

(1975) 07 SHI CK 0003

High Court of Himachal Pradesh

Case No: Civil Writ Petition No. 134 of 1973

Balak Ram Chauhan
and Another

APPELLANT

Vs

The State of H.P. and
Another

RESPONDENT

Date of Decision: July 21, 1975

Citation: (1975) 4 ILR HP 492

Hon'ble Judges: D.B. Lal, J

Bench: Single Bench

Advocate: Sushil Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision: Dismissed

Judgement

D.B. Lal, J.

Balak Ram Chauhan and Uma Datt Bhardwaj have filed this writ petition and solicit for a direction to the Respondents 1 and 2 who are the State of Himachal Pradesh and the Himachal Pradesh Public Service Commission to appoint them as Mass Education and Information Officers (Class II) on the basis of a select list prepared on October 4, 1972. They have prayed for a further direction that they are entitled to all consequential benefits with effect from the date the other selected candidates were appointed. The Petitioners claim that they were working as Medical Social Workers at Simla, In the month of April or May, 1972, the State Government asked the Public Service Commission to issue a notification for selection to eight posts of Mass Education and Information Officers (Class II). The Petitioners accordingly applied for the post and were asked to appear for interview. The interview of the Petitioners was held at the office of the Public Service Commission. Along with others the Petitioners were selected and a list was issued containing the names of 7 candidates selected for the post of Mass Education and Information Officer. The merit position assigned to the Petitioner No. 1 was 6th, while that assigned to the Petitioner No. 2 was 4th. Letters to that effect were also written to the Petitioners by the Public

Service Commission. It was, however, specified that their names were recommended by the Commission to the Government for appointment to the post applied for. According to Petitioners, before the finalisation of the select list some of the candidates who were not selected came to know the result and accordingly Swarup Chand Gupta, Sohan Lal Sharma and T. R. Verma, who were not selected, filed a writ petition in the High Court which was registered as C. W. P. No. 125 of 1972. In that writ petition they claimed that the selection of the present Petitioners as well as of the other 5 selected candidates was bad in law as the same was made in contravention of the conditions prescribed in the advertisement. The present Petitioners were also impleaded as Respondents in that Civil Writ Petition. Formerly an interim stay was granted by the High Court restraining the appointment of the Petitioners and other selected candidates, but subsequently the interim stay was withdrawn and the Respondents were given opportunity to appoint the Petitioners as well as other selected candidates. Nevertheless, to the surprise of the Petitioners, the State Government appointed 5 of the candidates; Sarvshri S. N. Dubbey, B. D. Bhalla, Shrimati Pushpa Saklani, Rulia Ram and Narsi Dass Sharma, while the Petitioners were left out. It is contended that 2 of the persons appointed namely Narsi Dass Sharma and Rulia Ram were placed at No. 5 and No. 7 in the select list. In this manner Rulia Ram was lower in position to Petitioner No 1 while both Narsi Dass Sharma and Rulia Ram were lower in position to Petitioner No. 2- All these persons appointed subsequently joined the posts and the Petitioners were singled out for no rhyme or reason. Thereafter the Petitioners submitted representations to the Government; but to no effect. According to Petitioners, the action of the Respondents in not appointing them was illegal and without jurisdiction. There was a representation to the Petitioners by the Respondents that they would be appointed against the post of Mass Education and Information Officer (Class II), and there is estoppel against the Respondents in case they do not fulfil that representation and appoint the Petitioners. There was also discrimination against the Petitioners and a legal right arose in their favour for which they could not be deprived of. It appears the Petitioners who filed C. W. P. No 125 of 1972, "pulled up wires and influenced the Respondents 1 and 2" and that is why the Petitioners were not appointed. Accordingly the Petitioners claim that they are entitled to the appointment and should be appointed with effect from the date the other selected candidates have been appointed.

2. The contest of the Respondents is that no legal right accrued in favour of the Petitioners inasmuch as the appointing authority was the Government. The Public Service Commission only made a recommendation and if for a bona fide reason the Government did not choose to fill up all the posts, they had every right to do so. Narsi Dass Sharma whose position was 5th in the select list, according to Respondents, was never appointed. Rulia Ram whose position is 7th in that list is a scheduled caste candidate. As such he occupied a different category. The Petitioners are not affected by his appointment. The other 3 appointees are Sarvshri S. N.

Dubey, B.D. Bhalla and Shrimati Pushpa Saklani whose places in the select list are at Nos. 1, 2 and 3. The two Petitioners are lower placed as compared to them, and hence they have not been discriminated. It was denied that any wire pulling was done. Rather representations were received from departmental employees against cent percent direct recruitment and it was decided by the Government in the interest of public services that 50% of the posts should be filled up by way of promotion from amongst departmental candidates. That is why only 4 of the candidates were appointed and the Petitioners were left out being lower in rank in the order of selection. It is, therefore, contended that neither any legal right to the post can be claimed by the Petitioners, nor was it a legal duty on the part of the Government to appoint them.

3. The central question that arises for decision is, as to whether any legal duty can be imposed upon the Government to appoint the Petitioners. The factual position is almost admitted. Sarvshri S.N. Dubey, B. D. Bhalla and Shrimati Pushpa Saklani occupied higher positions and they were rightly appointed. Regarding Rulia Ram, his case stood on a different footing. He was a candidate for a reserved seat and the Petitioners can have no grievance as to his appointment. It is also abundantly clear that the Government made a decision in the interest of public services that 50% posts would be filled up from departmental candidates. The Petitioners relied on a clause in the advertisement which was to the effect:

Candidates must, if called, appear for personal interview. Selected candidates will be required to join duty immediately- (Annexure A).

Similarly in para 9 (Annexure B) of the advertisement, it was mentioned that the candidates selected for appointment will be required to join duty immediately after selection. From this, the Petitioners infer that as of right the selected candidates must be required to join duty. It is manifest, the advertisement was a mere invitation to apply for selection. The role of the Public Service Commission was to prescribe a test for making selection. That body was only recommendatory and the ultimate appointment was to be made by the Government. A mode of selection was only prescribed in the advertisement. After the selection was made, the appointment rested with the State Government. The clause mentioned in the advertisement can only be interpreted to mean that those selected and considered fit for appointment were required to join immediately. That clause does not mean to say that each and every person selected must be called for appointment. In fact the process of appointment was only inchoate at the stage of the advertisement. That could be completed only by an order of the Government. The subsequent order of appointment could be withdrawn, cancelled, modified or postponed according to exigency of situation. It was a matter of policy on the part of the Government to fill up 50% posts from departmental candidates. The courts will not interfere in that policy decision. No question of malafide or unfair dealing can be pointed out. The allegation regarding mala fide is neither precise nor definite in the writ petition. It

has only been stated to be subsequently rejected.

4. From *The State of Haryana v. Subhash Chander Marwaha and Ors.* 1973 (2) S.L.R. 137 the following passage may be extracted which may be useful:

One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed.

The learned Counsel attempted to distinguish this case by submitting that in that case certain service rule was interpreted and further that no condition existed in the mode of selection itself as in the present case. I have already held that no such condition existed in the mode of selection and the particular clause referred to by the Petitioners was confined to those cases where the Government decided to appoint a candidate and only in that contingency care was taken to specify that the candidate will be required to join immediately lest he may while away the time and postpone the appointment on one pretext or the other. It is only with that idea that the clause was introduced in the advertisement. It was never intended to do away with the ultimate right of the Government to make appointment according to a policy decision taken by them. Thus *State of Haryana (supra)* clearly applies to the facts of the present case. In order to obtain a mandamus the Petitioners have to show that the statute imposed a legal duty on the authority and they have a right to enforce its performance. They have miserably failed to do so. To a similar effect is a subsequent decision of Delhi High Court in *Shri Varan Singh v. Union of India and Ors.* 1974 (1) S.L.R. 710. It was a case of recommendation for appointment made by a departmental promotion committee. The Government was not bound to appoint all persons shown in that panel. It was in the discretion of the Government to fill up all or some of the vacancies available. Thus these two decisions really disentitle the Petitioners for any relief.

5. It is then contended that a principle of estoppel is involved. Firstly, the Government never issued the advertisement. It was issued by the Public Service Commission. Any representation, if at all made to the candidates by the Commission, was not binding on the Government. That apart, in my opinion, no such representation was at all made that each and every person selected was required to be appointed by the Government. In fact the appointment was to come at a later stage. The Government made a policy decision and did not choose to appoint all the 7 candidates. The learned Counsel relied on *Union of India and Ors. v. Anglo Afghan Agencies etc.* AIR 1968 SC 718 and [Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another](#), In both these cases representations were made on behalf of the Government and the learned judges held that these representations were required

to be fulfilled on the principle of estoppel because the person aggrieved altered his position to his disadvantage. In the present case no such representation was made by the Government and as such, with respects to the learned Judges, these two cases cannot lend support to the Petitioners. In regard to estoppel to be pleaded against Government, reference can be made to *M. Ramanatha Pillai v. The State of Kerala* and Anr. 1974 (1) S.L.R. 225. The following passage may be referred to in this connection:

The High Court was correct in holding that no estoppel could arise against the State in regard to abolition of post. The Appellant Ramanatha Pillai knew that the post was temporary. In *American Jurisprudence* 2nd at page 783 paragraph 123 it is stated "Generally, a State is not subject to an estoppel to the same extent as an individual or a private Corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore, as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice". The estoppel alleged by the Appellant Ramanatha Pillai was on the ground that he entered into an agreement and thereby changed his position to his detriment. The High Court rightly held that the courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate.

As such the application of estoppel to the State could only be pleaded to prevent fraud or manifest injustice. Neither fraud nor manifest injustice could be established in the instant case. In the result, the Petitioners cannot derive any benefit by pleading estoppel which does not even arise against the State Government.

6. There can be no dispute that no person junior on the list as compared to the Petitioners has been appointed. As such there is no question of discrimination.

7. In this view of the matter, the Petitioners derived no legal right to the post, nor was there any legal duty imposed upon the Respondents to appoint them. The petition is without any force and is hereby dismissed.

8. In the special circumstances of the case no order is made as to costs.