2023INSC842

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10861 OF 2013

SUDESH KUMAR GOYAL **...APPELLANT**

VERSUS

THE STATE OF HARYANA & ORS. **...RESPONDENTS**

J U D G M E N T

PANKAJ MITHAL, J.

1. We had heard Shri Rakesh Dahiya learned counsel for the appellant, as well as Shri Raju Ramachandran, learned senior counsel for the respondents. Ms. (Dr.) Monika Gusain had appeared for the State of Haryana and was also heard.

2. The common judgment and order dated 18.05.2010 passed by the Division Bench of the Punjab & Haryana High Court deciding 12 writ petitions, more particularly, writ petition No.16211 of 2009 is under challenge in the present appeal. The bunch of the above writ petitions were partially allowed but the appellant was not accorded any relief insofar as his appointment to the higher judicial service of the State under direct recruitment quota was concerned.

3. Before adverting to the two legal issues which have been addressed by Shri Rakesh Dahiya in assailing the impugned judgment and order, we consider it appropriate to briefly narrate the facts leading to the filing of the writ petition and now the appeal arising therefrom.

4. The Punjab & Haryana High Court on 18.05.2007 issued a notification for the selection/recruitment of 22 officers in the Haryana Superior Judicial Service by direct recruitment from the Bar, out of which, 14 were of general category, 5 of the scheduled caste and 3 of the backward class. The selection was

to be made in accordance with the provisions of the Haryana Superior Judicial Service Rules, 2007 within the 25 per cent quota for direct recruitment from the Bar.

5. The appellant was one of the candidates, who applied for the post along with the other candidates who preferred the connected writ petitions. The appellant, despite having successfully qualified the written examination and the interview and having secured the 14th position in the merit list, was not appointed.

6. Pursuant to the above notification dated 18.05.2007, the written examination was held in February 2008 and the interviews of the successful candidates were held on 08.04.2008 and 09.04.2008. The final result was displayed on the website of the High Court on 15.07.2008 and the appellant was placed at serial no.14 of the merit list of the general category candidates. In spite of the fact that 14 general category posts for direct recruitment were advertised and the appellant was within the first 14 general category candidates who successfully

qualified the written test and the interview, he was not given appointment, whereas the first 13 candidates in order of merit were appointed. Out of these 13 candidates, one of the candidates, namely, Jitender Kumar Sinha joined the service but later resigned.

7. It is in the above factual background that the appellant invoked the writ jurisdiction of the High Court seeking his appointment against the 14th post of general category candidate, *inter alia*, on the allegation that the said post could not be kept vacant, more particularly, in an arbitrary manner. It is also contended that out of the 13 candidates appointed, one of them after joining had resigned and, therefore, in any case the appellant could have been adjusted against the said vacancy.

8. Shri Dahiya, in the light of the ratio laid down by the Apex Court in **Shankarsan Dash** v. **Union of India** (1991) 3 SCC 47, has argued that though he is conscious that the appellant by selection itself has not acquired any indefeasible right to be appointed, nonetheless, his right for appointment cannot be

defeated by adopting an arbitrary approach. The respondents have acted purely in an arbitrary manner in keeping the 14th post vacant and not filling it by the appointment of the appellant.

9. The relevant paragraph 7 of the above decision reads as under:-

> "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha,

Neelima Shangla v. State of Haryana, or Jatendra Kumar v. State of Punjab".

10. A simple reading of the above paragraph would reveal that though it is up to the employer or the State to fill up all the notified vacancies or to keep all of them or any of them vacant but it does not mean that the employer/State can act arbitrarily in not filling up those posts and the decision not to fill up the vacancies has to be a *bona fide* one supported by appropriate reasons.

11. The relevant rules of 2007, do not oblige the State to fill up all the vacancies advertised.

12. The respondents, in order to justify the non-appointment of the appellant on the 14th vacancy, submitted that the notification/advertisement dated 18.05.2007 advertised 22 posts for direct recruitment in the higher judicial service, out of which 14 were meant to be filled up by general category candidates but only 13 selected general category candidates were appointed. The reason being that 5 general category candidates who were working as Additional District & Sessions

Judges (Fast Track Court) in Haryana pursuant to the notification dated 26.05.2003 applied for their absorption and filed writ petition No.8587 of 2007 seeking their regularisation on substantive posts which petition came to be disposed of vide order dated 30.05.2007 directing them to make representation on administrative side to the High Court in terms of **Brij Mohan Lal** (1) v. **Union of India** (2002) 2 SCC 1. Acting on the aforesaid representation, the selection committee of the High Court recommended for absorption of the above 5 Fast Track Court judges on fresh posts. Accepting the recommendations of the Committee, out of the 14 general category posts, 5 officers of the Fast Track Court were adjusted, thus leaving only 9 to be filled up as per selection. In the meantime, 20 fresh vacancies of the cadre became available, out of which, 5 were to be filled up by direct recruitment from the Bar, (4 general category and 1 scheduled caste category). Therefore, a conscious decision was taken to add these 4 general category vacancies to the already advertised vacancies, thus making the number of general

category vacancies to be 13 [14-5=9+4=13]. Thus, only 13 candidates were appointed. The respondents have not acted arbitrarily in making such appointments.

13. Under the Fast Track Court scheme envisaged by the Central Government, State Governments were required to establish Fast Track Courts for disposal of long pending cases. In **Brij Mohan Lal (1)** (supra), certain directions were issued for the proper implementation of the above scheme. Some of the said directions which are relevant for our purpose provide that for the appointment of judges in the Fast Track Courts, first preference be given to the eligible judicial officers who may be promoted on *ad-hoc* basis after following the procedure in force for the promotion of the judicial officers. Second preference was to be accorded to the retired judges who have good service records with no adverse comment in their ACRs. The third preference was to be given to the members of the Bar for direct appointment as Fast Track Court judges and that they may be continued against the regular post if the Fast Track Court

ceases to function. They may be absorbed in regular vacancies in the subsequent recruitment if their performance in Fast Track Court is found satisfactory and in making such absorption, the High Court shall adopt such methods of selection as are normally followed for selection of superior/higher judicial service officers amongst the members of the Bar by direct recruitment.

14. It is worth mentioning that **Brij Mohan Lal (2)** v. **Union of India** (2012) 6 SCC 502, vide paragraph 207, without interfering with the policy decision of the government, in exercise of its power under Article 142 of the Constitution of India issued certain more directions in relation to Fast Track Court Scheme. One of the directions was for creation of additional 10% posts for the absorption of Fast Track Court judges. Another direction was that all those who have been appointed by way of direct recruitment from the Bar under the Fast Track Court Scheme would be entitled to be appointed to the regular cadre of the higher judicial services of the respective States in the manner

laid down therein. In addition to the above, it directed that candidates who were promoted as Fast Track Court judges from the post of Civil Judge (Sr. Division) having requisite experience in service shall be entitled to be absorbed and remain promoted to the higher judicial service of the State against the 25% quota after giving due weightage to the fact that they have already put in a number of years' service in the higher judicial service.

15. In view of the aforesaid facts and circumstances, it can be noticed that initially 14 general category vacancies within the direct quota were advertised, out of which, 5 were filled up by absorption of the Fast Track Court judges in terms of the directions contained in the **Brij Mohan Lal (1) & (2)** (supra). Adding 4 general category posts which in the meantime fell vacant, all 13 vacancies were duly filled up from the selected candidates. The appellant could not be appointed as he was at serial No.14 of the merit and the posts available were only 13.

16. The absorption of Fast Track Court judges was done after following the prescribed procedure for the selection. The

appointment/absorption of the aforesaid Fast Track Court judges was in accordance with the directions contained in **Brij Mohan Lal (1) & (2)** (supra) and has been affirmed by the High Court under the impugned order which part of the judgment is not being assailed specifically.

17. In view of the reasoning given by the respondents for appointing only 13 selected candidates leaving the appellant who was at Sl. No.14, we are of the opinion that the respondents have justified the appointments and have not acted in an arbitrary manner. The respondents have acted fairly and logically without any malice against the appellant. Thus, on the touchstone of the decision cited on behalf of the appellant himself, we do not find any arbitrariness on the part of the respondents. Therefore, the decision of the Division Bench of the High Court is not liable to be disturbed on the above count, more particularly when the appellant has not acquired any indefeasible right to be appointed because he qualified in the selection process.

18. This takes us to the second argument that the appellant could have been easily adjusted against the vacancy caused due to resignation of one of the selected candidates. The argument *per se* is bereft of merit inasmuch as all the vacancies notified stood filled up initially. However, if one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process. The Division Bench has rightly dealt with the above contention in the light of the precedent of the various decisions of this Court and we do not feel that any error has been committed in this context.

19. This apart, as may be noticed that the procedure for selection of superior/higher judicial service officers by direct recruitment from the Bar was initiated by the Punjab and Haryana High Court way back in the year 2007 and now we are in the year 2023 meaning thereby that 16 years have passed by in between. It would be a travesty of justice to keep open the selection

process for such a long time and to direct at this stage to make any appointment on the basis of a selection process initiated so far back. For this additional reason also, we do not deem it proper to interfere with the impugned judgment and order of the High Court.

20. To conclude, we do not find any merit in this appeal and as such dismiss the same with no order as to costs.

..... J.
(HRISHIKESH ROY)

..... J.
(PANKAJ MITHAL)

NEW DELHI;
SEPTEMBER 21, 2023.