

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.336 OF 2010
WITH
CIVIL APPLICATION NO.2601 OF 2018
WITH
CIVIL APPLICATION NO.2371 OF 2013
IN
WRIT PETITION NO.336 OF 2010**

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The Union of India & Ors.

..... Petitioners

Vs.

Jagdish P. Awale & Ors.

..... Respondents

Mr. R. R. Shetty for the Petitioners

Ms. Vaishnavi M. Gujarathi for the Respondents

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : MARCH 4, 2024**

ORAL JUDGMENT (PER : CHIEF JUSTICE)

1. It has been informed by the learned Counsel representing the Respondents that Respondent No.9 has died.

2. Learned Counsel representing the Petitioners states that considering the subject matter of this Writ Petition, no cause of action survives as against Respondent No.9 and accordingly, he may be permitted to delete Respondent No.9 from the array of Respondents.

3. We, thus, direct that Respondent No.9 shall be deleted from the array of Respondents.

4. Necessary amendment shall be carried out by learned Counsel representing the Petitioners during the course of the day. Reverification is dispensed with.

5. We, now, proceed to adjudicate the Writ Petition finally with the consent of the learned Counsel for the parties.

6. Heard Mr. R. R. Shetty, learned Counsel representing the Petitioners and Ms. Vaishnavi M. Gujarathi, learned Counsel appearing for the Respondents.

7. By instituting the present proceedings of this Writ Petition, the Petitioners have challenged the judgment and order dated 15th June 2009 passed by the Mumbai Bench of the Central Administrative Tribunal (hereinafter referred to as the **"Tribunal"**) whereby the Original Application No.278 of 2008 filed by the Respondents has been allowed and a direction has been issued to the Petitioners to consider the Respondents for recruitment as unskilled labourers pursuant to the advertisement dated 19th November 2005 from the stage at which the

recruitment process is said to have been cancelled on 11th February 2008.

8. It has been argued by the learned Counsel for the Petitioners that such a direction issued by the Tribunal is completely illegal for two reasons. Firstly, that merely because the Respondents were permitted to participate in the interview and physical efficiency tests, they will have no vested right to be appointed and secondly, it has been argued on behalf of the Petitioners that whether to fill-in or keep a vacancy in abeyance is the prerogative of the employer and by a judicial order the employer cannot be compelled to fill-in a vacancy. In this view, the argument is that the impugned direction issued by the Tribunal is not sustainable.

9. In addition to the aforesaid, it has also been submitted by learned Counsel for the Petitioners that there existed valid and reasonable grounds for the Petitioners to cancel the recruitment process and as a matter of fact the recruitment process initiated pursuant to the advertisement dated 19th November 2005 was cancelled with a view to give effect to the judgment passed by the Tribunal in Original Application No.684 of 2006 which was

filed with a prayer for absorption of Group-D employees. It is, thus, argued that no exception can be taken by the Respondents to the cancellation of recruitment process.

10. *Per-contra*, it is submitted by learned Counsel representing the Respondents that the Tribunal, while deciding the Original Application No.684 of 2006, by means of impugned judgment and order dated 6th June 2007, has rightly allowed to continue the recruitment process initiated pursuant to the advertisement dated 19th November 2005 and that against the available vacancies if a direction has been issued by the Tribunal for completing recruitment process, no fault can be found with such a direction issued by the Tribunal.

11. We have given our anxious consideration to the competing submissions made by the learned Counsel for the respective parties and have also considered the records available before us on this Writ Petition.

12. By means of an advertisement dated 19th November 2005, 121 vacancies of unskilled labourers were advertised pursuant to which the Respondents submitted their Applications. Accordingly, the Respondents are said to have been subjected to interview

and physical efficiency tests and they were also issued letters for undergoing the medical examination, however, before the medical examination could be completed, a communication was received by the Respondents not to attend the medical examination as a consequence whereof the Respondents filed Original Application No.647 of 2007 which was disposed of by the Tribunal with a direction to the Petitioners to decide the representations made by the Respondents against deferment / cancellation of recruitment process initiated pursuant to the advertisement dated 19th November 2005. The Petitioners, pursuant to the said direction issued by the Tribunal on 11th November 2007 in Original Application No.647 of 2007, considered the representations of the Respondents and rejected the same by means of an order dated 18th December 2007. Once the representations made by the Respondents were rejected, it necessitated filing of Original Application No.278 of 2008 which has been decided by the impugned judgment and order dated 15th June 2009 whereby the Original Application has been allowed and the Petitioners have been directed to consider the recruitment of the Respondents as unskilled labourers pursuant to the advertisement dated 19th November 2005 from

the stage the recruitment process is said to have been cancelled on 11th February 2008.

13. The reason indicated by the Petitioners while rejecting the representations of the Respondents is extracted in the impugned judgment and order dated 15th June 2009 according to which, the recruitment process was cancelled for giving effect to the judgment and order passed by the Tribunal on 6th June 2007 in Original Application No.684 of 2006 which was filed by certain employees seeking their absorption as Group-D employees as unskilled labourers in terms of the existing Recruitment Rules which provide that prior to undertaking the recruitment process for direct recruitment, the process of absorption shall be resorted to. The Tribunal, however, while noticing the said reason, has further proceeded to calculate the vacancy position which is available in paragraph No.9 of the impugned judgment and order. The calculation of vacancies made by the Tribunal itself in paragraph No.9 of the impugned judgment and order is extracted hereinbelow:

"9. As against that on the basis of a letter dated 10.1.2008 of Respondent No. 4 to the applicants and the averrment made on behal of the respondents in response to this Tribunal's order dated 03.12.2008, the applicants have suggested the following vacancy

position: -"

"Posts of Unskilled Labourers As on 31 st December 2007	1497
Posts already filled in	605
Vacant posts filled in view of O.A. No. 84 of 2006	160
	732
Vacant Posts advertised in April 2008 (not yet filled)	698
34 Still available	

14. The Tribunal has, thus, concluded that 34 vacancies were still available, that is to say, 34 vacancies were available on the date of pronouncement of judgment by the Tribunal which is on 15th June 2009. It is also to be noticed that once the recruitment process was started pursuant to the advertisement dated 19th November 2005, it was deferred on account of an interim order passed by the Tribunal on 22nd December 2006 and thereafter the recruitment process was cancelled pursuant to the final judgment and order passed by the Tribunal on 6th June 2007 in Original Application No.684 of 2006 and also that in the meantime 698 posts were advertised in the month of April 2008. The vacancy position as calculated by the Tribunal on the date of its judgment is 732, out of which 698 were advertised and 34 vacancies were still available. As to how these 34 vacancies related back to the date of an advertisement dated 19th November 2005 is not decipherable from the judgment of the

Tribunal. In any case, such an exercise undertaken by the Tribunal was absolutely uncalled for and unwarranted in the facts of this case.

15. The issue which ought to have been considered by the Tribunal was limited as to whether the reason given by the Petitioners for cancellation of the recruitment process initiated pursuant to the advertisement dated 19th November 2005 was having any rationale or not. The Tribunal, while discussing the law as to the vested or indefeasible right in a candidate merely on account of selection and also the principle that the recruitment process initiated by the employer could be cancelled for a valid reason, has given the impugned directions in the judgment which is under challenge before us in this Writ Petition.

16. The law in this regard is very clear, as held by the Hon'ble Supreme Court in the case of ***Shankarsan Dash Vs. Union of India*¹**, according to which the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license to act in arbitrary manner. Paragraph 7 of the judgment in the case of **Shankarsan (supra)** is extracted hereinbelow:

1 (1991) 3 SCC 47

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759], or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899]."

17. The view taken by the Hon'ble Supreme Court in the case of **Shankarsan (supra)** has been referred with approval in yet another judgment by the Hon'ble Supreme Court in the case of **Vinodan T and Others Vs. University of Calicut and Others²**.

18. Even the Tribunal has extracted the judgment of the Hon'ble Supreme Court in the case of **All India SC & ST**

2 (2002) 4 SCC 726

Employees' Association and Another Vs. A. Arthur Jeen and Ors.³, wherein it has been noticed by the Hon'ble Supreme Court, *inter alia*, that unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any other vacancies.

19. Accordingly, from the discussion as above, the legal position which emerges is; (a) the State or the employer is under no legal obligation to fill-up the vacancies advertised, (b) merely because of selection of a candidate, he does not get indefeasible or vested right to be appointed, (c) in case where a candidate has only been subjected to interview and physical tests and recruitment process is not complete, he shall not have any vested right to be considered for an appointment, and (d) even after completion of recruitment process the State or the employer has right to cancel the recruitment process once initiated, provided there are valid reasons for the same.

20. If the facts of the instant case are analyzed on the touchstone of the aforesaid legal principles, what we find is that the recruitment process initiated pursuant to the advertisement dated 19th November 2005 was deferred on account of interim

3 (2001) 6 SCC 380

order passed by the Tribunal on 22nd December 2006 in Original Application No.684 of 2006. This very recruitment process was subsequently cancelled with a view to give effect to the judgment and order dated 6th June 2007 passed by the Tribunal in Original Application No.684 of 2004 which was finally allowed with a direction to the Petitioners to absorb certain Group-D employees. Thus, the reason available for cancellation of the recruitment process initiated pursuant to the advertisement dated 19th November 2005 in which the Respondents had participated, in our considered opinion, is legitimate and no fault can be thus found with the Petitioners in cancelling the recruitment process.

21. Further, we may also observe that any direction to fill-up any vacancy to the employer having regard to the facts and circumstances of this case, cannot be approved of. Such a direction in the facts of the present case was completely unwarranted.

22. For the reasons given above, the Writ Petition deserves to be allowed.

23. Resultantly, the Writ Petition is allowed. The judgment and

order dated 15th June 2009 passed by the Mumbai Bench of Central Administrative Tribunal is hereby quashed.

24. There will be no order as to costs.

25. The Interim Applications, if any, shall stand disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)