

CASE NO.:  
Appeal (civil) 4129 of 2006

PETITIONER:  
Andhra Pradesh Public Service Commission

RESPONDENT:  
P. Chandra Mouleesware Reddy & Ors.

DATE OF JUDGMENT: 14/09/2006

BENCH:  
S.B. Sinha & Dalveer Bhandari

JUDGMENT:  
J U D G M E N T

S.B. Sinha, J.

Leave granted.

Andhra Pradesh Public Service Commission (for short, 'the Commission') is in appeal before us aggrieved by and dissatisfied with the judgment and order of a Division Bench of the High Court of Judicature of Andhra Pradesh dismissing a writ petition filed by it from an order of the Andhra Pradesh State Administrative Tribunal dated 15.10.2004 directing it to make recruitment from the selection list to the nine posts of Deputy Superintendent of Police as only ten out of nineteen posts advertised therefor had been filled up.

The Commission advertised nineteen posts for recruitment to the post of Deputy Superintendent of Police. Pursuant thereto and in furtherance thereof, applications were filed, inter alia, by the Respondent Nos.1 to 3 herein. The State, however, asked the Commission to fill up only ten posts. An exercise was carried out accordingly by the Commission purported to be in terms of Rule 6 of the Public Service Commission Rules.

Aggrieved by and dissatisfied therewith, the Respondent Nos. 1 to 3 filed an Original Application before the Andhra Pradesh Administrative Tribunal (Tribunal). The Tribunal noticed that the Respondent Nos. 1 to 3 pursuant to the advertisement of the Commission appeared at the written examination. They had also appeared at the interview. At that stage only, the State of Andhra Pradesh directed the Commission to fill up only ten posts, which was complied with. It is not disputed that nineteen posts were vacant. The vacancies were notified in terms of Rule 3 of the Andhra Pradesh Police Service Rules. It is also not denied or disputed that the said posts were to be filled up both by way of direct recruitment as also by promotion in the ratio of 1:2. In not filling up the said posts, according to the Respondents, the provisions of the said Rules have been violated.

In its counter affidavit, the State contended :

"According to the programme of selections to be made by the Andhra Pradesh Public Service Commission among other things being equal that Government in the case of State Services should send to Andhra Pradesh Public Service Commission estimates of the number of candidates to be selected for each service. The estimate of the number of candidates required should cover a period of 12 months following the dates on which the lists of selected candidates are due to be communicated

to the appointing authorities according to the programme. As the appointing authorities are not adhering to the time schedule and not notifying the vacancies to the A.P. Public Service Commission in time, which results in delay in making recruitment in the State Government Offices the following instructions were issued :

"The matter has been reviewed and it is hereby ordered that 1/3 of the vacancies in respect of retirements in the particular year of recruitment in respect of the posts which are within the purview of the A.P. Public Service Commission for making direct recruitment shall be notified in advance to the Andhra Pradesh Public Service Commission in order to hasten up the recruitment and to enable the Commission to programme its selection suitably."

In Rc.No.564/G3/97, dt.8.7.97, the Director General and Inspector General of Police, Andhra Pradesh, Hyderabad has addressed the General Administration (Ser) Department with a request to notify 19 backlog vacancies of Deputy Superintendent of Police Category-2 for direct recruitment but not the vacancies that would arise in future and he has also extended the same letter to the Andhra Pradesh Public Service Commission which in turn notified the vacancies for the purpose of inviting applications from the open market.

However on the presumption that they were to be filled up for future recruitment, Government in Home Department have given directions to the Andhra Pradesh Public Service Commission that only 10 vacancies for the post of Deputy Superintendent of Police instead of 19 vacancies be notified as per Govt. Memo No.1946/Ser-A/90-1, dt.18.12.90, which is a mistake of fact i.e., vide impugned Government Letter No.21701/Pol.E/A1/99-1 dt.2.6.99."

The Tribunal, therefore, opined that mistake on the part of the State being admitted, the applicants were entitled to the reliefs prayed for. It was furthermore observed that the State before issuing the direction to the Commission should have consulted the Director General of Police and, thus, its decision was arbitrary. In regard to the stand of the Appellant, the Tribunal observed :

"Though the APPSC was acting at the specific instance of the first respondent i.e. Government, and it is not its own fault that not filling up the 19 vacancies occurred, still the action itself has to be declared as arbitrary and illegal on account of the basis of the action.

In the facts and circumstances of the case, it is declared that the APPSC ought to have selected 19 candidates strictly following the rule of reservation instead of 10 candidates. It is also further declared that the first and second respondents ought to have selected 19 candidates as against 10 candidates actually by following the rule of reservation."

The writ petition filed by Appellant was dismissed by a Division Bench of the High Court stating :

"The only submission made by the learned counsel for the writ petitioner is that at this stage, after a lapse of 7 years, if the direction of the Tribunal is to be

implemented it would involve a great deal of exercise on the part of the Service Commission as the examination was conducted not only for the posts of Deputy Superintendent of Police but to 18 other categories of posts belonging to the same group. This argument, in our considered opinion, is only to be stated as rejected, as there is a constitutional obligation of the Service Commission to conduct the examination to enable the State to fill up the various posts to be filled up by the State. Such an obligation necessarily involves a onerous exercise, but that cannot be an excuse to decline the discharge of an obligation mandated by the Constitution of India."

Submission of Mr. G. Prabhakar, learned counsel appearing on behalf of the Commission before us is that as the selection process having been completed on 20.8.2000 the Tribunal should not have directed filling up of nine vacancies in September, 2003 as in terms of Rule 6 of the Public Service Commission Rules, the remaining vacancies were to be filled up only in the next year. It was submitted that if the direction is to be carried out, the same will have a cascading effect.

Mr. P.P. Rao, learned Senior Counsel appearing on behalf of the Respondents, on the other hand, would submit that the candidate should not suffer owing to a mistake on the part of the State.

Indisputably, by reason of Advertisement No.5 of 1998, nineteen posts of Deputy Superintendent of Police Category-2 in Police Service in the pay scale of Rs.3880-8140 were notified. Selection process ensued in furtherance thereof. The State of Andhra Pradesh by a letter dated 2.6.1999, however, asked the Commission to send recommendation for only ten vacancies in the said category for the purpose of direct recruitment, stating :

"According to the orders issued in Govt. Memo No.1946/Ser.A/90-1, Dt.18.12.90, 1/3 of the vacancies in respect of retirements in a particular year of recruitment in respect of the posts which are within the purview of A.P.P.S.C. for making direct recruitment, shall be notified A.P.P.S.C.; and not on the basis of the total No. of substantive vacancies in the Dept. from its inception. Accordingly the D.G. & I.G.P. has been requested to send revised proposals and his proposals were awaited. As the matter stood thus, it is not clear as to how the estimate of 19 posts of D.Ss.P. were cleared by Fin. & Plg. Dept. and advertised by A.P.P.S.C. later, as stated in the letter third cited, without the confirmation by this Dept.

Subsequently, A.P.P.S.C. has also called for estimate of vacancies upto 31.8.1998 in the letter second cited. Govt. have furnished the estimate i.e. 10 vacancies, keeping in view the instructions issued in Govt. Memo 1946/Ser.A/90-1, Dt.18.12.90 are also taking into consideration the vacancies arose upto 31.8.1998."

The finding of the Tribunal and consequently that of the High Court, in that, it was a mistake on the part of the State to issue the aforementioned direction. The same is not in dispute.

The State of Andhra Pradesh, we may notice, did not question the order of the Tribunal. The Commission was required to carry out fresh exercise in compliance of the directions of the Tribunal. For the said purpose, no fresh selection process was to be undertaken. If the State did

not have any objection to fill up the said posts realizing the mistake committed by it; we fail to see any reason as to why the Commission should have felt aggrieved by the order of the Tribunal.

In Ms. Neelima Shangla vs. State of Haryana & Ors. [(1986) 4 SCC 268], this Court opined :

".....That was wrong. The names of all the qualified candidates had to be sent to the government. The reason given by the Public Service Commission for not communicating the entire list of qualified candidates to the government is that they were originally informed that there were only 28 vacancies. That is not a sound reason at all. Under the "Rules relating to the appointment of Subordinate Judges in Haryana", the Public Service Commission is not concerned with the number of vacancies at all. Nor is it expected to withhold the full list of successful candidates on the ground that only a limited number of vacancies are available. The Government of Haryana has taken the stand that they were unable to select and appoint more candidates as the names of only a few candidates were sent to them by the Public Service Commission. It now transpires that even before the Public Service Commission sent its truncated list to the government, the High Court had already informed the government that there were more vacancies which required to be filled. The government not knowing that the names of several candidates who were qualified had been withheld from the government by the Service Commission, wrote to the Service Commission to hold a fresh competitive examination. If the government had been aware that there were qualified candidates available, they would have surely applied Rule 8 of Part D and made the necessary selection to be communicated to the High Court. The net result is that qualified candidates, though available, were not selected and were not appointed. Miss Neelima Shangla is one of them. In the view that we have taken of the rules, Miss Neelima Shangla is entitled to be selected for appointment as Subordinate Judge in the Haryana Civil Service (Judicial Branch)."

The candidates, therefore, in our opinion, should not suffer owing to a mistake on the part of the State. The Tribunal, we have noticed hereinbefore, directed the Commission to notify the remaining nine candidates in the merit order following the 'Rule of Reservation'. It was categorically stated that those who would be appointed in terms thereof would be able to claim any right only with prospective effect, i.e., from the date of their actual joining of service. It, therefore, cannot be said that the order of the Tribunal was in any manner unjustified, arbitrary or unreasonable. The High Court, thus, in our opinion, rightly refused to exercise its jurisdiction under Article 226 of the Constitution of India.

We may notice that in S.L. Kaul & Ors. vs. Secretary to Government of India, Ministry of Information and Broadcasting, New Delhi & Ors. [(1989) Supp.1 SCC 147], this Court held that to take a technical view so as to deprive the candidate of his right of seniority, would be unjust.

The question was considered at some length by a Division Bench of this Court in Virender S. Hooda & Ors. vs. State of Haryana & Anr. [(1999) 3 SCC 693], wherein it was held that the Commission should follow the instructions of the state provided the same is in accordance with rules.

The policy of the State was to fill up all the nineteen posts. The

Respondents were, thus, entitled to have their case considered by the Commission in accordance with merits only. Mistakenly, the State directed to fill up only ten posts which was realised by it when the Original Application was filed before the Tribunal. It accepted its mistake in no uncertain terms.

Rule 6 of the Public Service Commission Rules reads as follows :

"The list of candidates approved/selected shall be equal to the number of vacancies only including those for reserve communications/categories notified by the unit officers/Government. The layout vacancies if any due to relinquishment/ and non-falling selected candidates shall be notified in the next recruitment."

Rule 6 of the Public Service Commission Rules, whereupon Mr. Prabhakar placed reliance, is not of much significance. It operates in a different field. It will have no application in a case of this nature. The law cannot be permitted to act unfairly. It cannot be arbitrary. The country is governed by a Rule of Law and not by men. Thus, although a mistake had been committed by the State, the same cannot be directed to be perpetrated only because the Commission will have to undertake the selection process again and particularly, in view of the fact that the State of Andhra Pradesh did not question the order passed by the tribunal.

For the reasons aforementioned, we find no merit in this appeal, which is, accordingly, dismissed with costs quantified at Rs.25,000/- payable by Appellant in favour of Respondent Nos. 1 to 3.