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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WA.No. 1952 of 2014 () IN WP(C).25748/2012

AGAINST THE JUDGMENT IN WP(C) 25748/2012 of HIGH COURT OF
KERALA

APPELLANT(S)/RESPONDENT:

THE AGENCY FOR NON CONVENTIONAL ENERGY AND
RURAL TECHNOLOGY (ANERT),
REPRESENTED BY ITS DIRECTOR, ANERT OFFICE, THYCAUD
TRIVANDRUM.

BY ADV. SRI.V.G.ARUN, SC, ANERT

RESPONDENT(S)/PETITIONERS:

1. GOKUL P.G.
PALLATH HOUSE, PUTHENPEEDIKA P.O.,
ANTHIKAD VILLAGE
THRISSUR DISTRICT.

2. JUSTIN N.J.
NEYYAN HOUSE, PUTHUR P.O., MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

3. JISHABAL B.S.
B.S.BHAVAN, KAZHIVOOOR, KAZHIVOOOR P.O.
THIRUVANANTHAPURAM.

BY ADV. SRI.K.G.PAVITHRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

APPELANT'S ANNEXURE

ANNEXURE A1: TRUE COPY OF THE LETTER
NO. 6307/P/S2/14/PD DATED 21-11-2014
ALONG WITH ENGLOSH TRANSLATION

ANNEXURE II: TRUE COPY OF G.O. RT NBO.
57/2011/PD DATED 23-02-2011 ALONG WITH
RELEVANT PAGES OF THE ANNEXURE

/TRUE COPY/

P.S. TO JUDGE

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

.....
W.A.No. 1952 of 2014
.....

Dated this the 18th day of February, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

Heard the learned counsel for the appellant as well as the learned counsel appearing for the respondents.

2. This Writ Appeal has been filed against the judgment dated 5th October 2013 passed by the learned Single Judge in W.P.C. No. 25748/2012, by which, the Writ Petition filed by the petitioners was allowed and certain directions were issued. The respondent in the Writ Petition is in appeal before us. The brief facts necessary for deciding the Writ Appeal are as follows:

3. The Writ Petitioners had submitted an application

for appointment pursuant to the notification dated 20th August 2010. After the written test, information was issued to the petitioners to appear for interview on 28th February, 2011. On 27th February, 2011, an information was received by the candidates that the interview scheduled to be held on 28th February, 2011 will not be held. A notice dated 6-10-2012 was published by Ext. P3 inviting application for selecting persons on deputation basis. The petitioners submitted a memorandum before the Government and thereafter filed the Writ Petition praying for the following reliefs:-

- i) Call for the records leading to Exts. P1 to P3 and peruse them;
- ii) issue a writ of certiorari or any other appropriate writ, direction or order quashing the original of Ext.P3 notification dated 6-10-2012 appeared in Mathrubhoomi daily;

- iii) Issue a writ of mandamus or any other writ, direction or order to the respondent to complete the interview and complete the selection process started in pursuance of the notification dated 20-08-2010 and appoint persons so selected in the post of District Engineer in the District Office of ANERT within the time specified by this Hon'ble Court;
- iv) Stay all further proceedings in pursuance of the notification dated 6-10-2012 till the final selection is made in pursuance of the notification dated 20-08-2010 and till the disposal of the Writ Petitioner
- v) Award costs to the petitioners;
- vi) issue such other writ, direction or order deemed just and proper in the circumstances of the case;

4. The learned Single Judge by the impugned judgment held that it was incumbent on the part of the respondents to have completed the process of selection after issuing the notification inviting application for appointment to the post of District

Engineer. The learned Single Judge further noticed that the qualifications on the basis of which notification Ext. P1 was issued were different from the one which has now been published vide Government Order dated 27th February, 2011. The learned Single Judge took the view that the Government Order dated 27th February, 2011 would reveal that, in fact, higher qualifications were prescribed under Ext. P1. The learned Single Judge opined that respondents were bound to fill up the vacancies notified as per Ext.P1, strictly in terms of Ext. P1. The learned Single Judge further observed that it shall be open for the respondents to issue fresh notification for effecting appointments against vacancies which were not notified a per Ext. P1. Learned counsel for the appellant, challenging the judgment of the learned Single Judge, submitted that after the commencement of the selection process by Ext. P1, Government by letter dated 20th July 2011, issued a direction to the appellant

to keep in abeyance the selection process. It is submitted that the Government had earlier, i.e. on 23rd February, 2011 has approved the qualifications for the various posts as recommended by the governing body of the appellant. It is submitted by the appellant that in view of the amended qualifications, appellant decided not to proceed further with the selection process. Hence, interview letters were not issued to the candidates after 28-2-2011. As per the order of the Government dated 20-7-2011, the appellant was bound to keep the entire process in abeyance. It is further submitted that the appellant having not completed the process, no right has accrued to the Writ Petitioners nor any mandamus can be issued to complete the process and declare the result of the selection process.

5. Learned counsel for the Writ Petitioners, disputing the submission of counsel for the appellant, contended that the change of qualifications during the proceedings of the earlier

selection process shall not affect them in any manner. He submits that amendment in the qualifications can only be prospective and may be relevant for next recruitment. He has placed reliance on a judgment of the Apex court reported in K. Manjusree v. State of Andhra Pradesh - (2008) 3 SCC 512. The learned counsel for the petitioners further submitted that the petitioners having been selected in the written examination and date of interview having already fixed, respondents committed an error in not proceeding further with the selection. He submits that the vacancies which were notified were the vacancies existing prior to Ext. P1 notification.

6. We have considered the submissions of the learned counsel for the parties and perused the records.

7. There is no dispute between the parties that the process had begun by Ext. P1 in which petitioners submitted their application and were called for the interview. However, before

the interview took place the candidates were informed that the interview has been adjourned. From the materials brought on record, it does appear that certain proceedings were taken for re-structuring of the appellant and for approving qualifications which were proposed by the governing body and which could be materialised by issuance of the Government Order dated 23rd February, 2011 by which qualifications have been fixed including the qualification for the posts which were notified by Ext. P1. The present is the case where the selection process has not been completed by the appellant due to change of qualifications and due to direction issued by the State Government to keep the process in abeyance. The petitioners had appeared in the written examination and were declared qualified for interview but interview did not take place. It is well settled that even after completion of the selection process, inclusion of name in the panel does not give any right to the candidates to

seek appointment as was held by the Hon'ble Supreme Court in Shankarsan Das v. Union of India. – (1991) 3 SCC 47. Present is a case where even the selection process was not completed nor any select list was prepared. By participating in the selection process, a candidate does not acquire any indefeasible right to claim appointment. Even after completion of selection process, orders are to be issued, is a factor which is also in the domain of the employer. However, employer cannot on arbitrary or unreasonable ground refuse the appointment after completion of selection process which is also laid down by the Apex Court.

8. We have to examine whether the action of the respondent/appellant in not completing the process of selection, is an arbitrary exercise of the power or whether there was any valid reason for not completing the process. From the facts brought on record it is clearly indicated that process of restructuring of the appellant and change of qualifications are

made and subsequently the Government directed the appellant to keep the process of selection in abeyance. Hence, no error was committed by the appellant in not finalising the selection process.

9. The Judgment relied on by the learned counsel for the Writ Petitioners in *K .Manjusree v. State of Andhra Pradesh* - (2008) 3 SCC 512, held that for the selection to the post of District and Sessions Judge- Gr.II, there was no minimum marks prescribed in the interview. After the entire selection process was completed consisting of written test and interview, a decision was taken to provide for a minimum mark in the interview. In the above context, the Apex Court have laid down in paragraph 27 to the following effect:-

“ But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra

Pradesh High Court earlier for selection of District & Sessions Judges ,(Grade – II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24-7-2001 and 21-2-2002 and held that what was adopted on 30-11-2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them – P.K.Ramachandra Iyer v. Union of India, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa”.

10. The Apex Court laid down that after completion of the

process, it is not permissible to change the rules of the game. There cannot be any dispute to the proposition laid down by the Apex Court in the said case. But, present is not a case where any rules of game had been changed. Present is the case where, on account of reasons, including orders issued by the State Government that the appellant did not complete the process nor intended to proceed with the process which was initiated by Ext. P1 and issue of appointment consequently. The employer can, due to various reasons may leave the selection midway, which may depend on various circumstances, alleged exigencies including the requirement of posts. It is not necessary for us to enumerate those cases where the process can be left midway. The tests, however is that, the action should not be arbitrary, unreasonable, or violative of Article 14 and 16 of the Constitution. As observed above, in the present case, we are satisfied that there was sufficient reason for the appellant in not proceeding with

the selection process and the direction of the learned Single Judge directing the appellant to complete the process cannot be sustained.

In the result, this Appeal is allowed setting aside the judgment of the learned Single Judge.

Sd/- ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

Sd/- A.M.SHAFFIQUE,
JUDGE

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/truecopy/

P.S.toJudge