

(3) The District of—

(a) Uttarkashi, Chamoli and Pithoragarh in the State of Uttar Pradesh ;

(b) Lahaul and Spiti, Kinnaur and Kulu in the State of Himachal Pradesh.”

(14) Since the Notification dated 28th November, 1962 stands superseded, reliance placed by the counsel for the petitioner on the said notification is totally misplaced. Petitioner would not be deemed to be on active service as per definition of section 3(i) of the Army Act read with the subsequent notification dated 5th September, 1977, as he was not serving in either of the capacities mentioned in section 3(i) of the Army Act, or States, Union Territories or districts referred to in the subsequent notification dated 5th September, 1977. Since the petitioner was not on active military service, he could only be tried by a civil court having criminal jurisdiction and the military authorities have rightly sent his case to the civil Court of criminal jurisdiction for trial.

(15) For the reasons recorded above, We find no force in this petition which is ordered to be dismissed with no order as to costs.

J.S.T.

Before Hon'ble R. P. Sethi & K. S. Kumaran, JJ.

ANITA,—Petitioner.

versus

*HARYANA PUBLIC SERVICE COMMISSION & ANOTHER,
—Respondents.*

C.W.P. No. 12437 of 1995

5th June, 1995

Constitution of India, 1950—Arts. 14 & 226—Vacancies—Haryana Civil Services (Judicial Branch)—Vacancies in services—Thereafter rules amended changing eligibility Claim of petitioner is that such vacancies are to be filled in accordance with old eligibility criteria—Held that there is no law which provides for carry forward of vacancies—Employers have right to fill vacancies at any time—Open to commission to readvertise posts in accordance with amended rules,

Held, that there is no provision under the rules for carrying forward the back log of the seats. The petitioner has also not been in a position to show us any provision of law or the judgment of any Court to the effect that the vacancies falling vacant should be carried forward and filled up on the basis of the qualifications prescribed at the time when the vacancy has occurred. No person has any vested, legal or fundamental right to claim appointment against a post falling vacant at a particular time. Generally, it is for the employer to fill the post as and when desired.

(Para 7)

Further held, that the plea of the petitioner that the above directions were perpetual in nature and intended to continue till all the earlier vacancies were filled up is without any substance. It was open to the commission to re-advertise the posts in accordance with the amended Rules and revised qualifications.

(Para 9)

Petitioner in person.

Rajiv Atma Ram, Advocate, Arun Nehra, Addl. A.G. Haryana,
for the Respondents.

JUDGMENT

R. P. Sethi, J.

(1) Without possessing the requisite experience of three years' practice at the Bar, the petitioner was allowed to appear in the H.C.S. (Judicial Branch) examination held in the month of February/March, 1995 on the basis of the judgment of this Court in *Jatinder Kumar v. State of Haryana* (1). Having failed in the said examination, the petitioner has filed the present writ petition with the prayer for setting aside the subsequent advertisement issued in the month of July, 1995 for holding H.C.S. (J.B.) examination. It is submitted by her that as backlog of 19 posts in the Judicial Service of Haryana is required to be brought forward, she is entitled to appear in the examination notwithstanding the fact that she does not possess the requisite experience as prescribed by the rules which were amended consequent upon the judgments of the Supreme Court in *All India Judges Association case v. U.O.I.* (2). and *All India Judges Association v. U.O.I.* (3).

(1) 1995 (1) R.S.J. 752.

(2) 1992 (1) S.L.R. 426.

(3) 1993 (4) R.S.J. 610.

(2) The petitioner has relied upon various judgments referred to and noted by this Court in *Jatinder Kumar's case* (supra).

(3) In the reply filed on behalf of the respondent-Public Service Commission, it is submitted that consequent upon the judgment of the Supreme Court in *All India Judges Association case* (supra), the relevant rules were amended prescribing the condition of three years practice at the Bar. It is contended that the judgments relied upon by the petitioner are not applicable in the case. It is argued that this Court in *Renu Ahuja v. State of Punjab* (4), has already considered the scope and ambit of the judgments relied by the petitioner and held them to be not applicable in the circumstances of the case as has been projected by the petitioner. It is admitted that consequent upon the judgment of this Court in *Jatinder Kumar's case* (supra), the petitioner was allowed to appear in the examination but she failed to make the grade and was not selected. The petition is claimed to be mis-conceived and without any substance.

(4) We have heard the petitioner who has appeared in person and the counsel for the respondents.

(5) It is worth mentioning that on the failure of the Punjab Public Service Commission and Haryana Public Service Commission to hold examinations for recruitment of Subordinate Judges/Judicial Magistrates for years a C.W.P. No. 15693/1994 was filed in this Court in Public interest praying therein that respondents be directed to take immediate steps to fill up the existing vacancies and also to take appropriate steps to fill the future vacancies of Subordinate Judges which were likely to occur. The petition was treated as a public interest litigation and,—vide Court order dated 2nd November, 1994, the respondents including the Haryana Public Service Commission were directed to intimate the Court regarding the steps taken by them for filling the post of Subordinate Judges in the States of Punjab and Harvana. It may not be out of place to mention that in that writ petition, 64 vacancies of Subordinate Judges were alleged to be lying vacant which were directed to be filled up by holding the examination. Vide court order dated 28th November, 1994, so far as respondent No. 1 is concerned, it was directed :—

(4) 1992 (4) S.L.R. 263.

“Haryana Public Service Commission, which have already advertised the posts for HCS (Judl) shall hold examination and complete the process of selection, after holding interviews within a period of two months from today. The selection process shall be subject to interim directions or the final decision made in any of the writ petitions pending in this Court.”

(6) Even though the respondent-Commission was directed to fill up all the posts yet they advertised only 32 posts for which the advertisement notice had earlier been issued presumably under the impression that in view of *Jatinder Kumar's case* (supra), they were to fill up those posts separately. However, after the completion of the process of selection only 13 candidates could be selected for appointment to the Subordinate Judiciary of Haryana leaving the balance of 19 vacancies. The Court,—*vide* order dated 1st June, 1995 passed in C.W.P. 15693/995 directed the Haryana Public Service Commission to initiate the process for the selection of 40 vacancies inclusive of aforesaid unfilled 19 for which specific schedule was prescribed. In pursuance to the Court directions, the advertisement notice impugned in this writ petition was issued. The present writ petition is apparently intended to forestall the process of selection directed to be completed,—*vide* orders passed in C.W.P. No. 15693/1994.

(7) The argument of the petitioner that there was a back log of 19 seats which should be filled up on the basis of old qualifications if accepted would lead to disastrous results in as much as the persons may come to the Court and insist for filling up the vacancies year-wise and not on the basis of the vacancies existing at the time when the directions are issued for holding the examination of filling vacancies. Admittedly, there is no provision under the rules for carrying forward the back log of the seats. The petitioner has also not been in a position to show us any provision of law or the judgement of any Court to the effect that the vacancies falling vacant should be carried forward and filled up on the basis of the qualifications prescribed at the time when the vacancy had occurred. No person has any vested, legal or fundamental right to claim appointment against a post falling vacant at a particular time. Generally, it is for the employer to fill the post as and when desired. On the failure of the employer State to perform its constitutional obligations, appropriate directions can be issued as we have already initiated in C.W.P. No. 15693 of 1994. The petitioner admittedly has acquired

no right to claim selection against a post allegedly falling vacant before the judgment of the Supreme Court in *All India Judges Association case* (supra) and further insist to fill those posts without insisting upon the qualifications prescribed after the amendment of the Rules consequent upon the judgment of the Supreme Court. The proposition put forth by the petitioner if accepted would amount to issuance of direction for filling the posts from amongst the persons who admittedly do not possess the requisite experience which is a condition precedent for appearing in the selection process. The claim of the petitioner is neither *bona-fide* nor genuine.

(8) The petitioner has referred to the judgments of the Supreme Court in *Y. V. Rangaish v. J. Sreenivas Rao* (5), *P. Ganeshwar Rao v. State of A.P.* (6), *P. Mahendra v. State of Karnataka* (7), *N. T. Devin Katti v. Karnataka Public Service Commission* (8). It may not be out of place to mention that all these judgments were taken note of by this Court in *Jatinder Kumar's case* (supra) wherein it was found. "It is not in dispute that all the petitioners were having the requisite qualifications and were eligible for being selected in pursuance of the advertisement dated 1st May, 1983 and also that each one of them had applied in response to the said advertisement." The Court then proceeded to consider the plea raised and found that the issue which required to be determined was as to whether the amendments could have applied in respect of the vacancies which had been advertised prior to the judgment of the Supreme Court in *All India Judges Association Case* (supra) when admittedly the petitioners therein possessed the then requisite qualifications prescribed at the time of advertisement and before the date of filling of the application forms. The court noted, "that the entire source-material from which the selection was required to be made by the Commission had become available to it by 31st May, 1993." The Court in that case even found that all those persons who were eligible at the time of the earlier advertisement were entitled to appear in the test held for the purposes of making the selection. The Court concluded :

"In the result, the writ petitions are allowed. It is declared that the petitioners who had applied in response to the

(5) 1983 (3) S.C.C. 2085.

(6) 1988 (4) S.L.R. 548.

(7) 1990 (1) S.L.R. 307.

(8) 1992 (2) S.L.R. 378.

advertisement No. 2 dated 1st May, 1993 issued by the respondent-Commission are eligible to be considered for selection for appointment to the Haryana Civil Service (Judicial Branch) and rejection of their candidatures by the Commission is unlawful. The respondent-Commission is directed to consider the petitioners as eligible for selection to the said service alongwith other eligible candidates. This direction shall be applied in respect of all those candidates as well, who may not have approached this Court. If the petitioners or any one of them is found suitable for appointment, the Government shall pass necessary orders on the recommendation of the Commission."

(9) The plea of the petitioner that the above directions were perpetual in nature and intended to continue till all the earlier vacancies were filled up is without any substance. This Court in *Raksha Mangi v. Director, Secondary Education, Haryana* (8), has already held that in view of the judgment of the Supreme Court in *P-Ganeshwar Rao's case* (supra), it was open to the Commission to re-advertise the posts in accordance with the amended Rules and revised qualifications.

(10) The Supreme Court in *State of Madhya Pradesh v. Raghbir Singh* (9), has held that the candidates who had appeared in the examination and passed the written examination had only legitimate expectation to be considered for their claim according to the Rules then in vogue and the Government was entitled to conduct the selection in accordance with the changed rules and make final recruitment. No candidate could be held to have acquired any vested right against the State and was held entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended rules. The facts of that case were that for the filling of the post of Inspector, Department of Weights and Measures an advertisement was issued calling for applications from the eligible candidates. The qualification prescribed for eligibility was degree in Arts or Commerce or Science or Engineering or Diploma in Engineering. On the basis of the advertisement notice, written examinations were

(8) 1992 (4) S.L.R. 606.

(9) 1995 (1) R.S.J. 609.

held and result declared whereafter the Board issued interview calls to the successful candidates. In the meanwhile, the Government amended the Rules and altered the eligibility qualification for appointment to the posts by presenting degree in Science with Physics as a subject or Degree in Engineering or Technology or Diploma in Engineering. The aggrieved selected candidates challenged the amended rules on the ground that having issued the notification for filling up the posts of Inspectors with degree of Arts or Commerce, the State was under an obligation to proceed with the recruitment only as per the qualifications prescribed in the notification and that the subsequent amendment of the Rules could not come in their way for consideration for being appointed. The contention was found favourable with the Administrative Tribunal which allowed the application filed by the aforesaid candidates. The Supreme Court in Special Leave Petition allowed the appeal by setting aside the order of the Tribunal by holding :—

“It is not in dispute that statutory rules have been made introducing Degree in Science or Engineering or Diploma in Technology as qualification for recruitment to the posts of Inspector of Weights and Measures. It is settled law that the State has no power to prescribe qualifications for recruitment. Here is a case that pursuant to Amended Rules, the Government has withdrawn the earlier notification and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard the basis of the amended rules.”

(11) The case of the petitioner is in no way better than the case of those who had approached the Madhya Pradesh Administrative Tribunal, Jabalpur in O.A. No. 248 of 1992. It may not be out of place to mention that the petitioners therein had been selected and had preferred the claim for appointment on the basis of the old rules which was negated by the Supreme Court. The petitioner

herein however, admittedly does not possess the requisite qualifications for appearance in the selection process initiated. On the basis of the Supreme Court judgments, the amended Rules and the directions issued by this Court in C.W.P. No. 15693 of 1994, the present writ petition is without any substance which is accordingly dismissed in limine but with no order as to costs.

J.S.T.

Before Hon'ble G. S. Singhvi & T. H. B. Chalapathi, JJ.

OM PARKASH,—Petitioner.

versus

THE STATE OF HARYANA & ANOTHER,—Respondents.

C.W.P. No. 1077 of 1995

3rd August, 1995

Constitution of India, 1950—Arts. 226/227—Appointment—Select list prepared in 1982 of 28 eligible candidates for appointment of 11 Assistant Food & Supplies Officers—Appointment sought in 1995 on the basis of selection made by Board in 1982—Validity and tenure of main list and waiting list to be six months—Thereafter any vacancy arises to be filled by making fresh appointment.

Held, that various service rules framed by the Governor of Haryana under Proviso to Article 309 of the Constitution of India do not contain any provision regarding the tenure of the select list or the panel prepared by the Haryana Public Service Commission and the Subordinate Service Selection Board, Haryana. In order to fill up this lacuna, the Government of Haryana has issued various circulars on the subject.

(Para 11)

Further held, that the last circular on the subject has been issued on 28th October, 1993 and it has been clarified that the Commission shall also prepare a waiting list along with the main list and the validity of the main list shall be for six months and the waiting list shall also remain alive for six months. These circulars issued by the Government of Haryana though administrative in character are in no manner inconsistent with the Rules framed under Proviso to Article 309 of the Constitution and, therefore, these circulars are binding on the Public Service Commission as well as the Board.

(Para 11)