Supreme Court of India
State Of Haryana vs Subash Chander Marwaha And Ors on 2 May, 1973
Equivalent citations: 1973 AIR 2216, 1974 SCR (1) 165
Author: D Palekar
Bench: Palekar, D.G.

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
SUBASH CHANDER MARWAHA AND ORS.

DATE OF JUDGMENT02/05/1973

BENCH:
PALEKAR, D.G.
BENCH:
PALEKAR, D.G.
ALAGIRISWAMI, A.

CITATION:
1973 AIR 2216 1974 SCR (1) 165
1974 SCC (3) 220
CITATOR INFO :
R 1977 SC 276 (9)
R 1978 SC 327 (11)
E&R 1984 SC 169 (2)
R 1984 SC1850 (12)
D 1991 SC1612 (1,7,8)

ACT:
Punjab Civil Service (Judicial Branch) Service Rules, Part C. rr. 8 and 10-Rules fixing 45% as qualifying marks-Government fixing 550% for actual selection for appointment-If illegal.

HEADNOTE:
Under the Punjab Civil Service (Judicial Branch) Service Rules, which were applicable in the appellant-State, the State Public Service Commission was to hold an examination and prepare a list strictly in accordance with the marks obtained by the candidates. Under s. 8 of Part C of the Rules. no candidate shall be considered to have qualified unless he obtains 45% marks in the aggregate. Under r. 10. after the list is published in the Gazette. Government was bound to make the selection of the candidates strictly in the order in the list, and intimate the selection to the High Court. When vacancies are to be filled the High Court

will send in the names in accordance with. and in the order in, the list, for appointment.

In the present case. it was advertised that the Public Service Commission would hold an examination for recruitment of candidates for 15 vacancies. 40 candidates qualified by scoring 45% or more marks. The appellant selected the first seven who had scored more than 55% marks. The respondent, who ranked 8, 9 and 13 in the list, filed a petition for the issue of a mandamus claiming that since there were 15 vacancies, the appellant was not entitled to fill up only seven. The appellant justified their action on the ground that in the interest of maintaining-high standards of judicial competence, they were not prevented from fixing a higher standard while making the actual appointment.

The High Court allowed the petition.

Allowing the appeal to this Court,

HELD: (1) In order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and that the aggrieved party had a legal right under the statute to enforce its performance. [170E-G]

Rai Shivendra Bahadur v. The Governing Body of the Nalanda College, [1962] Suppl. 2 S.C.R. 144, followed.-

(2) The advertisement that there were 15 vacancies did not give the respondent a right to be appointed. The fact that a candidate's name appeared in the list also did not entitle him to be appointed. [170A]

(3) The effect of the rules is that, (a) the State Government shall not make appointments by traveling outside the list, and (b) the State Government shall make the selection for appointment strictly according to the order in the list. There is no other constraint or legal duty on the Government to make an.appointment in the judicial service. merely because there are vacancies or a list had been prepared. [17WE]

(4) There is no constraint on the Government against fixing a higher score of marks for the Purpose of selection with a view to maintain a high standard. There was nothing arbitrary in fixing 55% for the purpose of selection, because, the High Court itself intimated such a view to the Punjab Government. The fact that that Government later fixed a lower score was no ground for the appellant to change their mind. [171A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 534 of 1973. Appeal by special leave from the judgment and order dated January 31, 1973 of the Punjab and Haryana High Court at Chandigarh in C.W. No. 1541 of 1972.

C. K. Daphtary, J. N. Kaushal and Bishambar Lal, for the appellant.

P. Malhotra, for respondent No. 1.

Uma Dulta for respondent No. 2.

L. M. Singhvi and S. K. Dhingra, for respondent No. 3 Brahm Dev Sethi, for the intervener.

The Judgment of the Court was delivered by PALEKAR, J.-This is an appeal by special leave from an Order of the High Court of Punjab and Haryana dated January 31, 1973 passed in Civil Writ No. 1541 of 1972. That was a Writ Petition filed by respondents 1 to 3 for a mandamus. The petition was allowed and by its judgment the High Court issued a mandamus to the appellant to select respondents 1 to 3 under Rule 1 0 (ii) of Part C of the Punjab Civil Service (Judicial Branch) Services Rules so that their names are brought on the High Court Register for appointment as Subordinate Judges in the Haryana State. The aforesaid rules had been adopted by the Haryana State after bifurcation.

On February 3, 1970 an advertisement was published in the Government Gazette to the effect that the Haryana Public Service Commission will hold an examination for recruitment of candidates for 15 vacancies in the Haryana Civil Service (Judicial Branch). In response to the advertisement a number of candidates appeared for the examination held in November, 1970. The result of the competitive examination was declared and published in the Haryana Government Gazette on April 6, 1971. It was a list of 40 candidates who obtained 45% or more marks in the examination. The State Government which is the appointing authority made seven appointments in the serial order of the list according to merit. Respondents who ranked 8, 9 and 13 respectively in that list did not get an order of appointment although there were vacancies. The reason for not making the appointments was that in the view of the State Government, which was the same as that of the High Court previously intimated to the State Government, candidates getting less than 55% of marks in the examination should not be appointed as Subordinate Judges in the interest of maintaining high-standards of competence in Judicial Service. Respondents 1 to 3 who expected to be appointed filed the petition claiming that since, there were 15 vacancies and they had the necessary qualifications for appointment the State Government was not entitled to pick and choose only seven out of them for appointment, because to do so would be to prescribe a standard which was not contemplated by the rules but was against them. The appellant, on the other hand, contended that the rules did not oblige them to fill in all the vacancies and it was open to them (the Government) to appoint the first seven candidates front the list in the interest of maintaining high-standards. There was no question of picking and choosing. The rules did not prevent the State from deciding at the time of selection from the list, the minimum number of marks that a selected candidate should score for the purpose of an appointment. The High Court agreed with the contention of the State, that merely because the advertisement was for filling 15 vacancies the first 15 candidates in the list had no right to be appointed in the posts but held that as long as there are requisite number of vacancies unfilled and qualified candidates were available, those candidates had a legal right to be selected under rule 10..... of Part C of the Rules. In the view of the High Court the State Government was not entitled to impose a new standard of 55% of marks for selection as that was against the rule

which provided for a minimum of 45 %.

It is contended on behalf of the appellant that the above finding against the State was erroneous. The submission was that under the rules the minimum of 45 % was an element to be considered for the eligibility of a candidate for selection and that while making the actual appointment by selection the State Government, in the interest of main- taining high-standards of judicial competence, were not prevented from fixing a minimum standard of a score of 55% marks, especially, as that was the view of the High Court also previously intimated to them. In our view that submission is correct.

Elaborate rules were framed by the Punjab Government in 1951 for the purpose of recruitment of Subordinate Judges to the Punjab Civil Service (Judicial Branch). After the bifurcation of the Punjab State these rules applied to the State of Haryana and the same have been published by the Government of Haryana with appropriate amendments. Part A of these rules deals with general qualifications. Part B deals with the preparation and submission of rolls of those who are qualified under Part-A. Those who are on these rolls prepared by the District Judges become eligible for appearing in a written examination held by the Punjab Public Service Commission. The rules with regard to this examination are in Part C. Rule 4 thereof provides that "the examination papers shall be set and marks awarded by examiners who will be appointed by the Punjab Public Service Commission. Rule 8, which is important, is as follows : "No candidate shall be considered to have qualified unless he obtains 45 per cent marks in the aggregate of all the papers and at least 33 per cent marks in the language paper, that is, Hindi (in Devnagri script)". As we shall see immediately the final selection depends entirely on this examination. Apart from this examination there is no other hurdle except that of medical examination to be passed by the candidate. No oral interview is prescribed. Rule 10 is as follows :

> (i) The result of the examination will be published in the Punjab Government Gazette.
>
> (ii) Candidates will be selected for appointment strictly in the order in which they have been placed by the Punjab Service Commission in the list of those who have qualified under rule 8 ;.....

It will be seen from this that the function under the rules given to the Punjab Public Service Commission was to hold the examination and then prepare a list strictly in accordance with merit on the basis of the marks received in the examination and this list was to be published in the Punjab Government Gazette. Thus it became public property and every candidate would know having regard to the vacancies whether he is likely to be appointed.

The list is of great importance. There could be no departure from the list either by the Public Service- Commission, the High Court or the State Government. This will be seen from Part D which relates to appointments. Rule I in this part provides that "the names of candidates selected by Government for appointment as Subordinate Judges under rules 10 and 1 1 of Part C shall be entered on the High Court Register in the order of their selection." Rule 10(ii) in Part C referred to earlier stated that the "candidates will be selected for appointment" and rule I in Part D says "that

the selection was by Government for appointment". Reading the two together it is clear that Government was bound to make the selection strictly in the order in which the names were mentioned by the Public Service Commission in the list and this selection was for the specific purpose of making appointments. There is no question of the High Court making any recommendations. Once the State Government has selected the names of the candidates strictly in accordance with the list, such selection for appointment is intimated to the High Court and the candidates so selected by Government for appointment are to be entered by the High Court in a Register in the order of the selection. Obviously the Register is to be kept by the High Court because the High Court knows in its administrative capacity what vacancies have occurred and which are the courts to which the appointments have to be made. The Service Rules have been made in consultation with the Public Service Commission and the High Court and, therefore, they are binding on all. They show that the examination is the final test, apart from medical examination as per rule 1 1 in Part C for a candidate's appointment to the post of the Sub,ordinate Judge and once the list is prepared by the Public Service ,Commission strict in order of merit, neither the Public Service Com- mission nor the State nor the High Court can depart from the order of merit given in the list except where reservations have been made in favour of backward classes and Scheduled castes and tribes in accordance with rule 10(ii). In the present case it appears that about 40 candidates had passed the examination with the minimum score of 45 per cent. Their names were published in the Government Gazette as required by Rule 10(1) already referred to. It is not disputed that the mere entry in this list of the name of a candidate does not give him the right to be appointed. The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed. The list is merely to help the State Government in making the appointments showing which candidates have the minimum qualifications under the Rules. The stage for selection for appointment comes thereafter, and it is not disputed that under the Constitution it is the State Government alone which can make the appointments. The High Court does not come into the picture for recommending any particular candidates. After the State, Government have taken a decision as to which of the candidates in accordance with the list should be appointed, the list of selected candidates for appointment is forwarded to the High Court and the High Court then will have to enter such candidates on a Register maintained by it. When vacancies are to be filled the High Court will send in the names of the candidates in accordance with the select list and in the order they have been placed in that list for appointment in the vacancies. The High Court, therefore, plays no part except to suggest to the Government who in accordance with the select list is to be appointed in a particular vacancy. It appears that in the present case the Public Service Commission had sent up the rolls of the first 15 candidates because the Commission had been informed that there are 15 vacancies. The High Court also in its routine course had sent upthe first 15 names to the Government for appointment. Thereuponthe Chief Secretary to Government, Haryana wrote to the Registrar ofthe High Court on May 4, 1971 as follows :

> "I am directed to refer to Haryana Government endst. No. 1678-1GS 11-71/3802, dated the 22nd April, 1971, on the subject noted above, and to say that after careful consideration of the recommendations of the Punjab and Haryana High Court for appointment of first fifteen candidates to the Haryana Civil Service (Judicial Branch),

> the State Government have taken the view that it would be appropriate that only the first seven candidates should be appointed to the Haryana Civil Service (Judicial Branch) and a notification has been issued accordingly. The reason is that in the opinion of the State Government, only those candidates who obtained 55% or more marks in the Haryana Civil Service (Judicial Branch) Examination, should be appointed as that was serve to maintain a minimum standard in the appointments to the Service. It may be mentioned that the last candidate appointed against unreserved vacancies out of the merit list prepared on the basis of the Haryana Civil Service (Judicial Branch) Examination held in May, 1969, secured 55.67% marks. The State Government have also received information that the Punjab and Haryana High Court themselves recommended to the Punjab Government that in respect of P.C.S.(Judicial Branch) Examination held in 1970, candidates securing 55% marks or more should be appointed against unreserved vacancies. Thus, the decision-taken by Haryana Government is in line with the recommendations which the High Court made to the Punjab Government regarding recruitment to the P.C.S. (Judicial Branch) on the basis of the Examination held in 1970, and a similar policy in both the cases would be desirable for obvious reasons."

This will clearly go to show that the High Court itself had recommended earlier to the Punjab Government that only candidates securing 55% marks or more should be appointed as Subordinate Judges and the Haryana Government in the interest of maintaining high standards in the service had agreed with that opinion. This was entirely in the interest of judicial administration.

It is rather difficult to follow the reasoning of the High Court in this case. It agrees that the advertisement mentioning 15 vacancies did not give a right to any candidate to be appointed to the post of a Subordinate Judge. Even so it somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies. At one place it was stated "so long as there are the number of vacancies to be filled in and there are qualified candidates in the list forwarded by the Public Service Commission along with their Rolls, they have got a legal right to be selected under rule 10(ii) in Part 'C'." One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for conside- ration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of rule 10 in Part C is that if and when the State Government propose to make appointments of Subordinate Judges the State Government (i) shall not make such appoint- ments by travelling outside the list arid (ii) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case neither of these two requirements is infringed by the Government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, rule 10 does not impose any other constraint. There is no constraint that the Government shall make an appointment

of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence.

It must be remembered that the petition is for a mandamus. This Court has pointed out in Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College(") that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived. It was, however, contended by Dr. Singhvi on behalf of the respondents that since rule 8 of Part C makes candidates who obtained 45 per cent or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed (1) [1962] (2) Suppl. S.C.R. 144.

to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who,, is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of' 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. that the Punjab Government later on fixed a lower score is no reason for the Haryana, Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who get less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking. that the State Government had somehow contravened rule 8 of Part C. The appeal must, therefore, be allowed and the order passed by the High Court set aside. There shall be no order as to costs.

V.P.S. Appeal allowed-