

State Of Punjab vs Raghbir Chand Sharma & Anr on 30 October, 2001

Bench: S. Rajendra Babu, Doraiswamy Raju

CASE NO. :

Appeal (civil) 8034 of 1994

PETITIONER:

STATE OF PUNJAB

Vs.

RESPONDENT:

RAGHBIR CHAND SHARMA & ANR.

DATE OF JUDGMENT: 30/10/2001

BENCH:

S. Rajendra Babu & Doraiswamy Raju

JUDGMENT:

RAJU, J.

This appeal by the State of Punjab has been filed against the Order dated 24.1.94 of a Division Bench of the High Court of Punjab and Haryana confirming the order of a learned Single Judge of the said High Court, allowing CWP No.13347 of 1989 filed by the first respondent herein and as a consequence thereof, directing the appellant-State to appoint him as the Assistant Advocate General, Punjab.

The indisputable and relevant facts, necessary to be noticed for an appreciation of claims of the parties, are that the State of Punjab by a Notification issued in August, 1987 invited applications from amongst practising advocates of Punjab and Haryana High Court and Law Officers of Government of Punjab for a post of Assistant Advocate General, Punjab, in the scale of Rs.2000-2300; that from amongst the applicants, who responded, a select panel of three candidates was made by the Committee, which interviewed them in which one M.L. Agnihotri was arrayed as No.1, one Baldev Singh as No.2 and the first respondent as No.3. The first in the panel, M.L. Agnihotri accepted the same and on being appointed, he joined the service also on 16.10.1987, but subsequently resigned on 13.11.1987. The second candidate, Baldev Singh, on the select panel also on his own, by his letter dated 13.1.1988 expressed that he was not interested and even if offered his inability to accept the appointment. Thereupon, the State took a decision to fill up the post from the

service cadre by promotion and that is how the second respondent, who was serving in the Office of Advocate General, was on the basis of seniority-cum-merit appointed and he also retired on 31.7.1988. The grievance of the first respondent as writ petitioner was that he being the third candidate in the select panel, should have been offered the appointment and not the second respondent. Though representations had been made by the first respondent asserting such a claim, the same were considered and rejected. It was at that stage the first respondent approached the High Court and the learned Single Judge was of the view that after the candidate at Serial No.2 in the select panel declined to accept the appointment, the first respondent should have been offered the same and relying upon an administrative Circular issued by the State Government on 23.3.1957, the learned Single Judge allowed the claim, as noticed earlier. The challenge made by the State in appeal before a Division Bench having failed, this appeal has been filed.

Heard the learned counsel appearing on either side. Strong reliance has been placed by the appellant on some decisions of this Court, wherein it has been held that mere empanelment in a select list does not confer upon such a person in the panel any right to get appointed to a post under the State and if for good and valid reason, the State does not choose to appoint the said person in the panel, no right inheres in such a person to seek a mandate from the Courts for an appointment. Per contra, the learned counsel for the first respondent placed strong reliance upon a decision of this Court, to which one of us (Rajendra Babu, J.) was a member, reported in *Virender S. Hood and Ors. Vs. State of Haryana & Anr.* [AIR 1999 SC 1701], wherein it was held relying upon the Circular Orders dated 22.3.1957 that when vacancies existing were filled in by appointing candidates recommended by the Public Service Commission, further vacancies arising and available within six months from the receipt of recommendation of Public Service Commission have to be filled up out of the wait list maintained by the Public Service Commission.

We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant-State, the Notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The Circular Orders dated 22.3.1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the Circular Orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before Courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies.

For all the reasons stated above, we are unable to approve the judgment under appeal. The appeal is allowed. The writ petition filed by the first respondent in the High Court will stand dismissed. No costs.

J. [S. Rajendra Babu] J. [Doraiswamy Raju] October 30, 2001.