

PETITIONER:
KAILASH CHANDER SHARMA

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS.

DATE OF JUDGMENT 16/11/1989

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MISRA RANGNATH
SAWANT, P.B.

CITATION:
1990 AIR 454 1989 SCR Supl. (2) 189
1989 SCC Supl. (2) 696 JT 1989 (4) 316
1989 SCALE (2) 1122

ACT:

Civil Services: Assistant District Attorney--Appointment of--Undertaking given by State--Compliance of--Direction issued.

HEADNOTE:

In a group of cases filed in this Court in connection with recruitment to the posts of Assistant District Attorneys by the State Public Service Commission. The Respondent-State had undertaken that if any post was to be filled up within one year, candidates who were selected by the Public Service Commission but had not been appointed, would be appointed in the order of merit. However, the petitioner, who was selected by the Public Service Commission and, assigned 39th position in the order of merit, was not given the appointment, and a fresh notification was issued by the Public Service Commission for selecting candidates for 27 posts. Therefore, the petitioner filed a writ petition in this Court alleging that the respondents had arbitrarily and illegally denied him his right to appointment to the posts.

The respondent-State contended that since only 37 posts were earmarked for general candidates and no vacancy had arisen before the expiry of one year, the petitioner could not be appointed as per the undertaking given by the State. Disposing of the Writ Petition, this Court,

HELD: When this Court had given the direction on the undertaking given by the State that selected candidates would be appointed in vacancies that would arise within one year, it was expected that the State Government would comply with the spirit and substance of the direction, and not to avoid compliance on the technical plea of expiry of the one year period. The Court would not permit the State to avoid implementation of the order made by it on any technical or unjustified stand. [192E-F]

It is incredible to believe that within one year even one vacancy had not arisen when 27 posts were subsequently notified for direct

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recruitment. It would be obvious, and it is common knowl-

edge, that vacancies keep arising as and when the incumbents of such posts either retire or resign or new posts are created. On the fact-situation arising out of the record of the proceeding, it has to be concluded that some of these 27 vacancies did arise within the one year period set by this Court but the State Government delayed action to allow the year to run out and to free itself from the purview of the direction. [192C, D-F]

The petitioner, therefore, became entitled to be considered for appointment to the post of Assistant District Attorney and given appointment in accordance with the rules. The respondents would accordingly appoint the petitioner against one of the posts subject to physical fitness. [192G]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition (C) No. 1157 of 1988.

(Under Article 32 of the Constitution of India)

R.K. Kapoor, Mrs. Anil Katiyar (not present) for the Petitioner.

Rajinder Sachar and Mahabir Singh for the Respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. This writ petition under Article 32 of the Constitution is a sequel to the order passed by this Court in *Sat Der Parasher, etc. etc. v. State of Haryana*, in Writ Petition Nos. 887 of 1986 and a batch of connected Special Leave Petitions. Transfer Petitions etc. etc. in December, 1985. The State of Haryana made on different dated ad hoc appointments to the posts of Assistant District Attorney. Applications were invited by the Haryana Public Service Commission to make recruitment to the posts of Assistant District Attorney. The ad hoc appointees filed writ petitions under Article 32 and also Special Leave Petitions against the judgment of the High Court of Punjab & Haryana. Their main contention was that they have been regularly recruited though on ad hoc basis after interview by a duly constituted Committee and that they were entitled to be regularised. This Court while disposing of the cases held that the petitioners therein were appointed only on ad hoc basis till suitable candidates were available for regular appointment. The interim orders passed on different dates were vacated. It was observed that "if amongst the said petitioners any person has been appointed regularly by the Public Service Commission subsequently he shall hold the post pursuant to the order issued on the recommendation of the Public Service Commission. This order of dismissal will not affect him. The petitions are disposed of accordingly. The candidates who have been selected by the

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Public Service Commission shall be appointed by the State Government on regular basis and any stay order passed by this Court against their appointment is vacated. These petitions are accordingly allowed. Dr. Y.S. Chitale, learned counsel for the State, submits that if any post of the Assistant District Attorney is to be filled up within one year, candidates who are selected by the Public Service Commission but have not been appointed shall be appointed in the order of merit "The petitioner was, admittedly, selected by the Haryana Public Service Commission, as communicated by letter dated May 7, 1986, with his Roll No. 446. He stood at Serial No. 39 in the order of merit among sixty-six selected candidates. In the counter affidavit filed in the earlier group of petitions by the State of Haryana it

was admitted that 39 posts were to be filled from among the selected general candidates. The petitioner having been selected on merit and assigned the 39th position, was also entitled to be appointed as Assistant District Attorney. It is the petitioner's case that the respondents have arbitrarily and illegally denied him his right to appointment as Assistant District Attorney. It is his case that several representations made in this regard received no consideration constraining him to approach this Court for issuance of a Writ of Mandamus or order or direction to the respondents to give him his due appointment. In the counter affidavit, it is admitted that the petitioner was selected by the Public Service Commission and he stood at Serial No. 39, but the posts earmarked for the general candidates were 37. Consequently, the petitioner could not be appointed. This Court seeing the specific admission made on the earlier occasion that 39 posts were earmarked for general candidates, called upon the respondents to explain the contradictory stand set up in the present case. A further affidavit was filed stating that averments of earmarking 39 posts for general candidates is a typographical mistake. The total number of posts notified were 57, the breakup of which is that 11 posts were reserved for Scheduled Castes, six posts were reserved for Backward Classes and three posts were reserved for NSML and the remaining 37 were to be filled up from general candidates. They regretted the typographical error committed in the earlier affidavit. It is also admitted that subsequent notification was issued by the Public Service Commission to select 27 candidates to fill up 27 posts of Assistant District Attorneys, but claiming to be, after the expiry of the one year limit set by this Court. The stand taken by the respondents in their counter affidavit and argued by their counsel is that the direction issued by this Court referred to herein before was strictly adhered to and appointments were given to all the selected candidates. No vacancy had arisen before the expiry of one year as indicated in the judgment, and therefore, the

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petitioner could not be appointed as per the undertaking given by the counsel for the State. The petitioner has no fundamental right to appointment. He has to apply afresh and take his chance for selection by the Haryana Public Service Commission.

The admitted fact is that the petitioner was one among the selected candidates standing at Serial No. 39 in the order of merit by the Public Service Commission and was recommended for appointment to the post of Assistant District Attorney. The counsel for the State had given an unequivocal undertaking that if any vacancies arise within one year from the date of the judgment, the candidates selected and recommended by the Public Service Commission shall be appointed to those posts in the order of merit. It is incredible to believe the averment of the State that within one year even one vacancy in the post of Assistant District Attorney had not arisen for appointment when 27 posts were subsequently notified for direct recruitment. It is not their case that all the 27 vacancies had suddenly arisen on a particular date just after the expiry of one year. It would be obvious and it is common knowledge that vacancies kept arising as and when the incumbents of such posts either retire or resign or new posts are created. When this Court had given the direction on the undertaking given by the State that selected candidates would be appointed in vacancies in the said posts that would arise within one year, it was expected that the Haryana State Government

would comply with the spirit and substance of the direction, and not to avoid compliance on the technical plea of expiry of the one year period. We wanted to know the definite dates when the twenty seven vacancies arose but the details have not been placed on the record inspite of the Court's query. On the fact-situation arising out of the record of the proceeding, it has to be concluded that some of these twenty seven vacancies did arise within the one year period set by this Court in its earlier order but the State Government delayed action to allow the year to run out and to free itself from the purview of the direction. The Court would not permit the State to avoid implementation of the order made by it on any technical or unjustified stand. In these circumstances, we are of the considered view that the petitioner became entitled to be considered for appointment to the post of Assistant District Attorney and given appointment in accordance with the rules. The respondents are, accordingly, directed to appoint the petitioner against one of the posts of Assistant District Attorney subject to physical fitness. No costs.

N.P.V.

Petition disposed of.

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