

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10956 OF 2016

Union of India and ors.	.. Petitioners
Vs.	
Laxman Dattatray Shinde	.. Respondent

Mr.Neel Helekar i/b Mr.Ashutosh R.Gole, for the Petitioners.
Mr.M.N.Sandhyanshiv, for Respondent No.1.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

**RESERVED ON : 10th JANUARY, 2018
PRONOUNCED ON : 17th JANUARY, 2018**

ORDER (PER M.S.KARNIK, J.) :

1. The petitioner – Union of India by this Petition has challenged the judgment and order dated 27/11/2015 passed by the Central Administrative Tribunal, Mumbai Bench, in OA No. 372/2013 filed by the respondent. The respondent filed OA for declaration that 6 vacancies in dispute were required to be reserved against 20% quota of Deputation-cum-Reemployment ('DCRE' for short) for ex-servicemen under Service Regulation Order ('SRO' for short) 58 and not under SRO 71. The

respondent's case before the Tribunal was that as per SRO 71 dated 04/08/2008, posts of Store Keeper Grade II were to be filled upto 10% by reemployment from ex-servicemen. This SRO was substituted by SRO 58 dated 13/08/2011 wherein it was stated that the posts of Store Keeper Grade II were to be filled up to 20% by deputation-cum-reemployment of ex-servicemen. The respondent retired on 31/01/2012 and therefore he made an application for reemployment. As the respondent was at serial No. 6, he could not secure employment. This was challenged by the respondent before the Tribunal.

2. The petitioners took a stand before the Tribunal that the vacancies for the post of Store Keeper Grade II were to be filled as per SRO 71 & not SRO 58 as the vacancies have arisen prior to the coming into force SRO 58. SRO 71 was duly published in the official gazette and was brought into force on 16/08/2008. SRO 58 was brought into force on 13/08/2011 and was applicable for the vacancies arising in the financial year 2012-13. According to the petitioners, there were only 3

vacancies for DCRE and as the respondent was at serial number 6 in the list, he was not appointed.

3. Learned Counsel for the petitioners assailing the order of the Tribunal contended that the Tribunal committed an error in directing the petitioners to issue offer for appointment to the respondent either in an existing vacancy or by creating a post. According to him, the vacancies which were to be filled up had arisen and released prior to the coming into force SRO 58 and therefore were filled up as per the earlier SRO 71 of 2008. Learned Counsel submits that the petitioners had not taken a conscious decision to defer filling up the vacancies until finalisation of the amended Recruitment Rules. Learned Counsel relied upon the tabular statement pointing out the vacancies position.

4. Learned Counsel for the petitioners filed additional affidavit dated 10/01/2018 of Brig. Shri Sarvajit Singh, Chief Engineer (Navy), Military Engineer Services wherein it is stated

as under:

“I say that during the process of recruitment of Store-Keeper-II, carried out in the year 2012, the vacancies occurring in the years 2009-10, 2010-11 and 2011-12 were filled up. I say that there were total 59 vacant posts. However, 29 posts were filled up by compassionate appointments and therefore, 30 posts were available for normal recruitment. I say that accordingly, only 3 posts were available for recruitment in DCRE (Deputation-cum-Reemployment) quota.”

5. In the submission of the learned Counsel for petitioners as 29 posts were filled up by compassionate appointments, only 30 posts were available for normal recruitment. Accordingly, only 3 posts were available for recruitment in DCRE quota.

6. Learned Counsel for the respondent on the other hand invited our attention to the reasons recorded by the Tribunal while allowing the OA. In his submission, the order passed by the Tribunal is a reasoned order calling for no interference as the Tribunal after considering the relevant aspects allowed the OA.

7. Heard learned Counsel for the parties. The Tribunal

in paragraph 13 of the order has relied upon the decision of the Apex Court in the case of **Dr.K.Ramulu and anr. Vs. Dr.Surya Prakash Rao and ors. (1997) 3 SCC 59** wherein the Apex Court held that when the Government takes a conscious decision not to fill up any pending vacancy until the process initiated for amendment of recruitment rules is completed, on administrative ground, no direction can be issued to the Government to prepare and operate the panel based on the earlier rules. The Tribunal also relied upon the decision of the Apex Court in the case of **State of Punjab and ors. Vs. Arun Kumar Aggarwal & ors. (2007) 10 SCC 402** wherein it was held that if the Government takes a conscious decision not to fill up the posts under the Recruitment Rules in force, pending revision of the Rules, no direction can be issued to fill up the post which occurred during continuance of the earlier Rules as those posts are required to be filled up under the provisions of the new Rules.

petitioners the respondent has not pleaded or pointed out any conscious decision taken by the petitioners not to fill up the posts under the Recruitment Rules in force pending framing of new Rules. In the submission of the learned Counsel for the petitioners as no conscious decision was taken by the petitioners not to fill up the posts under the Recruitment Rules in force, the petitioners are justified in filling up the vacancies which have arisen in the previous years in accordance with old Recruitment Rules SRO 71 of 2008. We find substance in the contention of the learned Counsel for the petitioners. In our opinion, in the facts of the present case, the Tribunal ought to have adverted to this aspect of the matter and recorded a finding whether a conscious decision was taken by the petitioners not to fill up the posts under old Rules pending framing of new Rules. In the light of the decisions of the Apex Court in the cases of **Dr.K.Ramulu** (*supra*) & **State of Punjab** (*supra*), we are inclined to remit the matter back to the Tribunal for a fresh consideration in the light of the observation made by us in this order. Hence, the following order.

ORDER

- i) Impugned order of the Tribunal is quashed and set aside. OA No. 372 of 2013 is remitted back to the Tribunal for deciding the same afresh on its own merits and in accordance with law in the light of the observations made by us.
- ii) We may not be understood to have expressed any opinion on merits of the matter.
- iii) The Tribunal may endeavour to decide the OA as expeditiously as possible and preferably within a period of 16 weeks from today.

9. Writ Petition is disposed of in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)