Union Of India & Ors vs B. Valluvan & Ors on 19 October, 2006

Equivalent citations: AIR 2007 SUPREME COURT 210, 2006 AIR SCW 5801, 2007 LAB. I. C. 265, 2007 (1) AIR JHAR R 755, 2007 (1) SRJ 94, 2007 (2) SERVLJ 445 SC, (2007) 2 SERVLJ 445, 2006 (10) SCALE 607, 2006 (8) SCC 686, (2006) 8 SUPREME 352, (2006) 10 SCALE 607, (2007) 1 SERVLR 5, (2007) 1 ALL WC 829, (2007) 1 CAL HN 22, (2007) 1 ALL WC 954

Author: S.B. Sinha

Bench: S.B. Sinha, Dalveer Bhandari

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           CASE NO.:
Appeal (civil)  4554 of 2006

PETITIONER:
Union of India & Ors

RESPONDENT:
B. Valluvan & Ors

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No.7903 of 2004) S.B. Sinha, J.

Leave granted.

The Department of Personnel and Training, Andaman & Nicobar Administration (Administration) issued a circular letter, stating :

> "As you may be aware, as per the instructions of the Government of India, whereas validity of panel prepared against promotion quota is generally limited to one year, there is no fixed life of the panel against direct recruitment post. Accord ing to the Govt. of India's instructions therefore 3 panel prepared for direct recruitment should not be unduly inflated and should take care of immediate vacancies and those which are likely to occur in the near future. A maximum of ten percent additional persons can be kept on the panel against the existing vacancies at the time of preparation pf panel or vacancies likely to occur in the near future. Such a provision has been kept so that government can obtain the services of better qualified persons if they become available in due course of time.

> It has however been observed that these instructions of the Government of India are not even followed by all the Departments of this Administration while preparing panel for direct recruitment as well as for promotion.
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> It is, therefore, brought to the notice of all the Departments that in future panel for promotion as well as for direct recruitment against various categories of posts should be prepared strictly in accordance with the instructions of the Govt. of India issued from time to time."

Three vacancies for the post of Pharmacist were notified in the year 1999. Applications were invited from the eligible candidates. In the advertisement issued therefor, it was categorically stated :

> "EMPLOYMENT NEWS Applications are invited from the eligible local candidates for the post of Pharmacist Under the A & N Health Department, Port Blair
>
> a) No. of vacancies :- 3 (three)"

The 1st Respondent together with others, pursuant to or in furtherance of the said advertisement filed application. Interviews therefor were held in 1999. A select list of three candidates was prepared on the basis of the recommendations made by the Selection Committee on 27.5.1999. The said three persons accepted the offer and joined services. The Selection Committee, however, made a list of 19 candidates for future appointments occurring if any, in the said year. The said select list, according to Appellant, was prepared in violation of the purported statutory instructions dated 26.6.1992. All the three vacancies in the post of Pharmacist having been filled up, the said panel was directed to be cancelled by an order dated 7.12.1999. Several candidates purported to be aggrieved by and dissatisfied therewith, filed an Original Application before the Central Administrative Tribunal, inter alia, contending that as the panel was drawn for future vacancies, they were entitled to be appointed against the vacancies occurring thereafter. It was furthermore contended that as several new posts were likely to be created and/or likely to fall vacant in the near future, they should be directed to be appointed in such vacancies. During pendency of the said application, another advertisement was issued on 17.5.2000 for filling up of one vacancy, which occurred in the year 2000. Interview was also held on 26.6.2000 and the said vacancy had also been filled up. The said fact was brought on record by Appellants herein. By an order dated 13.9.2002, the Tribunal rejected the said Original Application, inter alia, opining :

> ".....In the present case, however only 3 candidates had figured in the select list for immediate appointment and the panel of candidates in the waiting list had been cancelled on the ground that one of the candidates in that panel was not qualified and that the preparation of the panel was not in accordance with the Government of India/A&N Administration instructions."

It was further observed :

> ".....When only three vacancies had been advertised, the preparation of a waiting list containing 19 candidates does not appear to be either legal or reasonable. Besides in this case, against the three advertised vacancies, the three selected candidates have been appointed. In any case, the contention of the applicants that this panel should be operated even beyond a period of one year is rejected as they themselves have stated that it should be operated for one year which is as per the rules. In the facts and circumstances of the case; the impugned order of cancellation issued by the respondents dated 7.12.1999 cannot be held to be arbitrary, illegal or against the rules which justifies any interference in the matter."

The said order came to be questioned before the Calcutta High Court. A Division Bench of the said Court dismissed the said writ petition, stating :

> "Our attention was not drawn to any statutory or otherwise rules authorizing the authority concerned to keep the panel alive after supplying the notified vacancies. That being the position, it is well settled in law that the panel stood lapsed the moment notified vacancies had been filled up."

A review application was filed by the 1st Respondent and by reason of the impugned judgment, the same was allowed by another Division Bench of the said Court, stating :

> "Having regard to the unusual nature of the case, we have devoted considerable time to the submissions made on behalf of the parties, both in support of the application and against it, and we are convinced that the order of the Division Bench sought to be reviewed suffers from errors apparent on the face of the record. We are of the view that while expressing the correct legal position, the Division Bench appears to have applied the said provisions erroneously in the facts of this case, since the list of selected candidates was not confined only to the immediate vacancies but also in respect of future vacancies as well. We are inclined to agree with Mr. Roy that the first three names were in respect of immediate vacancies and the object of preparing a list other names was for the definite purpose of filling up future vacancies. It is not as if there was no intention that the panel was to be utilized at a later stage and was meant only for filling up the three immediate vacancies, which were then existing under one and the same selection."

Mr. B. Datta, the learned Additional Solicitor General appearing on behalf of Union of India submitted that as the life of the panel was one year, the impugned judgment cannot be sustained.

Mr. Gaurav Jain, learned counsel appearing on behalf of Respondents, on the other hand, urged that keeping in view the fact that Respondent No.1 has been appointed in August, 2005, pursuant to the judgment of the High Court, this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

Recruitment process, as is well known, must be commensurate with the statute or the statutory rule operating in the field. We have noticed hereinbefore, advertisement was made for three posts. It was not indicated therein that another panel for filling up of the future vacancies was to be prepared by the Selection Committee. In the select list prepared by the Selection Committee, the name of 1st Respondent was at Serial No.4. Recommendations were made containing the names of 19 persons for future vacancies. Only because a panel has been prepared by the Selection Committee, the same by itself, in our opinion, would not mean that the same should be given effect to irrespective of the fact that there was no such rule operating in the field. The Selection Committee was bound to comply with the selection process only in terms of the extant rules. It was bound to follow the stipulations made in the advertisement itself. Even in the advertisement it was not indicated that a select list would be prepared for filling up future vacancies. The Selection Committee, having been appointed only for recommending the names of suitable candidates, who were fit to be appointed, could not have embarked upon the question as regards likelihood of future vacancy.

The Review Bench of the High Court posed unto itself a wrong question. It did not say how an error apparent on the face of the record had been committed. It did not assign sufficient or cogent reason to hold as to how the Original Application before the Tribunal would have been maintainable if the petitioners had no existing legal right. The 1st Respondent did not have any legal right to be appointed. He filed an application pursuant to the said advertisement. It is not his case that his application had not been considered. He did not raise any plea of unfair treatment. No malafide was also alleged.

Life of a panel, as is well known, must be for a limited period. It is governed by the statutory rules. From the circular letter dated 26.6.1992 it is evident that ordinarily the life of the panel should be for one year. What had been indicated therein was that the panel prepared for recruitment should not be unduly inflated. Vacancies should ordinarily be notified keeping in view the immediate future need. It has categorically been stated that only upto a maximum of 10 additional persons were kept in a panel against the existing vacancies which were likely to occur in future. The said circular letter was meant to be applied in a case where, thus, more than 10 vacancies were notified. It did not have any universal application. By reason of the said circular letter, the ordinary life of the panel was not to be extended. Thereby no new practice or rule was brought into force.

In Madan Lal & Ors. vs. State of J & K & Ors. [(1995) 3 SCC 486], this Court held :

> "It is no doubt true that even if requisition is made by the Government for 11 posts the Public Service Commission may send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a

> case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the eleven vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list will get exhausted, having served its purpose.
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> * * * * In the present case as the requisition is for 11 posts and even though the Commission might have sent list of 20 selected candidates, appointments to be effected out of the said list would be on 11 posts and not beyond 11 posts, as discussed by us earlier. This contention will stand accepted to the extent indicated hereinabove."

In State of U.P. & Ors. vs. Harish Chandra & Ors. [(1996) 9 SCC 309], it was opined :

> "Coming to the merits of the matter, in view of the Statutory Rules contained in the Rule 26 of the Recruitment Rules the conclusion is irresistible that a select list prepared under the Recruitment Rules has its life only for one year from the date of the preparation of the list and it expires thereafter. Rule 26 is extracted hereinbelow in extenso :
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> "26. Appointment by appointing authority.- The select list referred to in Sub-rules (6) and (7) of Rule 23 shall be forwarded by the Selection Committee to the appointing authority mentioning the aggregate marks obtained at the selection by each candidates. The name of general and reserve candidates shall be arranged by the appointing authority in a common list according to the merit of the candidates and the appointment shall be offered in the order in which the names are arranged in the list shall hold good for a period of one year from the date of selection."

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 provisions of law or to do something which is contrary to law."

Yet again, in Surinder Singh & Ors. vs. State of Punjab & Anr. [(1997) 8 SCC 488], it was stated :

> "It is in no uncertain words that this Court has held that it would be an improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision has been taken. Exercise of such power has to be tested on the touchstone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised."

The Division Bench of the High Court committed a serious error in entering into the merit of the matter while exercising its review jurisdiction. The court's jurisdiction to review its own judgment, as is well known, is limited. The High Court, indisputably, has a power of review, but it must be exercised within the framework of Section 114 read with Order 47 of the Code of Civil Procedure. The High Court did not arrive at a finding that there existed an error on the face of the record. In fact, the High Court, despite noticing the argument advanced on behalf of Union of India that the 1st Respondent had no legal right to be appointed, proceeded to opine that the panel prepared for filling up of future vacancies should be given effect to. The review of the High Court was not only contrary to the circular letter issued by Union of India, but also contrary to the general principles of law. The life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits it to do it. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained.

Coming now to the plea of learned counsel that Respondent No.1 has been appointed in August, 2005, in our opinion, is not of much significance. If he has been appointed pursuant to the order of the High Court, the same invariably would be subject to the result of this appeal. Respondent No.1 did not have any legal right to be appointed even out of the said panel. His position was at Serial No.4 and not even at Serial No.1. Therefore, there were three persons in the panel above him. The High Court, therefore, committed a manifest error in issuing the impugned directions. Sympathy alone, in our opinion, cannot be a ground to allow the High Court judgment to be sustained, although, it is ex facie illegal. {See Maruti Udyog Ltd. vs. Ram Lal & Ors. [(2005) 2 SCC 638].} For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. In the facts and circumstances of the case, however, there shall be no order as to costs.