

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.7767/2007**

% **Date of Decision : 01.07.2008**

Sh.Anuj Kumar Bharti Petitioner
Through: Ms.Barkha Babbar Advocate for the
petitioner

Versus

National Book Trust & Another Respondents
Through : Mr. Chanchal Kumar Ganguli, Advocate
for the respondent.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

- | | |
|---|-----|
| 1. Whether reporters of Local papers may
be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported
in the Digest? | YES |

ANIL KUMAR, J.

*

1. The petitioner has sought a writ or directions to the respondents to appoint the petitioner to the post of Assistant Director (Production) pursuant to the select list prepared by them on the basis of the interview held on 14th December, 2005 in which he was placed at No.2 and as before the expiry of the life of the select panel which was one year, the appointment of the candidate at serial No.1 in the select list

was cancelled and so the offer for appointment to the post of Assistant Director (Production) should have been made to him. The petitioners has also sought directions seeking quashing the re-advertisement issued by the respondents for the post of Assistant Director (Production) in March 2007 and a direction not to appoint any other person to the post of Assistant Director (Production).

2. The brief facts to comprehend the controversies between the parties are that the petitioner was born on 15th March, 1967. He applied for the post of Assistant Director (Production) pursuant to an advertisement dated 18-24th June, 2005. The post of Assistant Director (Production) was reserved for Scheduled Castes and was to be filled by direct recruitment. The maximum age for the post of Assistant Director (Production) was 35 years but was relaxable by five years in case of the candidates belonging to Scheduled Castes/Scheduled Tribes category. The petitioner would have completed forty years on 14th July, 2007, therefore he was eligible for the post.

3. The petitioner applied on 14th July, 2005 as he was 38 years 4 months on that date and as the age of the petitioner was relaxable. Therefore he was eligible for consideration for appointment to the post of Assistant Director (Production).

4. The petitioner contended that he had all the essential qualifications for the post. After interview and on consideration of his candidature, he was placed at serial No.2 in the select list. The petitioner's plea is that the select list was valid for one year and before the expiry of the life of the select panel, the appointment of the candidate at serial No.1 in the select list was cancelled and so the offer for appointment to the post of Assistant Director (Production) should have been made to him which was not done. The petitioner, therefore, made a representation to the Director of respondent No.1 to issue an offer of appointment as he was in the select list at serial No.2 and he had become entitled for appointment. The representation of the petitioner was not considered and the post of Assistant Director (Production) was re-advertised on 17-23 March, 2007 after a gap of one and a half years without exhausting the select list for the declared vacancy which is challenged by the petitioner.

5. The pleas of the petitioner are challenged by the respondent No.1 and the counter affidavit of Nuzhat Hassan, Director, of the respondent No.1 Trust was filed. The respondent No.1 pleaded that 10 candidates were called for interview who were eligible for consideration for the post of Assistant Director (Production) and a select list was made. In the select list Shri Jagdish Kumar Koli was at serial No.1 and the offer of appointment was made to him on 23rd December, 2005. It is contended

that a complaint was received against Shri Jagdish Kumar Koli, the candidate who was at serial No.1 regarding submitting a false experience certificate and therefore an inquiry was conducted and on the basis of report of the Vigilance officer, the Competent Authority had decided to cancel and withdraw the offer of appointment of Shri Koli. The respondent No.1 further contended that since the false certificate was submitted by the candidate who was at No.1 in the select list, therefore, the entire panel was scrapped and the post was re-advertised on 17th/23rd March, 2007. The respondent No.1 contended that though the petitioner had applied again for post of Assistant Director (Production), however, petitioner was not called for interview as he was more than 40 years of age after the post was re-advertised on 17-23rd March, 2007 and in the circumstances it has been contended that the petitioner is not entitled for appointment as Assistant Director (Production). It is also contended that since the entire panel was scrapped by the Competent Authority, the petitioner being on the select list at No.2 was not entitled to be considered.

6. Additional affidavit dated 8th May, 2008 was also filed by respondent No.1 deposing that a reserve/select list was valid for one year from 14th December, 2005 when the select committee made the recommendation. It is admitted that the reserve/select list was created to have an option of a candidate for near future and it was valid for one

year and, therefore, the select/reserve list would have expired on 13th December, 2006. It is also admitted that a complaint was received against Shri Jagdish Kumar Koli who was at No.1 in the select/reserve list and on inquiry which was initiated against him on 9th January, 2006, it was inferred that the certificate produced by him was a fabricated and a fraudulent one and, therefore, the offer of appointment to Shri Jagdish Kumar Koli, who was in the select/reserve list at No.1 was withdrawn.

7. The respondent No.1 also admitted that the candidate at the select/reserve list at No.1 was not allowed to join and a letter dated 15th March, 2006 was received from the petitioner seeking an offer of appointment from the respondent No.1 as he was at No.2 in the select/reserve list. The respondent No.1 also admitted that the letter by the petitioner was not replied. It is also admitted that the offer of appointment of Shri Jagdish Kumar Koli was cancelled during the subsistence of select list and thereafter without offering appointment to the other candidate, petitioner, in the select/reserve list, the post was re-advertised on 17-23rd March, 2007. Though the petitioner applied again, however, he was not considered and called for interview as he had become overage. The respondent No.1 also relied on (1974) 3 SCC 220, State of Haryana vs. Subhash Chander Marwah to contend that mere entry in the list of name of a candidate, does not give him the right

to be appointed as it may happen that the Authorities for financial or other administrative reasons may not fill up any vacancy. It was contended that, in such circumstances, the petitioner does not have a right to appointment for the post of Assistant Director (Production).

8. The reliance was placed on behalf of respondent No.1 on (1974) 3 SCC 220, The State of Haryana v. Subash Chander Marwaha and others; (1991) 3 SCC 47, Shankarsan Dash v. Union of India; 1995 (1) SLR 320, Mrs.Maninder Kaur and Another v. Delhi High Court and Others and on 1993 (1) SLR 422, Jai Singh Dalal & Others v. State of Haryana & Another.

9. Reliance has been placed by the petitioner on 1995 Supp (2) SCC 230, R.S. Mittal Vs Union of India; (2006) 8 SCC 686, Union of India & Others Vs B. Valluvan and others ; (1996) 6 SCC 49, Purushottam Vs. Chairman, M.S.E.B. and Another; (2002) 4 SCC 726, Vinodan T. and Others Vs University of Calicut and Others and (2005) 13 SCC 403, State of J & K and Others v. Vijay Sharma and others to contend that though a person on the select panel has no vested right to be appointed to the post for which he has been selected, however, the Competent Authority cannot ignore the select panel or on its whims decline to make the appointment nor the panel of select candidates can be scrapped during the period of validity except for well-founded reasons.

The petitioner has also contended his becoming overage when the post was re-advertized will not stand in his way for appointment because during the pendency of the validity of the panel he was eligible and, therefore, the appointment to the post of Assistant Director (Production) cannot be denied to him.

10. I have heard the learned counsel for the parties in detail and have also gone through the writ petition, counter affidavit, additional affidavit and the documents produced by the parties in support of their respective contentions and the judgments relied on by them. This is not disputed by the respondent no.1 that a select list was prepared and the petitioner was placed at serial number two. This is also admitted by the respondent no.1 in the additional affidavit that the life of the select list was for one year from 14th December, 2005 and had to expire on 13th December, 2006. Another relevant admitted fact is that the candidature of the first candidates was cancelled during the subsistence of the select list. Since the petitioner was on the select list at serial number two, the respondent should have offered appointment to the post to the petitioner and could decline to appoint him provided there could be justifiable reason for the same. Ordinarily the respondent could not ignore the select list or decline to make the appointment on the basis of the same. The respondent no.1 has not given any reason nor any justifiable reason as to why the appointment

was not offered to the petitioner though he was next on the select panel during its subsistence except that the select list was scrapped as the candidate at no.1 had submitted a forged certificate. Can this be a well founded reason to scrap the select list when the respondent no.1 has admitted that the select list was prepared with an object of having an option for candidates?

11. During the arguments, the only reason canvassed by the Learned counsel for the respondent no.1 was that the petitioner did not have any inherent right to be appointed to the post. Though a select candidate does not have an inherent right to be appointed, however, if there is a vacancy which can be offered to a selected candidate on the basis of his merit position, denial of appointment to such a candidate without a proper reason and scraping the select list without well founded reasons would be unjustifiable. The Supreme Court in R.S.Mittal (supra) had held that though a person on the select panel has no vested right to be appointed to the post for which he had been selected, however, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. In R.S.Mittal (supra) the Supreme Court at page 234 in para had 10 held as under:-

“10.....It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or

decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

This has not been disputed by the respondent no.1 that the reserve list/select list was valid for one year from 14th December, 2005, the date on which the selection committee had made the recommendation. Even according to the plea of the respondent no.1 the select panel/reserve list was valid till 13th December, 2006. The learned counsel for the respondent, however, contended that the reserve list was created only to have an option of a candidate for near future. This is not disputed that a letter was written by the petitioner to the Director of the respondent for his appointment as his name was at serial No.2 on the reserve list/select panel. The respondent no.1 has rather contended that the letter written by the petitioner dated 15th March, 2006 could not be replied as the appointment of Sh.Jagdish Kumar Koli who was at serial No.1 at the select panel had not been finalized till then.

12. This is not disputed that on the basis of an investigation report dated 10th March, 2006 of the vigilance officer, the Joint Director (Administration and Finance), a show cause notice dated 20th June, 2006 was issued to Sh.Jagdish Kumar Koli who was at serial No.1 in the select list. On the basis of the reply given by Sh.Jagdish Kumar Koli and the enquiry conducted against him, the offer of appointment given to Sh.Jagdish Kumar Koli dated 23rd December, 2005 was cancelled and withdrawn on 10th November, 2006 and, therefore, a communication dated 22nd November, 2006 was issued to Sh.Jagdish Kumar Koli intimating him that his offer of appointment to the post of Assistant Director (Production) has been cancelled. In the circumstances it is clear that the offer of appointment of the candidate at serial No.1 in the select list had been cancelled on 10th November, 2006 and it was also intimated to the candidate at serial No.1 in the select panel. The reserve list/select list was valid up till 13th December, 2006 and, therefore, during the life of the reserve list/select list, the appointment of the candidate at serial No.1 stood cancelled and, therefore, the respondent no.1 was to offer the said post to the candidate at serial No.2, petitioner, in the reserve list/select list. Since the petitioner was on the reserve list/select list after selection by the selection board and a vacancy occurred during the life of the reserve list/select list, the vacancy ought to have been offered to petitioner and ordinarily there could not be any justification to ignore the petitioner for

his appointment. There has to be a justifiable reason to decline the offer of appointment to the petitioner as he was next on the select list and the select list was valid up to 13th December, 2006.

13. This is no more *res integra* that a panel of selected candidates cannot be scrapped during the period of its validity except for well founded reasons. In *Vinodan T. & Ors (Supra)* the Apex Court had held that the appointing authority cannot scrape the panel of selected candidates during the period of its validity, except for well founded reasons. From the counter affidavit filed by the respondent no.1 and the submissions made by the learned counsel, it is apparent that no well founded reason has been disclosed for scrapping the select panel during its life. The alleged reason that the candidate at serial no.1 had forged and fabricated his documents, cannot be termed well founded reason for scrapping the select list especially in view of the plea of the respondent no.1 that the select list was prepared to have an option for the candidate in near future.

14. The learned counsel for the respondent no.1 has emphatically reiterated that the petitioner did not have any indefeasible right to appointment even if the vacancy existed and relied on *S. Shankarsan Dash (Supra)*. In the case relied on by the respondent no.1, the

candidates were included in a combined merit list of IPS and Police Service Group B and had been placed at the top of the list of the Group B service. In this case the appointment to general category vacancies could not be made due to closure of process of final selection. In these circumstances it was held that the candidates who were not appointed due to closure of process of final selection do not have an indefeasible right for appointment. It was further held that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies, as ordinarily the notification merely amounts to a notification to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that unless the relevant rules so indicates, the State is under no legal duty to fill up all or any of the vacancies. It was, however, clarified that it does not mean that the State has a license to act in an arbitrary manner. The decision not to fill up the vacancies is to be taken bonafide and for appropriate reasons. Apparently the case relied on by the respondent is distinguishable as the Apex Court in the case of R.S.Mittal and Vinodan T. (Supra) had also held that panel of selected candidates cannot be scrapped during the period of its validity except for well founded reasons and there has to be a justifiable reason to decline appointment to a person who is on the select list. In the circumstances apparently no

well founded reason has been disclosed by the respondent no.1 for scrapping the select panel/reserve list during its lifetime and for not appointing the petitioner who was at serial No.2. This is not the plea of the respondent no.1 that the post was not to be filled for any valid reason as the same post was readvertised.

15. The learned counsel for the respondent no.1 has also relied on State of Haryana Vs Subhash Chander Marwaha (Supra) where the Supreme Court had dealt with the recruitment of candidates for 15 vacancies in Haryana Civil Services (Judicial branch). A list of 40 candidates who obtained 45% or more marks in the examination was declared, out of which only 7 appointments were made in the serial order according to merit. The other candidates were not appointed as the State Government was of the view that candidates getting less than 55% marks in the examination could not be appointed as Subordinate Judges in the interest of maintaining high standard of competence in judicial services. Some of the candidates who were in the list who were not appointed because they had not scored more than 55% marks had challenged the action of not appointing them. It was held that a candidate selected for the post does not have a vested right to be appointed if there is justifiable reason for not appointing a selected candidate. The reason given by the authorities was found to be justifiable in the case relied on by the respondent no.1 in

contradistinction to the present case where no reason has been given for not offering the appointment to the candidate at serial No.2 after the appointment of the candidate at serial No.1 was cancelled during the life of the select list/reserve list. Therefore no reason has been given for not offering the appointment to the petitioner and reason that the candidate at serial no.1 in the select list had forged his documents cannot be a well founded reason for scraping the select list. Consequently, the respondent no.1 cannot rely on the ratio of the State of Haryana (Supra) in denying the appointment to the petitioner in the facts and circumstances. Similarly the judgment of the full bench in case of Mrs.Maninder Gaur and Another (supra) relied on by the respondent no.1 is also distinguishable because the candidates who were on the select list were claiming right of appointment against a future vacancy in that case. In the case of petitioner he has not sought appointment on the basis of being on the select list to a future vacancy as the candidate on the select list at serial No.1 was not appointed and the appointment was withdrawn after due enquiry. In another case Anirudh Pandey (Supra) relied on by the respondent no.1, the Haryana Public Service Commission was still in the process of selecting candidates and had not yet completed and finalized the select list when the earlier notification was withdrawn and fresh notification was issued revising the eligibility criterion. In those facts and circumstances it was held that the candidates did not acquire any right to appointment and

consequently it was held that the candidates had no right to claim appointment on the basis of earlier notification. It was also held that the authority which has power to specify the method of recruitment, is also deemed to have an inherent power to revise and substitute the method of recruitment, if for given reasons it considers the same necessary. Apparently the cases relied on by the respondent no.1 are distinguishable and on the basis of the ratio of the same the appointment of the petitioner to the post of Assistant Director (Production) could not be denied by the respondent no.1 in the present facts and circumstances.

16. The respondent no.1 has next contended that the petitioner cannot be appointed to the post of Assistant Director (Production) as the petitioner has become over age. The plea of the respondent no.1 cannot be accepted in the facts and circumstances because when the petitioner applied for appointment to the post of Assistant Director pursuant to advertisement dated 18th/24th June, 2005 and when he was selected he was not over age. The life of the select panel was till 13th December, 2006 and on cancellation of the appointment of the candidate at serial No.1 in the select list, the respondent no.1 could have denied the offer of appointment only on giving some justifiable or valid reason. The respondent no.1 could not scrape the select list/reserve list on his own whims and fancies and without any well

founded reason. The petitioner was not over age at the time of his selection and his placement at serial no.2 in the select list/reserve list and during the life of the select list. Therefore, the offer of appointment cannot be denied to the petitioner for appointment to the post of Assistant Director (Production) with respondent No.1 on this ground. In State of J&K and Ors (Supra) relied on by the petitioner it was clarified by the Apex Court that in case any of the candidates becomes over age during the life of the select panel, such a reason would not stand in the way of their appointment. In the case relied on by the petitioner the selected candidates had been appointed as early as in the year 1998 and were continuing in service for last many years and pursuant to the direction of the Division Bench to redraw the list, it was held that on redrawing the list, if the candidates were found to be over age it will not be appropriate to deny them appointment on the ground of being over age. Had the offer of appointment been made to the petitioner on the basis of the petitioner being at serial No.2 in the select list, the appointment could not be denied to him on the ground that he was over age. The petitioner has become over age only in respect of the subsequent advertisement made by the respondent no.1 for the same post. In case the petitioner had a right to be appointed pursuant to the selection made in 2005 which has been denied by the respondent no.1 by scrapping the select list without assigning any justifiable reason and denying the appointment to the petitioner without giving any reason,

the eligibility of the petitioner has to be seen during that time. As the petitioner was not over age at that time, the appointment cannot be denied to the petitioner on this ground also.

17. No other plea and argument has been raised on behalf of the respondent no.1 except that the petitioner has no right to be appointed to the post of Assistant Director (Production) and that the reserve list/select list which was prepared was scraped due to fake documents used by the candidate at serial no.1. On account of fake documents used by the candidate at serial no.1, his candidature was cancelled but this cannot be a reason to scrape the reserve list/select list so as to deny the appointment to the selected candidate at serial no.2 in the select list/reserve list.

18. For the forgoing reasons the respondent could not scrape the select list/reserve list during its validity which was up till 13th December, 2006 nor could respondent no.1 refuse to offer the appointment to the petitioner who was at serial No.2 without disclosing any justifiable reason against him. Consequently, the act of the respondent in scrapping the select list/reserve list during its life and re-advertising the post was not legal and cannot be sustained in the facts and circumstances. The respondent no.1 ought to have made an offer of appointment to the petitioner for the post of Assistant Director

(Production) in the facts and circumstances. The learned counsel for the respondent no.1 during the arguments on 28th May, 2008 had submitted that no fresh appointment has been made to the post of Assistant Director (Production) and consequently it is apparent that the post has not been filled up. Therefore, the petitioner is entitled to be appointed to the post of Assistant Director (Production) in the facts and circumstances.

19. Consequently, the writ petition is allowed and the respondent no.1 is directed to offer appointment to the petitioner to the post of Assistant Director (Production) pursuant to his selection and placing him in the select list/reserve list in accordance with rules within four weeks. The appointment of the petitioner to the said post be made in accordance with rules, if the petitioner accepts the offer of appointment by the respondent no.1. With these directions the writ petition is disposed of, however, parties are left to bear their own cost.

July 01, 2008.
'Dev'

ANIL KUMAR, J.