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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 1st November, 2018

Decided on: 16th November, 2018

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LPA 810/2017 and CM No. 47340/2017

SUDHIR KUMAR TYAGI & ORS.

.....Appellants

Through: Mr R.K. Saini, Advocate.

versus

SUPREME COURT OF INDIA & ORS.

....Respondents

Through: Mr Kirtiman Singh, CGSC with Mr
Waize Ali Noor and Ms Shruti Dutt,
Advocates for R-1 and 2.

Mr Waize, Mr Anuj Aggarwal and Mr
Himanshu Sharma, Advocates for R-
3.

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LPA 202/2018 and CM No. 14426/2018

SURUCHI RAWAT & ORS.

.....Appellants

Through: Mr Avadh Kaushik, Advocate.

versus

SUPREME COURT OF INDIA & ORS.

....Respondents

Through: Mr Kirtiman Singh, CGSC with Mr
Waize Ali Noor and Ms Shruti Dutt,
Advocates for R-1 and 2.

Mr Waize, Mr Anuj Aggarwal and Mr
Himanshu Sharma, Advocates R-3.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These appeals are directed against the common judgment dated 25th October, 2017 passed by the learned Single Judge the writ petitions being W.P. (C) Nos. 5571 and 6346 of 2016, declining the relief of quashing the action of the Respondent No.1, Supreme Court of India, in not extending the validity period of the panel of candidates prepared and declared in April 2014 for appointments to the posts of Junior Court Assistants ('JCAs').
2. On 31st October, 2012, an advertisement was issued inviting applications for preparation of the above panel for appointment to the posts of JCAs in Pay Band-I of Rs.5200 – 20200 as Grade Pay of Rs.2800.
3. The case of the Appellants is that after they successfully completed the examination/selection process, their names were shown in the panel of 500 candidates. The panel was valid for a period of one year with effect from 31st March, 2014. The validity of this panel was extended twice by six months each time to 31st March, 2016.
4. According to the Appellants, during the period of two years between 31st March, 2014 and 31st March, 2016, the general category candidates up to the rank of 424 and reserved category candidates up to the rank of 475 were given appointments to the post of JCAs against the vacancies that arose during this period. After November, 2015, no candidate from the panel was called for appointment notwithstanding that the panel was extended till 31st March, 2016. As and when the post fell vacant on the retirement of old employees, the Respondents engaged retired Senior Assistants and Junior

Court Assistants and appointed them as JCAs on contract basis. Several representations were made to the Respondents from 6th April, 2016 onwards. Sometime in June, 2016, the Appellants were informed that their representations have been rejected.

5. In response to the notice issued in the writ petitions, replies were filed in both petitions by the Registrar (Administration) of the Respondent No.1. At the outset, it was pointed out that Article 146 of the Constitution provides for the appointment of the officers to the Supreme Court and the powers conferred on the Chief Justice of India ('CJI') in respect of the appointments of the officers and servants on the establishment of the Supreme Court. It was asserted that full autonomy was given to the CJI in the matter of appointment of officers and servants. It was averred that in terms of Article 146 of the Constitution read with the Supreme Court Officers and Servants (Conditions of Service and Conduct) Rules, 1961, ('1961 Rules') all administrative powers had been conferred upon the CJI for determining the work structure, the Registry of the Supreme Court and for also setting up the ministerial side of the Supreme Court.

6. Rule 4 of the 1961 Rules provided for the method of recruitment of staff. Rule 5 provided for qualifications required for appointment to various categories of posts specified in Column-2 of the Schedule attached to the Rules. Under Rule 6, it was clarified that CJI is the 'appointing authority'. Rule 9 provided for the conditions of service and Rule 47 provided for 'residuary powers'. Rule 47 in particular clarified that nothing in the Rules would be deemed to affect the power of the CJI to make "such orders, from

time to time, as he may deem fit in regard to all matters incidental or ancillary to these rules not specifically provided for herein or in regard to matters as have not been sufficiently provided for.” The proviso to Rule 47 stated that if any such order related to the salaries, allowances, leaves or pensions of Court servants, it would be made with the approval of the President.

7. Under Rule 48 of the 1961 Rules, all questions relating to interpretation of the Rules would be referred to the CJI whose decision thereon would be final. Again the proviso stated that in those questions related to the interpretation of any rule in Part (II) of the Rules insofar as they related to the salaries, allowances, leaves or pensions, it shall be decided by the CJI with the approval of the President.

8. The CJI by order dated 19th October 2012 approved the process for conducting an open competitive exam. Simultaneously, departmental tests for formation of panels for appointment to the posts of JCAs were also held. It was pursuant thereto that the advertisement dated 31st October, 2012 was issued inviting applications for preparation of the said panel of JCAs. The advertisement, it is pointed out, did not specify the number of vacancies. Therefore, the panel was not intended to be restricted to specific vacancies. It was further pointed out that mere inclusion of the name in the panel did not give any person on that panel the right of appointment.

9. The stand of the Respondents is that pursuant to the test conducted, by an order dated 31st March, 2014, the CJI approved the formation of a panel of 500 candidates for filling up vacancies of JCAs and this panel was valid for

one year. Again it was by the orders of the CJI that the panel was extended twice. Importantly, it was averred by the Respondents that “no vacancy of Junior Court Assistants was left for being filled up by way of direct recruitment by the date of closure i.e. 31st March, 2016 and whatever vacancies were available were meant to be filled by promotion of departmental candidates on the basis of departmental examination as per quota vacancies fixed for departmental candidates.” It was also asserted by the Respondents that once the panel lapsed then the leftover candidates could not claim appointment and a fresh recruitment process had to be undertaken.

10. The Appellants, on the other hand, in their rejoinder asserted that the Respondents cannot deny the appointment for selection as they have acquired a valid right for appointment till last candidate in the panel is given/offered appointment till closure of the panel and particularly so when there were vacancies available even as of the date of expiry of such panel.

11. The learned Single Judge also noted that on the file there was a note dated 30th March, 2016 whereby it was decided that the validity of the panel will not be extended beyond 31st March, 2016. On that date, there were 12 departmental candidates appointed through departmental examination who were working as JCAs. The rest of the vacancies were to be filled through departmental candidates and there was no vacancy to be filled through open recruitment. The learned Single Judge also noted that it was only after the validity of the panel ended on 31st March, 2016 that a fresh advertisement was issued on 27th January, 2017 for preparing a fresh panel for filling up 57

vacancies anticipated in the post of JCAs up to 31st December, 2017.

12. The learned Single Judge negated the plea of the Appellants that since as of date 48 vacancies are available, the persons already on the panel could be offered those appointments. The learned Single Judge noted that since the panel had expired on 31st March, 2016 and a fresh advertisement had been issued, those who had applied pursuant to such fresh advertisement, would also have a right to be considered for those vacancies.

13. The learned Single Judge referred to the decision in *State of Bihar v. Secretariat Assistant Successful Examinees Union AIR 1994 SCC 736* which held that the empanelment by itself did not create a vested right to be appointed. Again in *Shankarsan Dash v. Union of India AIR 1991 SC 1612*, it was held that the successful candidates in a selection do not acquire any indivisible right to be appointed and no mandamus could be issued to the extent of validity of a panel. It was held likewise in *Jatinder Kumar v. State of Punjab AIR 1984 SC 1850*.

14. This Court has heard learned counsel for the Appellants as well as the Respondents.

15. It is reiterated by Mr. Saini, learned counsel for the Appellants, that on the date i.e. 31st March, 2016, there were still vacancies in the permanent posts of JCAs which could have been filled up by the candidates on the panel.

16. It may be mentioned here that an additional affidavit was filed before the

learned Single Judge by the Respondents on 27th February, 2017 setting out the procedure adopted for creation of a panel for future vacancies. In this additional affidavit, it was asserted that no vacancy of JCA was left for being filled up by way of direct recruitment by the date of expiry of the panel i.e. 31st March, 2016. Whatever vacancies were available were meant to be filled by promotion of departmental candidates on the basis of departmental examination as per quota vacancies fixed for departmental candidates.

17. The factual position remains the same. It was entirely the prerogative of the CJI to decide how the permanent anticipated vacancies after December, 2017 should be filled up i.e. from the existing panel or by going for recruitment by issuing a fresh advertisement. There was indeed no vested right of the persons in the panel, the validity of which was extended only up to 31st March, 2016 to be appointed against such vacancies.

18. The Court finds no error having been committed by the learned Single Judge in rejecting the prayers of the present Appellants. The appeals and the applications are accordingly dismissed, but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA J.

NOVEMBER 16, 2018

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