Supreme Court of India
Prem Singh And Others vs Haryana State Electricity Board ... on 7 May, 1996
Equivalent citations: 1996 SCC (4) 319, JT 1996 (5) 219
Author: N G.T.
Bench: Nanavati G.T. (J)

PETITIONER:
PREM SINGH AND OTHERS

Vs.

RESPONDENT:
HARYANA STATE ELECTRICITY BOARD AND OTHERS

DATE OF JUDGMENT: 07/05/1996

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
AGRAWAL, S.C. (J)

CITATION:
1996 SCC (4) 319 JT 1996 (5) 219
1996 SCALE (4)354

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 7789 OF 1996 (Arising out of SLP(C) No.24555 of 1995) Shanti Prakash and others V.

The Haryana State Electricity Board and others WITH CIVIL APPEAL NO. 7790 OF 1996 (Arising out of SLP(C) No.25996 of 1995) Haryana State Electricity Board V.

Shri Satbir Singh Bura and ors J U D G M E N T NANAVATI, J.

Leave granted in the two SLPs. Heard learned counsel appearing in all the three appeals.

These appeals arise out of the judgment and order passed by the High Court of Punjab and Haryana in Civil Writ Petition No. 4012 of 1993. Along with that writ petition the High court also disposed of Civil Writ Petition Nos. 4716, 4885, 5301, 5987, 6024, 6427, 7310, 7884, 8068 of 1993 and 15534 of

1994. The High Court allowed all the writ petitions and declared the selection/appointments of Respondents 2 to 214 in those writ petitions as illegal and quashed the same. About 125 selected candidates have filed Civil Appeal No.3423 of 1996 and Civil Appeal arising out of SLP(C) No.24555 of 1995. The Civil Appeal arising out of SLP(C) No.25996 of 1995 has been filed by the Haryana State Electricity Board (hereinafter referred to as the 'Board') which appointed them.

Two questions which arise for consideration in these appeals are: (1) Whether it was open to the Board to prepare a list of as many as 212 candidates and appoint as many as 137 out of that list when the number of posts advertised was only 62? (2) Whether the High Court was justified in quashing the selection of all the 212 candidates and appointments of 137?

In October 1993 the Board decided to fill up 62 vacant posts of Junior Engineers by direct recruitment. By an advertisement published on 2.11.1991 applications were invited from eligible candidates. 15 posts were reserved for scheduled castes and scheduled tribes candidates, 6 for backward classes and 9 for exservicemen. The last date for receiving applications was 4.12.1991. The advertisement mentioned qualifications necessary for those posts and it was further stated therein that preference will be given to the candidates having higher qualification. Large number of applications were received and after screening 5955 applicants were found eligible. 893 candidates appeared for interview in July 1992. The selection committee selected 212 and recommended their names in April 1993. The Board after considering the latest vacancy position as on 11.2.1993 decided on 2.4.1993 to fill up 147 posts. Following the instructions of the State Government relating to reservation of posts, the Board distributed vacant posts as under:

1. General	74
2. SC	29
3. B.Cs.	15
4. ESM	25
5. PH	4

Total 147

It also decided to reduce the share of general category by 24 posts as there was a backlog of that many posts reserved for scheduled castes. Accordingly, the Chief Engineer of the Board who was the appointing authority was directed to fill up the vacant posts in different categories as under:

1. General	50
2. Scheduled Castes	53
3. Backward Classes	15
4. Ex-Servicemen	25
5. Physical Handicapped	4

Total 147

---------- The Chief Engineer was able to appoint 138 candidates shortly thereafter.

Some of the candidates who were not selected/appointed and one person who became eligible soon after the last date for receiving applications challenged the selection/appointments by filing the aforesaid writ petitions in the High Court.

The following four contentions were raised before the High Court. (1) The Board acted in violation of Articles 14 and 16 of the Constitution in selecting as many as 212 candidates and appointing 147 even though the posts advertised were only 62. (2) No real benefit was given to the candidates possessing higher qualifications even though it was represented in the advertisement that preference would be given to the candidates possessing higher qualifications. (3) About 150 candidates were interviewed every day by each of the three selection committees. Each candidate was interviewed for a very short time. Thus the worth of the candidate was not properly assessed and this defect vitiated the entire process of selection. (4) As many as 50 marks were earmarked for viva voce test and that defect also vitiated the entire selection.

With respect to the third contention it was stated by the Board in its counter affidavit that each selection committee had in fact interviewed about 69 candidates only on each day and on an average each candidate was interviewed for about 8 to 9 minutes. As this contention was thus found to be factually incorrect the High Court rejected the same. The High Court also rejected the fourth contention relying upon the decision of this Court in Anzar Ahmad vs. State of Bihar and others 1994(1) SCC 150. The decision of the High Court on these two points is not challenged before us and, therefore, they need no further consideration. The High Court upheld the first contention as it was of the opinion that the Board committed a breach of the equality clause contained in Articles 14 and 16 of the Constitution because it was not fair and open to the Board to take into consideration 85 more posts which became. available after the date of the advertisement while preparing the select list and making appointments. As regards the second contention the High Court did not find any substance in the submission that the Board should have, in the first instance, selected only those candidates who possessed higher qualifications and that it could have considered others only if persons possessing higher qualifications were not found otherwise suitable. But it upheld the contention that as the Board had decided to give preference to the candidates possessing higher qualifications it could not have made the selection "without specifying any advantage to the candidates". In absence of any explanation given by the Board at the time of hearing of the writ petitions "as to how many marks were fixed for those having the minimum qualifications and how many marks were fixed for those having the higher qualifications" the High Court held that the Board did not "at all keep in mind the contents of the advertisement while laying down the criteria for award of marks". This omission and deviation from the condition mentioned in the advertisement, according to the High Court, resulted in denying benefit of higher qualifications to the petitioners and other similarly situated persons. The High Court, therefore, allowed the petitions and quashed the selection and appointments made by the Board.

It was contended by Mr. P.P.Rao, learned senior counsel appearing for the appellants in Civil Appeal No.3423 1996 and the learned counsel appearing for the other appellants that the High Court wrongly held that the Board had either overlooked or deviated from the condition that preference would be given to those candidates who possessed higher qualifications. It was submitted that though in the counter affidavit filed by the Board the correct position in this behalf was not properly explained, the record produced before the court clearly disclosed that the selection committee had before hand decided the norm as regards the manner in which preference was to be given for higher qualifications. It has been stated in SLP(C) No.24555 of 1995 and it is not denied by the respondents that the selection committee had adopted the norm of giving more marks for higher qualifications. It had given 2 marks to the candidates possessing diploma qualification and had obtained upto 75% marks. 3 marks were given to those candidates who possessed diploma and had obtained more than 75% marks and also to them who had obtained B.E. or B.Tech. degrees. Those who possessed AMIE degree were given 4 marks. 5 marks were given to those candidates who possessed M.E. or M.Tech. degrees. On the basis of this material it can be said that weightage was in fact given for higher qualifications. The High Court was, therefore, not right in holding that the benefit of higher qualifications was denied to those candidates who possessed them. We are also of the opinion that it was not necessary to indicate in advance to the candidates the manner in which benefit of higher qualifications was to be given to them. Once we find that the selection committee had fixed the norm in this behalf in advance and that norm was applied uniformly to all the candidates it will have to be held that it acted in a fair manner and did not contravene the provisions of Articles 14 and 16 of the Constitution. The learned counsel for the respondents, however, tried to support the finding of the High Court on this point by contending that in view of the representation made in the advertisement what was required to be done by the Board was to consider first those candidates who had higher qualifications and the candidates with lesser qualifications could have been considered only thereafter. This contention was rejected by the High Court, and in our opinion rightly. Ordinarily, giving of preference for higher qualifications would imply that other things being equal the candidates with higher qualifications will be preferred. The representation made in the advertisement did not imply or convey that the selection was to be made in two stages, that is, firstly, the candidates having higher qualifications were to be considered and only thereafter the candidates with minimum qualifications were to be considered and that too if adequate number of candidates possessing higher qualifications did not become available. Therefore, the contention raised on behalf of the respondents has to be rejected.

It was next contended by the learned counsel for the appellants that selection of candidates in excess of the number of posts advertised does not per se offend the equality guaranteed by Articles 14 and 16 of the Constitution. It was submitted that in view of delay which was likely to take place in the process of selection and appointments it was permissible to the Board to take into consideration anticipated vacancies and make provision for the same also. They further submitted that the High Court should not have quashed the selection and set aside the appointments at the instance of original writ petitioners as in any case they were not selected by the selection committee and, therefore, were not likely to get any benefit by getting the selection and appointments invalidated. The learned counsel also questioned the locus stand of the writ petitioners as all of them except one had taken part in the process of selection without any objection They also pointed out that Petitioner No.3 in Writ Petition No. 4012 of 1993 was not even eligible to be considered for the post on the last

date for receiving applications.

In our opinion, there is no substance in the objection raised with respect to locus stand of the original writ petitioners. The candidates could not have anticipated when they appeared for the interview that the Selection Committee would recommend candidates and the Board would make appointments far in excess of the advertised posts. The petitioner who was not eligible had a just grievance that due to appointments of candidates in excess of the posts advertised he was deprived of the right of consideration for appointment against the posts which would have become vacant after he acquired eligibility.

The factual position in this case, as disclosed by the record, is that on 15.10.90 the Board decided to fill up 62 vacant posts of Junior Engineers by direct recruitment. On 2.11.90 the Board advertised those 62 vacant posts and invited applications by 4.12.90. In the notification of vacancies required to be issued under the Employment Exchange Act and the Rules also the vacancies notified were

62. After the posts were advertised and published but before appointments could be made 13 more posts became vacant because of retirement and 12 because of deaths. Meanwhile, the Board also created 60 new posts of Junior Engineers. The stand taken by the respondent-Board before the High Court was that by April 1993, 85 more posts had become vacant. Even when 62 posts were advertised there was a backlog of 62 posts of Junior Engineers and that was through oversight not taken into consideration. Out of the said backlog of 62 posts 36 posts were of direct recruitment quota and this had come to the notice of the Board in December 1991. There was a backlog of 24 posts belonging to reserved category. It was for these reasons that on 2.4.1993 the Secretary of the Board had written to the Chief Engineer who was the appointing authority that as the list of 212 candidates selected by the selection committee was received and as 147 posts were vacant as on 11.2.93 he should fill up all those vacant posts as directed therein. Out of the said list the Board was able to appoint 138 candidates.

In was submitted by the learned counsel for the appellants that the selection process which had started on 2.11.91 was completed in April 1993 when the selection committee forwarded the list of selected candidates to the Secretary of the Board. In view of this long lapse of time and large number of posts remaining vacant it was permissible to the Board to make appointments in excess of the number of posts advertised, If the Board had not filled up those posts then its work would have suffered adversely. It was submitted that bearing in mind these realities the High Court should have adopted a pragmatic approach and refrained from quashing the selection and appointments made by the Board. In support of these contentions the learned counsel relied upon one decision of the Punjab and Haryana High Court and some decisions of this Court.

In Subhash Chander Sharma and others vs. State of Haryana 1984(1) SLR 165 the facts were that as against 60 advertised posts the Public Service Commission had recommended almost double the number and more than 60 candidates were appointed on the basis of that selection. Relying upon the earlier decision of the same High Court in Sachida Nand Sharma and others vs. Subordinate Services Selection Board. Haryana decided on 1.6.83 it was contended that all appointments beyond 60 should be invalidated. The High Court distinguished its earlier decision in Sachida Nand

Sharma's case (supra) and held that if the State adopted a pragmatic approach by taking into consideration the existing vacancies in relation to the process of selection which sometimes take a couple of years and made appointments in excess of the posts advertised, then such an action cannot be regarded as unconstitutional.

In Ashok Kumar Yadav and others vs. State of Haryana 1985 Suppl. (1) SCR 657 what had happened was that Haryana Public Service Commission had invited applications for recruitment to 61 posts in Haryana Civil Service and other allied Services. The number of vacancies rose during the time taken up in the written examination and the viva voce test and thus in all 119 posts became available for being filled. The Haryana Public Service Commission, therefore, selected and recommended 119 candidates to the Government. Writ Petitions were filed in the High Court of Punjab and Haryana challenging the validity of the selections on various grounds. The High Court set aside the selection as it was of the view that the selection process was vitiated for more than one reason. On appeal, this Court also found substance in the contention that the Haryana Public Service Commission was not justified in calling for interview candidates representing more than 20 times the number of available vacancies and that the percentage of marks allocated for the viva voce test was unduly excessive. Yet this Court did not think it just and proper to set aside the selections made by the Haryana Public Service Commission as by that time two years had passed and the candidates selected were already appointed to various posts and were working on those posts since about two years.

In A.V. Bhogeshwarudu vs. Andhra Pradesh Public Service Commission J.T. 1989(4) SC 130 the process of selection had started in 1983 and was completed in 1987. The vacancies that arose in between were also sought to be accommodated from the recruitment list prepared by the State Public Service Commission. The point which arose for consideration was if out of the names recommended for appointments some candidates did not join, whether the vacancies remaining unfilled can be filled from out of the remaining successful candidates. This Court held that there was no justification in insisting that instead of filling up the vacancies by recommended candidates a fresh selection list should be made. This decision is, therefore, not relevant for the purpose of this appeal. So also, the cases of Neelima Shangla vs. State of Haryana 1986 (3) SCR 785 and Shankarsan Dash vs. Union of India 1991 (2) SCR 567 cited by the learned counsel for the appellants are of no help as the point involved in those cases was altogether different.

In Hoshiar Singh vs. State of Haryana 1993 (4) Suppl. SCC 377, a requisition was sent to select candidates for appointment on 6 posts of Inspectors of Police by advertisement dated January 22, 1988. Applications were invited for the said 6 posts. Subsequent to the written examination but prior to the physical test and interview a revised request for 8 more posts was sent. The Board recommended 19 names out of which 18 persons were given appointments. Those appointments were challenged before the Punjab and Haryana High Court and it was held that appointments beyond 8 posts were illegal. On appeal this Court held that since requisition was for 8 posts, the Board was required to send its recommendation for 8 posts only. This Court further observed: The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional

posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable".

In the case of State of Bihar vs. Secretariat Assistant Successful Examinees Union 1986 and Others 1994 (1) SCC 126, the Bihar State Subordinate Services Selection Board had issued an advertisement in the year 1985 inviting applications for the posts of Assistants falling vacant upto the year 1985-86. The number of vacancies as Then existing was announced on August 25,1987, the examination was held in November 1987 and the result was published only in July 1990. Immediately thereafter out of successful candidates 309 candidates were given appointments and the rest empanelled and made to wait for release of further vacancies. Since the vacancies available uptil December 31, 1988 were not disclosed or communicated to the Board no further appointment could be made. The empanelled candidates, after making an unsuccessful representation to the State Government approached the Patna High Court which directed them to be appointed in vacancies available on the date of publication of the result as well as the vacancies which had arisen upto 1991. The State appealed against that decision and this Court held that the direction given by the High Court for appointment of empanelled candidates according to the merit list against the vacancies till 1991 was not proper and cannot be sustained. This Court further observed that since no examination was held since 1987 persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for not fault of theirs. However, keeping in view the fact situation of the case this Court upheld the appointments made on the posts falling vacant upto 1988 and quashed the judgment of the High Court which directed the filling up of the vacancies of 1989, 1990 and 1991 from out of the list of the candidates who had appeared in the examination held in 1987.

In the case of Gujarat State Dy. Executive Engineers' Association vs. State cf Gujarat 1994 Supp (2) SCC 591 the following question arose for consideration: "What is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary"; and lastly how long can it operate?" Though this question was examined in the context of Executive Engineers (Civil) Gujarat Service of Engineers Class I Recruitment Rules, 1979 the following observations made by this Court are of general application. Therein this Court has observed:

> "How a waiting list should operate and what is its nature may be Governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. Therefore, once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim

> appointment to any future vacancy which may arise unless the selection was held for it. The following observations made therein are also relevant:-
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> "Appointment in future vacancies from waiting list prepared by the Commission should be an exception rather than the rule. It has many ramifications. There was no contingency nor the State Government had taken any decision to fill the vacancies from the waiting list as it was not possible for it to hold the examination nor any emergent situation had arisen except the claim of some of the candidates from the waiting list that they should be given appointment for vacancies which arose between 1380 and 1983 and between 1983 and 1993. The direction of the High Court, therefore, to appoint the candidates from the waiting list in the Vacancies which, according to its calculation, arose between the years 1980 to 1983 and between 1983 to 1993 cannot be upheld."

However, on equitable considerations this Court did not set aside appointments of those candidates who were appointed in pursuance of the decision of the High Court but gave appropriate directions for securing ends of justice.

In State of Bihar Vs. Madan Mohan Singh (1994 Supp (3) SCC 308) this Court held that the advertisement and the whole selection process were meant only for 32 vacancies. The process came to an end as soon as these vacancies were filled up. If the same list has to be kept alive for the purpose of filling up of other vacancies, it would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and the selection process.

In State of Bihar vs. Madan Mohan Singh and others 1994 Supp (3) SCC 308 this Court has in terms held that if the advertisement and the consequent selection process were meant only to fill up certain number of vacancies then the meant list will hold good for the purpose of filling up those notified vacancies and no further. In that case 32 vacancies were advertised but a select list of 129 candidates was prepared. A question arose whether more candidates could be appointed on the basis of the said select list. This Court held that once the 32 vacancies were filled up the process of selection for those 32 vacancies got exhausted and came to an end. It was further held that if the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process.

One of the questions which fell for consideration in Madan Lal and others vs. State of J & K 1995 (3) SCC 486 was whether preparation of meant list of 20 candidates was bad as the vacancies for which the advertisement was issued by the Commission were only 11 and the requisition that was sent by the Government for selection was also for those 11 vacancies. This Court held that the said action of the Commission by itself was not bad but at the time of giving actual appointments the meant list had to be so operated that only 11 vacancies were filled up. The reason given by this Court was that as the requisition was for 11 vacancies the consequent advertisement and recruitment could also be for 11 vacancies and no more. This Court further observed: "It is easy to visualize that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement,

whether the advertisement mention 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 proposes 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 appointment to the posts have to be confined to the posts of recruitment to which requisition is sent by the Government. In such an eventuality, candidates excess of 11 who are lower in merit list of candidate can only be treated as wait-listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any high 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 that list will get exhausted, having served its purpose". It may also be stated that while making the aforesaid observations this Court agreed with the contention that while sending a requisition for recruitment to posts the Government can keep in view not only actual vacancies than existing but Also anticipated vacancies.

From the above discussion of the case law it becomes clear that the selection process by way of requisition and advertisement can by started for clear vacancies and also for anticipated vacancies but not for future vacancies If the requisition and advertisement are for certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the Court may not, while exercising its extra-ordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.

In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, the Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2.11.1991 and the selection process which followed thereafter. But as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement etc. by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies - in this case on posts which were newly created - must be regarded as invalid. As stated earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional posts. But the appointments made by the Board on posts

beyond 87 are held invalid. Though the High Court was right in the view It has taken. we modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs.