Punjab State Electricity Board & Ors vs Malkiat Singh on 11 October, 2004

Equivalent citations: AIR 2004 SUPREME COURT 5061, 2005 (9) SCC 22, 2004 AIR SCW 5768, (2004) 8 JT 526 (SC), (2004) 24 ALLINDCAS 590 (SC), 2004 (24) ALLINDCAS 590, 2004 (6) SLT 520, 2004 (8) SCALE 655, 2004 (8) JT 526, (2005) 1 LAB LN 33, (2005) 1 PAT LJR 231, (2005) 3 SCT 91, (2004) 8 SCALE 655, (2005) 1 JLJR 140, (2004) 4 ALL WC 3696, (2005) 1 CAL LJ 59, (2004) 6 SERVLR 775, (2004) 7 SUPREME 394, (2004) 107 FJR 770, (2004) 103 FACLR 1106, (2004) 24 INDLD 376

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, B.N. Srikrishna

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           CASE NO.:
Appeal (civil)  6116 of 1999

PETITIONER:
Punjab State Electricity Board  & Ors.

RESPONDENT:
Malkiat Singh

DATE OF JUDGMENT: 11/10/2004

BENCH:
SHIVARAJ V. PATIL & B.N. SRIKRISHNA

JUDGMENT:
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J U D G M E N T Shivaraj V. Patil J.

The appellant-Board acquired 987 acres of land situated in few villages for setting up of a power project, which included 10 Kanals and 18 marlas belonging to the respondent, at Lehra Mohabbat and paid compensation to the land owners. On 18.7.1994, the appellant Board, with a view to rehabilitate the displaced persons who lost their lands because of acquisition, vide Office Order dated 18.7.1994 constituted a committee for providing employment on priority basis to one member of the affected family whose land has been acquired for the aforesaid purpose. Pursuant to the said policy decision as contained in the Office Order dated 18.7.1994, names of 277 persons were recommended for appointment on priority basis. The respondent was one among them. Out of them, 173 persons were appointed against the available vacancies on the basis of qualification possessed by them limited to the maximum of Class-III posts. On 15.5.1998 and 2.6.1998, the appellant-Board revised the policy considering that there was no justification to offer employment

to those persons whose lands acquired were very nominal and they need not be given appointment. It was further decided that instead of the Committee constituted earlier, the Chief Engineer (GHTP) should re-examine the proposal only of those land owners whose lands to the extent of 2 acres or more had been acquired for giving benefit of employment on priority basis. It was also decided that no relaxation as regards qualification or age be given in future. Pursuant to this amended policy, cases of the candidates whose lands were acquired were considered and only three candidates were recommended for appointment. All other pending cases were rejected. By the Office Order dated 1.7.1998, the appellant-Board decided to set up a homeopathic dispensary at Lehra Mohabbat power station for which a Class-II post of Homeopathy Physician was created for the welfare of staff and their families stationed at the aforesaid power project. A separate committee was also constituted for selecting a suitable candidate for the said post. Pursuant to the said Office Order, the Chief Engineer on 17.9.1998 addressed a letter to the District Employment Officer, Bhatinda to send names of suitable candidates for the said post by 27th October, 1998. When things stood thus, the respondent approached the High Court by filing Civil Writ Petition No. 16989/1998 with a prayer to quash the aforesaid letter dated 17.9.1998, and to quash the revised policy decision dated 2.6.1998. Further, direction was sought to the appellant-Board to appoint him as a Homeopathic Physician in the Homeopethic dispensary at Lehra Mohabbat power station. The appellant-Board contested the writ petition raising plea that he was not eligible to be appointed on priority basis under the scheme; inter alia contenting that the acquired land of the respondent was less than two acres and as such he was not eligible for appointment on priority basis in terms of the policy dated 2.6.1998; the post of Homeopathic Physician was not a Class-III post and as such he was not eligible even under the original scheme dated 18.7.1994; more over, he was found over-aged and no relaxation could be given under the amended scheme dated 2.6.1998. The appellant also contended that merely because the respondent was one of the 277 candidates whose names were recommended by the committee for appointment, the same does not entitle him for the appointment. Further, the compensation for the acquired land was given to the respondent as in case of other land owners and as such the respondent could not claim appointment under the scheme as a matter of right. The Division Bench of the High Court, by the impugned judgment, allowed the writ petition and directed the appellant-Board to offer appointment for the post of Homeopathic Physician to the respondent as soon as possible, preferably within one month from the date of the order. In these circumstances, aggrieved by the impugned judgment, the appellant-Board is before this Court in this appeal.

The learned counsel for the appellant urged: (1) the High Court committed an error in proceeding on a wrong footing that the respondent got a vested right by virtue of Office Order dated 18.7.1994 when his name was recommended for appointment pursuant to the said order; the policy could not be changed subsequently to the disadvantage of the respondent; (2) the decision to set sup a homeopathic dispensary and to appoint a Homeopathic Physician (a Class-II post) was taken on 1.7.1998; this post was not available on 18.7.1994 and so the respondent could not make any claim for appointment to the said post pursuant to the policy dated 18.7.1994, that too after it was revised on 2.6.1998; (3) as per the revised policy dated 1.5.5.1998 and 2.6.1998, the respondent was not eligible for appointment as he did not satisfy the eligibility conditions and (4) the respondent could not claim appointment as a matter of right under the scheme. The scheme itself was to give some concession in the matter of appointment.

Per contra, the learned counsel for the respondent made submissions supporting the impugned judgment. According to him, the name of the respondent having been recommended for appointment pursuant to the Office Order dated 18.7.1994, the appellant-Board was not right in denying appointment to him when several others from the same list were appointed; the policy in regard to appointment on priority basis could not be varied subsequently to the disadvantage of the respondent so as to take away his vested right and the appellant-Board has made discrimination unjustifiably in denying appointment to the respondent.

Having considered the respective submissions made by the learned counsel for the parties, we are of the view that the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in Shankarsan Dash vs. Union of India [(1991) 3 SCC 47] which reads:-

> "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 State of Haryana v. Subhash Chander Marwaha ((1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165), Neelima Shangla v. State of Haryana ((1986) 4 SCC 268 : 1986 SCC (L&S) 759), or Jatendra Kumar v. State of Punjab ((1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899)".

The same position is reiterated and followed by this Court in All India SC & ST Employees' Assn. & Anr. vs. A. Arthur Jeen & Ors. [(2001) 6 SCC 380] and State of Oriss and Ors. Vs. Bhikari Charan Khuntia and Ors. [(2003) 10 SCC 144].

It is not disputed that neither homeopathic dispensary at Lehra Mohabbat power station nor a post of Homeopathic Physician was available on 18.7.1994. The decision to set up a homeopathic dispensary at Lehra Mohabbat and to create a post of Homeopathic Physician in the dispensary was taken only on 1.7.1998 long after the policy decision dated 18.7.1994 and subsequent to the change in the policy dated 15.5.1998 and 2.6.1998. This being the position, the question of the respondent seeking for appointment to the said post pursuant to policy decision of 18.7.1994 itself did not arise. At any rate, there could be no vested right in him to claim the appointment to the said post. The

High Court also committed an error in taking a view that the policy decision of 2.6.1998 could not have retrospective application to the disadvantage of the respondent. There is no question of applying the policy retrospectively. On 17.9.1998 when the names of suitable candidates were sought from the employment exchange pursuant to the decision of the Board dated 1.7.1998, it could not be said that the right of the respondent was taken away when he did not have any such vested right to get an appointment to Class-II post of Homeopathic Physician. It may also be added that the respondent was not eligible to claim appointment on priority basis having regard to the changed policy from 2.6.1998 inasmuch as the land acquired from him was less than 2 acres and he was also over-aged as on 17.9.1998. The revised policy made the position clear that there could be no relaxation in regard to qualification and the age limit. Further the scheme was devised on 18.7.1994 and subsequently it was revised only as a concession to give a helping hand as far as possible to rehabilitate the displaced families whose lands were acquired. The respondent has got compensation for his land which was acquired. The scheme giving appointment on priority basis was only in the nature of concession to eligible candidates which the respondent could not claim as a matter of right having taken compensation amount for his land which was acquired, more so when he did not fulfill the necessary requirements under the revised scheme. The High Court in the impugned order has observed that "Obviously, if the effort of the respondent is to deny to the petitioner the job that he seeks in the present case on the ground that he is overage, action of the respondents cannot but be termed as discriminatory." This observation is not based on proper foundation or facts. It is not a case where any mala fide is alleged against the appellant or its officers. There is nothing to show that anybody was bent upon denying the appointment to the respondent.

In the light of what is stated above, it is clear that the respondent was not entitled for an appointment. The High Court was not right in directing the appellant-Board to appoint the respondent to the post of Homeopathic Physician. During the course of arguments, we asked the learned counsel for the respondent whether the respondent is willing to join in any of the available vacancies even now. On instructions from the respondent, the learned counsel submitted that the respondent is only interested in getting the appointment to the post of Homeopathic Physician and not any other post covered by the scheme.

In view of what is stated above and having regard to all aspects of the matter, we find that the impugned order cannot be sustained. Hence, the appeal is entitled to succeed. Accordingly, it is allowed and the impugned judgment is set aside. The writ petition filed by the respondent is dismissed. No costs.