

2023 LiveLaw (SC) 472

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

DR. DHANANJAYA Y. CHANDRACHUD; CJI., PAMIDIGHANTAM SRI NARASIMHA; J.

May 19, 2023

CIVIL APPEAL NO. 3062 OF 2023 Arising out of SLP(C) No. 12635 of 2020

THE STATE OF KARNATAKA & ORS. versus SMT. BHARATHI S.

Recruitment Rules - the duty to fill up vacancies from the Additional List (waiting list) can arise only on the basis of a mandatory rule. In the absence of such a mandate, the decision to fill all the vacancies from the Additional List, is left to the wisdom of the State. However, the State cannot act arbitrarily and its action will be subject to judicial review.

Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967 - Mere publication of a candidate's name in the Additional List (waiting list) for the purpose of recruitment as a Primary School Teacher, will not create any right to be appointed in favour of such candidate. Entry 66 of the Rules, which talks about additional list, does not mandatorily obligate the State to make appointments.

For Appellant(s) Mr. Nikhil Goel, AAG Mr. V.N. Raghupathy, AOR Mr. Manendra Pal Gupta, Adv. Mr. Adithya Roy, Adv.

For Respondent(s) Mr. Vikas Mehta, AOR Mr. Bhaskar Nayak, Adv.

ORDER

1. This Civil Appeal by the State of Karnataka impugns the judgment of the High Court directing appointment of the Respondent to the post of Assistant Teacher, as her name appears in the *Additional List* (Wait List) of candidates. Having considered the rules and the principles that govern the services, we have held that enlistment of name in the *Additional List* neither creates a right nor a co-relative obligation for appointment. For reasons that follow, we have allowed the appeal filed by the State and set aside the directions of the High Court. Facts that are necessary for disposal of the appeal are as follows:-

2. Pursuant to a notification issued by the Department of Public Instructions, the Respondent applied for the post of Assistant Teacher in Government Primary School at Chikkaballapur District. Post the selection process, the selection authority, issued the final select list of five candidates on 20.01.2016. The Respondent was not one of them. However, an *Additional List* (which is in the nature of a wait list) was published on 29.02.2016, which comprised of just one candidate, the Respondent herein. The *Additional List* had a note which stated that mere inclusion in the list would not confer a right to appointment and that the selection of the candidates named in the *Additional List* is provisional and subject to the directions received by the government from time to time.

3. A few months later i.e., on 21.07.2016, when a selected candidate made a representation that she was not inclined to take up the post, the Respondent addressed a letter to the Appellants on 08.09.2016 to consider her candidature since she was the only candidate in the *Additional List*.

4. Respondent's request for appointment was rejected by the State on 17.02.2017 on the basis of Proceedings of Govt. of Karnataka dated 11.04.2003, which provides that an *Additional List* shall remain valid up to *six months from the date of its publication or the*

date when all the posts are filled up, whichever is earlier. Since the *Additional List* was published on 29.02.2016, it would be valid up to 28.08.2016. As the Respondent made a representation only on 08.09.2016, which was beyond the sixmonth period, the request of the Respondent was rejected. This decision was challenged by the Respondent before the Karnataka Administrative Tribunal (hereinafter referred to as 'Tribunal'). The Tribunal dismissed the Application by relying on the Proceedings dated 11.04.2003. This decision was challenged by the Respondent before the High Court of Karnataka in a writ petition under Article 226 of the Constitution.

5. The High Court, by the judgment impugned herein, set aside the order of the Tribunal, holding that the State failed in its obligation to inform the respondent about the existence of the vacancy that has arisen, and also that, there were "latches in filling up the vacancy". For this reason, the High Court was of the opinion that the respondent was not at fault when she made her application after expiry of six months. The appellants were directed to give effect to the *Additional List* within three months from the date of the order.

6. We have heard learned counsel for the parties. At the outset, the Appellant has placed reliance on the Proceedings of the Government of Karnataka dated 11.04.2003, which is essentially a clarification about the life of the *Additional List*. The relevant portion of the clarification as under: -

"And for the question of till how long the Additional list is valid?"

For this, answer is up to 6 months of the announcement of additional list or by filling all the posts which has been already announced, whichever occurs first is to be taken into consideration."

7. As per the above referred clarification, the *Additional List* (wait list) will subsist for a period of six months from the date of its announcement. In the present case, the selection process which commenced on 23.03.2015, culminated in the issuance of a selection list on 20.01.2016. Thereafter, the *Additional List* has been notified on 29.02.2016. If the period of six months is calculated from the date of notification of the *Additional List*, the said list would expire by 28.08.2016. The respondent is said to have applied for the post only on 08.09.2016.

8. The learned counsel for the Writ Petitioner made an alternate submission that the clarification Proceedings dated 11.04.2003, relied on by the State, is only an executive instruction. It is submitted that the relevant Rules which govern the recruitment are the Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967. These Rules have undergone an amendment and the relevant portion of the amended Rule, being Entry 66 of the Schedule to the Rules, concerning 'Primary School Assistant Cadre', relied on is as under:

"The Selection authority shall prepare an additional list of candidates not included in the main list not exceeding ten per cent of the vacancies available. The list so prepared shall be published in the Official Gazette and shall cease to be operative from the date of publication of Notification for the subsequent recruitment of Primary School Teachers under these rules or any other rules specifically made for the recruitment of primary school teachers. However, the recruitment shall be limited to the extent of notified vacancies only."

Relying on Entry 66, it is submitted on behalf of the respondent that the *Additional List* would continue to subsist till a subsequent notification for recruitment of primary school teachers is issued.

9. It is true that Proceedings dated 11.04.2003 is only an executive instruction and cannot override the application of Rules that govern services. The Rules that govern the

services are the Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967 as amended in 2001. On a close reading of the relevant rule applicable to the services i.e. Entry 66, it is clear that there is no obligation on the State to make appointments. Mere publication of the *Additional List* does not create any right to be appointed. There is no such mandate in the Rule. Entry 66 of the Rules merely provides that the Selection authority shall prepare and publish an *Additional List* of candidates not exceeding ten percent of the vacancies and the said list shall cease to operate from the date of publication of notification for subsequent recruitments.

10. The position of law is also clear. In *Subha B. Nair & Ors. v. State of Kerala & Ors.*¹, which has also been relied upon by the State, it has been held that:

“8. A decision on the part of an employer whether to fill up the existing vacancies or not is within its domain. On this limited ground in the absence of discrimination or arbitrariness, a writ court ordinarily would not interfere in such matters.

9. Similar view has also been expressed by this Court in *K. Thulaseedharan v. Kerala State Public Service Commission*, (2007) 6 SCC 190.

19. *The question as to whether there existed 7 vacancies or 16 vacancies in the aforementioned situation loses all significance. We would assume that as per the requisition, 9 more vacancies could be filled up but it is trite that if the employer takes a policy decision not to fill up any existing vacancy, only because a person's name is found in the select list, the same by itself would be a ground to compel the Bank to fill them up.”*

Further, in *Shankarsan Dash v. Union of India*², this Court held that:

*“7. 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*, (1974) 3 SCC 220; *Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268 or *Jatinder Kumar v. State of Punjab*, (1985) 1 SCC 122.”*

11. The position that emerges from the above decisions is that the duty to fill up vacancies from the *Additional List* (waiting list) can arise only on the basis of a mandatory rule. In the absence of such a mandate, the decision to fill all the vacancies from the *Additional List*, is left to the wisdom of the State. We will however add that State cannot act arbitrarily and its action will be subject to judicial review.

12. Returning to the facts of the present case, we are of the opinion that the High Court has committed an error in assuming the existence of a right to be appointed on the basis of Entry 66 in the Schedule to the 1967 Rules. We have seen that the Rule by itself does not create any right. Such a position is also not supported by any principle of law. Finally, the conclusion of the High Court that the Respondent was unaware of the resignation of the appointed candidate will have no bearing on the operation of the Rule. The operation

¹ (2008) 7 SCC 210

² (1991) 3 SCC 47

of the *Additional List*, which is to be published in the official Gazette will depend upon the time specified in the Rule and not as per the knowledge of individual candidates.

13. In conclusion, we are of the opinion that the High Court committed an error in directing the State to give effect to the *Additional List* and appoint the respondent within three months from the date of the order. Under these circumstances, the Civil Appeal No. 3062 of 2023 filed by the State of Karnataka stands allowed and the decision of the High Court in Writ Petition No. 51904 of 2019 dated 31.01.2020 is set aside.

14. No order as to costs.

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