

Supreme Court of India

State Of Haryana vs Naresh Kumar Bali on 17 May, 1994

Equivalent citations: 1994 SCC (4) 448, JT 1994 (4) 184

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

STATE OF HARYANA

Vs.

RESPONDENT:

NARESH KUMAR BALI

DATE OF JUDGMENT 17/05/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

SAHAI, R.M. (J)

CITATION:

1994 SCC (4) 448 JT 1994 (4) 184

1994 SCALE (2) 1105

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- Leave granted.

2. This appeal by special leave is directed against the judgment dated 21-7-1993 of the High Court of Punjab and Haryana at Chandigarh in CWP No. 15366 of 1992.

3. The State of Haryana is the first appellant. The father of the respondent was employed as a Constable in the office of the Superintendent of Police at Ambala. He died in harness on 14-3-1976. There are instructions issued by the appellant dated 22-12-1970 containing a scheme under which the widow of the deceased employee could sponsor the name of any one member of the family for service to any post in any department of the Government. This is subject to the qualifications held by the persons whose names were forwarded for appointment. In accordance with this scheme the widow of the deceased employee was issued an intimation that she could sponsor a name.

Accordingly she forwarded the name of her son, Naresh Kumar Bali, the respondent herein. On 3-8-1988 the mother of the respondent wrote a letter to the second appellant categorically stating that her son was willing to do the job of a clerk and, therefore, should be appointed to the said post. Pursuant to this letter requisite sanction was obtained from the Government. Thereafter the following letter of appointment was issued on 14-2-1989:

"APPOINTMENT LETTER AS CLERK Registered From :

The Director General of Police & The Inspector General of Police, Haryana, Chandigarh.

To, Shri Naresh Kumar, S/o Shri Ram Dass, House No. 774/1, Chhota Nagar, V. & P.O. Buriya, Teh. Jagadhri, Distt. Ambala.

No. 1314 /SA(3) dated Chandigarh, the 14-2-1989. Subject: Employment for Temporary Clerk.

Memorandum:

In terms of Haryana Government Circular letter No. 3442-3GS- 11/71/19169, dated 13-7-1971, you are offered a purely temporary appointment of Clerk in this department, in the pay scale of Rs 950-1500 and such allowances as may be admissible from time to time. This offer of appointment is subject to the condition that you are declared medically fit for employment in government service by the Principal/Chief Medical Officer concerned and if married you have only one living spouse.

2. It should be clearly understood that this offer of appointment is for a purely temporary post, which is liable to be abolished at any time and carries no promise of subsequent permanent employment. Consequently, you may be required to go out of service without notice i.e. whenever there is no vacancy against which you can be appointed to officiate. It is, thus, clear that no offer of permanent appointment can be made to you at present and in this respect, you will have to take your chance like others, who are similarly recruited.

3. Your services will be liable to termination without notice, if your work or conduct is unsatisfactory or the post against which you are posted, ceases to exist or some senior man has to be adjusted against it.

4. If you at any stage, desire to resign your post in the Police Department, you will be required to give one month's notice or forfeit in lieu thereof your salary including allowances for one month, or for the period by which the notice falls short of one month. Such that notice will also be given to you by the department, to case (sic) it as proposed to terminate your services, for reasons after then these mentioned in paragraphs 1, 2 and 3 above. The department will also be liable to pay your salary including allowances for one month or for the period by which the notice falls short of one month. In case of misconduct, however, you will be entitled to reasonable opportunity to show cause why your services should not be terminated, in which case the condition of one month's notice shall not apply.

5. In accordance with the instructions issued by the Haryana Government, vide their letter No. 39/4/78/GS-1, dated 3-4-1978, you are required to pass a test to be conducted by Head Officer of the office to which you are being posted, in English or Hindi typewriting at a speed of 30/25 words per minute respectively, within a period of one year of your appointment and the grant of increment shall be regulated by the instructions issued vide Haryana Government letter No. 3980-GS-1-75/25879, dated 27-8-1975. It is, therefore, in your own interest to learn typewriting and pass the required type test to be conducted by Head Officer of the office to which you are being posted.

6. No travelling allowance shall be admissible for joining the post in this department.

7. If you are willing to accept this offer on the terms and conditions, mentioned above, you should report yourself in the office of the Deputy Inspector General of Police, CID, Haryana, Chandigarh. If you fail to join this department after getting your appointment order by 21-2-1989 your name will be removed from the approved list of candidates.

Superintendent-in-Charge, For Director General & Inspector General of Police, Haryana."

4. The respondent in his reply dated 11- 1 - 1990 informed the office of the appellant that since he had applied for appointment for the post of a teacher to the Subordinate Service Selection Board prior to his appointment by the department as a clerk, commensurate with his qualification, he should be appointed as a teacher. Therefore, he may be transferred to Education Department.

5. It requires to be mentioned that the respondent's name was not recommended by the Subordinate Service Selection Board since he lacked the requisite qualifications. Then again, he did not reveal at the time of his appointment as a clerk that he had applied for the post of a teacher. It was only after a period of one year from the date of appointment he made this representation. On 13-3-1990 the representation was rejected.

6. On 17-3-1990, the mother of the respondent filed a representation on behalf of the respondent for appointment to the post of Sub-Inspector.

7. The post of Sub-Inspector is only by promotion and not by direct recruitment as per the relevant Police Rules of 1934. Accordingly this representation was rejected on 18-4- 1990 by the Department.

8. On 4-1-1991 the respondent made another representation for transfer and adjustment as a clerk in the Excise and Taxation Department. That representation dated 4-1-1991 was rejected on 5-7-1991.

9. On 5-12-1992 the respondent filed Civil Writ Petition No. 15366 of 1992. In that it was alleged inter alia that he was discriminated against similarly situated persons who were appointed as Inspectors, Assistant Sub-Inspectors on compassionate ground. On this allegation he filed a writ of mandamus.

10. In the counter-affidavit of the second appellant (Director General of Police) it was averred since the respondent had been given appointment on compassionate ground, keeping in view the qualifications it was not correct on his part to claim any violation of fundamental right.

11. The High Court held in the impugned judgment that there were several instances where appointments had been made on compassionate grounds. It took the view, the mere fact that the mother of the respondent was praying for the employment of her son even at a lower post of Constable, it could not be used as a handle in perpetrating discrimination against him. Thus, the writ petition was allowed and the appellant was directed to appoint the respondent as Inspector of Police within a period of three months. Aggrieved by this the present civil appeal has come to be preferred.

12. It is the contention of the appellants that the ex gratia scheme as set out in Government Instructions in 1970 was strictly complied with by the appellants. In fact, the mother of the respondent was specifically asked about the post to which she wanted her son to be appointed under the scheme on compassionate ground. It was stated so under her letter dated 3-8-1988 that her son was willing to join as a clerk to which post he came to be appointed. Besides, the Subordinate Service Selection Board had not selected the respondent as a teacher because he lacked qualifications. The High Court went wrong in comparing the case of the respondent with others as their cases were considered on their merits and they are appointed under the ex gratia scheme but the case of the respondent is not comparable.

13. In any event, the High Court should have merely directed the appellants to consider and not straight away issue directions to appoint. More so, the post of an Inspector is a promotional post and not by direct recruitment.

14. The learned counsel for the respondent would urge that once discrimination has been established as found by the High Court it follows the respondent is entitled to equal treatment as was rightly pointed out by the High Court. Merely because the mother of the respondent chose to apply for the post of a clerk that does not mean the respondent is not entitled to the higher post.

15. We have set out the factual background in full. The letter of the respondent's mother dated 3-8-1988 categorically states that her son (respondent) was willing to be appointed as a clerk. It was on that the appointment letter, extracted above, came to be issued. Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of a teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for the post of teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed. The claim for appointment as Inspector was never made earlier. The High Court without even analysing the circumstances under which the seven persons mentioned in its judgment came to be appointed as Police Officers (ASI or Inspector), straight away has chosen to conclude that there was discrimination. We are not in a position to appreciate this line of reasoning. The positive finding ought to have been given whether the case of the respondent was comparable with those of the seven and then a finding of discrimination ought to have been

rendered.

16. With regard to appointment on compassionate ground we have set out the law in *Life Insurance Corp. of India v. Asha Ramchandra Ambekar*<sup>1</sup>. The same principle will clearly apply here. What the High Court failed to note is the post of an Inspector is a promotional post. The issuing a direction to appoint the respondent within three months when direct recruitment is not available, is unsupportable. The High Court could have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision-making process and not against the decision itself; and it is no part of the court's duty to exercise the power of the authorities itself. There is widespread misconception on the scope of interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226. For these reasons we set aside the judgment under appeal and remit the matter to the High Court for a fresh consideration in the light of what we have indicated above. Accordingly, the appeal is allowed. No costs.