications have been received though the last date of the receipt of the applications was 31st August, 2019. F

10. In respect of deputation quota in South Delhi Municipal Corporation, it is mentioned in the separate affidavit that out of 32 posts falling to the quota of deputationists, 13 posts are vacant as on 1st August, 2019. By a separate affidavit filed on behalf of East Delhi Municipal G

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- A Corporation, it is mentioned that out of 14 sanctioned posts, 5 posts are falling vacant against the deputation quota.

11. From the above information placed on record, we find that the Recruitment Rules providing 50% quota to be filled up by promotion failing which by direct recruitment and another 50% by deputation quota failing which by direct recruitment are being followed by the Municipal Bodies.
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12. The appellants who are aspirants for direct recruitment have no right for appointment merely because at one point of time the vacancies were advertised. The candidates such as the appellants cannot claim any right of appointment merely for the reason that they responded to an advertisement published on 12th September, 2013. Even after completion of the selection process, the candidates even on the merit list do not have any vested right to seek appointment only for the reason that their names appear on the merit list. In *Shankarsan Dash v. Union of India*¹, a Constitution Bench of this Court held that a candidate seeking appointment to a civil post cannot be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list. This Court held as under:-
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- “7. 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 the *State of Haryana v. Subhash Chander Marwaha* [(1974)
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H ⁶ (1991) 3 SCC 47

3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; *Neelima Shangla (Miss) v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or *Jitender Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] .” A

13. Since the selection process has not been completed and keeping in view the mandate of the Statutory Rules, we find that the appellants have no right to dispute the action of the Municipal Bodies to fill up the posts either by way of promotion or by deputation as such posts are being filled up in terms of mandate of the Rules. It is always open to the Municipal Bodies to fill up the vacant posts by way of direct recruitment after the posts by way of promotion and/or deputation quota are not filled up either on the basis of recruitment process already initiated or to be initiated afresh. B C

14. Consequently, we do not find any merit in the present appeals. Accordingly, the same are dismissed.

Kalpana K. Tripathy

Appeals dismissed. D