

Paramjit Kaur & Ors.

...Appellants

Vs.

State of Punjab & Ors.

...Respondents

WITH C.A. 5586-5587/1999@@
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These appeals are directed against the judgment of Punjab and Haryana High Court dated 12th October, 1998. The short facts are that on 12th July, 1992, 150 posts were advertised in the rank of Multi Purpose Health Workers (Female) on purely temporary basis. Several people applied pursuant to the said advertisement and a list of 632 persons was prepared and in fact all of them were appointed. The persons who were not selected, they approached the High Court by filing a Writ Petition, which was registered as Writ Petition No. 957/1994 challenging, inter-alia, that only 150 posts having been advertised, the authorities could not have prepared a list of 632 persons and could not have appointed 632 persons. That Writ Application was disposed of by an agreed order dated 2.1.1995 which may be quoted hereinbelow in extenso:

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"Learned counsel for the parties are agreed that the impugned selection be quashed and a fresh selection shall

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be made for the 150 advertised vacancies only by keeping in view the academic qualification. No marks will be provided for the interview.

In view of the agreed orders sought by adorned counsel for the parties, impugned selection is quashed, writ petition is disposed of. The State will be at liberty to fill up the remaining vacancies in accordance with law."

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Subsequent to the aforesaid order, the Government in fact prepared a list of 150 persons, who would be eligible for being appointed on the basis of academic qualification as stipulated in the order dated 2.1.1995. The Government, however, instead of implementing the same terminated all other appointees beyond 150 and therefore those persons whose services stood terminated approached the High Court again by filing a Writ Petition, which was registered as C.W.P.No. 1762/1995. It may be stated that several other Writ Petitions had also been filed. The

High Court disposed of the matter by order dated 19.12.1995. The said order was to the following effect:

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Learned counsel for the petitioners prays that let a fresh selection be made in accordance with the law and order dated 2.1.1995 passed in CWP No.9575 of 1992 be modified. However, services of the petitioners may not be terminated till a fresh selection is made and the petitioners be allowed to continue in service till the selected candidates in fresh selection are appointed. Learned counsel for the

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respondents states services of the petitioners have already been terminated. Fresh selection will be made in accordance with law.

Keeping in view the totality of the circumstances prayer made by the counsel for the petitioners in various writ petition being an end to the long drawn litigation, in our considered view, ends of justice would be met if the petitioners are allowed to continue in service till fresh selection is made in accordance with law, against all vacancies which were in existence and which have come into existence till date, by permitting all the candidates who applied against 150 vacancies when in fact 636 were selected according to eligibility than applicable and who had been qualified and eligible during this period any of the applicants who had applied for selection which is under challenge, has become in-eligible on account of age, the same will not be taken into consideration.

There is no serious objection to the modality suggested for the fresh selection in view of the order dt.2.1.1995 by the counsel for the state. Thus, order dated 2.1.1995 in CWP No. 9575 of 1995 is modified to the extent that the petitioners would be permitted to continue in service till a regular selection is made as observed above. The respondents are directed to make fresh selection and issue appointments to selected candidates whose services have been terminated, be taken in service within a period of one month, if selection is not completed otherwise during this

period of one month.

The writ petition stands disposed of in the light of observations made above.

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In view of this order the services of those non-selectees were continuing but the process of selection was started afresh and advertisement was issued in respect of 566 vacancies. People applied pursuant to the said advertisement and finally selection was made by the Subordinate Services Selection Board, Punjab and appointment letters appears to have been issued pursuant to such selection on 27th March, 1997. The non-selectees, who had been continued pursuant to the order dated 19.12.1995, approached again the High Court but their application was dismissed by order dated 22.10.1997. The present set of petitioners before the High Court in the meantime filed Writ Petition on 22.11.1997 contended, inter-alia, that they are amongst those 150 persons who were directed to be appointed on the basis of their academic qualification by order dated 2.1.1995 and the subsequent order of 19.12.1995 modifying the aforesaid order does not take away that right of those 150 persons and therefore the State Government should be directed to issue appointment letters in their favour. It was contended by them that in fact pursuant to the order dated 2.1.1995 the competent authority did prepare a list of 150 persons on the basis of their academic qualification though it had not been given effect to. The State Government took the stand before the High Court that in view of the modification of the order dated 2.1.1995 by the subsequent order dated 19.12.1995 the

earlier order does not survive and therefore question of appointing the petitioners would not arise. The High Court was persuaded to accept the stand of the State Government and being of the opinion that the subsequent order in fact practically modifies and supersedes the earlier order dated 2.1.1995, dismissed the Writ Petition by order dated 3rd April, 1998. Against this order the petitioners approached this Court in SLPs. But at the time when the matter was taken up for admission the counsel appearing for the appellants stated that a Review Petition be filed in the High Court in that regard and accordingly withdrew the Special Leave Petition. Thereafter, they filed a Review Petition and the Review Petition having been dismissed by order dated 12th October, 1998 the present appeals have been preferred assailing both the original order as well as the order under Review.

Mr. Misra, the learned senior counsel appearing for the appellants contended that the High Court committed serious error in mis-reading the order dated 19.12.1995 passed in CWP No. 1762/1995 inasmuch as what was modified by that order is only the fact that though by order dated 2.1.1995 there was no direction to allow the appointments to continue until a further selection is made, such order was passed by order dated 19.12.1995. Mr. Misra further contended that the said Writ Petition had been filed by

those persons who happened to be beyond 150 in number who had been originally appointed pursuant to the select list

of 632 candidates and not by any of those 150 who were found eligible to be appointed by virtue of order dated 2.1.1995 on the basis of their academic qualification. In that view of the matter, it is just not possible to conceive that the subsequent order dated 19.12.1995 passed in W.P. No.1762/1995 will wipe off rights accrued in favour of those 150 persons who were directed to be appointed on the basis of academic qualification without any interview for the post.

Mr. Dutta, the learned counsel appearing for the State, on the other hand, contended that the High Court was fully justified in dismissing the Writ Petition filed by the present appellants inasmuch as the subsequent order dated 19.12.1995 was almost an agreed order and all those appointees consented to be allowed to continue until further fresh selection is made. The State Government having taken due process for selecting the persons by conducting interviews and 556 persons having been found suitable by the Selection Board, the question of implementing the earlier order dated 2.1.1995 in favour of the present appellants would not arise. According to Mr. Dutta the order dated 2.1.1995 must be held to be merged with the subsequent order dated 19.12.1995 and if the order

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dated 19.12.1995 is read, it does not confer any right on the present appellants.

In view of the rival submissions made at the Bar the only question that arises for our consideration is whether the appellants can be held to be conferred any right by virtue of order dated 2.1.1995 and if so, can the subsequent order dated 19.12.1995 be held to have wiped of that right. We have carefully read both the orders of the High Court dated 2.1.1995 as well as the order dated 19.12.1995. The first order unequivocally indicates that the selection is quashed but fresh selection should be made for the 150 advertised vacancies only by keeping in view of the academic qualification. In other words, it contemplates appointment in favour of 150 applicants on the basis of their academic qualification in view of the fact that the advertisement was only in respect of 150 posts. It is also crystal clear that in the order dated 2.1.1995 there has been no direction or stipulation that the other appointees beyond 150 who had been appointed on the basis of the select list of 632 candidates would be allowed to continue in the post. The subsequent order dated 19.12.1995 which was passed at the behest of those who happened to be beyond 150, merely permits them to continue in service until a fresh selection is made and appointments are made pursuant to such selection. In other words, the

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High Court merely directed the State Government notwithstanding their selection having earlier been quashed to allow those people to continue until a fresh selection is made. That order by no stretch of imagination can be construed to take away the rights of those who, on the basis of their academic qualification, could be appointed against the advertised post of 150. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court committed error in dismissing the present batch of Writ Applications on an erroneous reading of the order dated 19.12.1995. We therefore set aside the impugned orders of the High Court and direct that the petitioners who had approached the High Court in filing Writ Petition be appointed, if they are coming within 150 post on the basis of their academic qualification pursuant

to the order dated 2.1.1995.

The appeals are accordingly disposed of.

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.....J.
(G.B. PATTANAİK)

New Delhi,
November 07, 2000

.....J.
(B.N. AGRAWAL)