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(2008) 05 SC CK 0201

Supreme Court of India

Case No: Civil Appeal No. 3648 of 2008 (Arising out of S.L.P. (C) No. 21416 of 2007)

Union Public Service Commission and Another	APPELLANT
Vs	
A.K. Salim and Others	RESPONDENT

Date of Decision: May 16, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 2008 SC 2673 : (2008) AIRSCW 4459 : (2009) 2 ALT 28 : (2008) 118 FLR 236 : (2008) 7 JT 4 : (2008) 7 SCALE 774 : (2008) 11 SCC 495 : (2008) 4 Supreme 352

Hon'ble Judges: Tarun Chatterjee, J; J. M. Panchal, J

Bench: Division Bench

Advocate: Binu Tamta, for the Appellant; D.S. Mahra, Sumant Bhardwaj, Mridula Ray Bhardwaj and P. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

J.M. Panchal, J.
Leave granted.

2. The instant appeal is directed against judgment dated October 18, 2007 rendered by the High Court of Kerala at Ernakulam in W.P.(C) No. 30695 of 2007 by which direction dated September 11, 2007, given by the Central Administrative Tribunal, Ernakulam Bench in M.A. No. 649 of 2007, which was filed in O.A. No. 26 of 2007, given to UPSC, New Delhi to convene the Selection Committee meeting based on the proposal already received from the State Government vide letters dated May 10, 2007 and June 15, 2007 for considering the case of the applicant for promotion to the Indian Forest Service, without waiting for further proposals in respect of additional vacancies, is upheld.

3. The respondent No. 1, i.e., Mr. A.K. Salim, was appointed as a Forest Range Officer on November 1, 1977. He was thereafter promoted as Assistant Conservator of Forest on January 5, 1995. He was also promoted as Deputy Conservator of Forest (non-cadre). The appointment to Indian Forest Service is governed by the provisions of Indian Forest Services (Appointment by Promotion) Regulations, 1966. The respondent No. 1 was confirmed in the cadre post of Assistant Conservator of Forest with effect from July 1, 2001. In the seniority list of Assistant Conservator of Forest he was placed at serial No. 24 and was also granted integrity certificate for consideration of his appointment to Indian Forest Service. The name of the respondent No. 1 was included in the select list prepared in terms of the Regulations of 1966 for the years 2004 and 2005. Since the respondent No. 1 was confirmed in the cadre post of Assistant Conservator of Forest with effect from July 1, 2001 and had completed eight years of service in the year 2003, his name was considered and included for the four vacancies that arose during the year 2004. Similarly his name for promotion to Indian Forest Service was included in the year 2005 for the two vacancies which had arisen in that year. However, he was found to be ineligible for being considered for the vacancies for the years 2004 and 2005 since he had not completed the prescribed eight years'' service. Likewise, he was found ineligible for being considered for the sole vacancy of the year 2006. The Selection Committee for Indian Forest Service met on December 22, 2006 and selected candidates for eight vacancies for the years 2003, 2004 and 2005. However, the Selection Committee did not consider filling up the sole vacancy of the year 2006. The reason for not considering filling up of the said vacancy was lack of proposal from the State Government and the Principal Secretary Forest, Government of Kerala. The respondent No. 1 made representations for his promotion to Indian Forest Service but of no avail. He, therefore, moved O.A. No. 26 of 2007 before the Central Administrative Tribunal, Ernakulam Bench and prayed to direct the appellants to convene meeting of the Selection Committee for considering his case for selection and appointment to Indian Forest Service cadre against the substantive vacancies available as on January 1, 2006.

4. On service of notice, the appellants contested the claim of the respondent No. 1 by filing reply. The Central Administrative Tribunal, Ernakulam Bench, by judgment dated March 9, 2007, directed the State of Kerala and the Principal Secretary Forests, Government of Kerala, to submit the consolidated proposal for considering the selection to Indian Forest Service for the year 2006 to the UPSC within a period of three weeks from the date of receipt of copy of the said order. The Tribunal further directed that on receipt of such proposal, the UPSC, New Delhi and the Selection Committee for selection to Indian Forest Service shall convene a meeting well before the date of retirement of the respondent No. 1, which was May 31, 2007 in accordance with the Rues.

5. The record indicates that the above mentioned directions were not complied with by the appellants. Therefore, the respondent No. 1 moved M.A. No. 649 of 2007 in O.A. No. 26 of 2007 and prayed to initiate contempt proceedings against the appellants for non-compliance of directions dated March 9, 2007 given by the Central Administrative

Tribunal, Ernakulam Bench in O.A. No. 26 of 2007.

6. The Tribunal issued notice to the appellants. On receipt of the notice, the appellants filed their reply. Meanwhile, proposals were received from Principal Secretary Forests, Government of Kerala and the State of Kerala. After hearing the learned Counsel for the parties, the Tribunal, by judgment dated September 11, 2007, directed the UPSC, New Delhi to convene the Selection Committee meeting based on the proposals already received from the State Government by letters dated May 10, 2007 and June 15, 2007 for considering the case of respondent No. 1 for promotion to Indian Forest Service without waiting for the further proposals in respect of additional vacancies which had arisen and disposed of M.A. No. 649 of 2007.

7. Feeling aggrieved the appellants invoked extraordinary jurisdiction of High Court of Kerala at Ernakulam under Article 226 of the Constitution by filing W.P. (C) No. 30695 of 2007 and prayed to set aside the directions given by the Tribunal in M.A. No. 649 of 2007, which was filed in O.A. No. 26 of 2007.

8. The High Court of Kerala at Ernakulam has dismissed the petition filed by the appellants vide judgment dated October 18, 2007, giving rise to the instant appeal.

9. This Court has heard the learned Counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the instant appeal.

10. One of the grounds of challenge urged in the memorandum of SLP is that no harm or prejudice would be caused to the respondent No. 1, i.e., Mr. A.K. Salim if the Select list is prepared for all the three vacancies because according to the appellants, the Tribunal has already directed to regularize services of the respondent No. 1 till the date of consideration of his case for promotion to Indian Forest Service by the Selection Committee, if he is ultimately found to be eligible though he has already retired on May 31, 2007 and, therefore, the judgment of the High Court, impugned in appeal, should be set aside. On service of notice, the respondent No. 1 has filed counter affidavit on January 11, 2008 wherein he has stated that he has no objection if selection proceedings for the three vacancies for the year 2006 are initiated. During the course of hearing of instant appeal Mr. Ranjit Kumar, learned senior counsel for the appellants as well as Dr. Sumant Bhardwaj, learned advocate for the respondent No. 1 and Mr. B. Dutta, learned Additional Solicitor General for Government of India, have stated at the Bar that the instant appeal may be disposed of by directing the appellant No. 2, i.e., the Selection Committee through UPSC to convene the meeting for considering the case of respondent No. 1 and others for the three vacancies which had arisen in the year 2006 and that the case of the respondent No. 1 be considered in the said meeting.

11. In view of the consensus arrived at between the parties, the appellant No. 2, i.e., the Selection Committee through UPSC, is directed to convene the meeting for considering the case of the respondent No. 1 and other eligible candidates for promotion to Indian

Forest Services within two months from today. In case the respondent No. 1 is selected for induction into Indian Forest Service, the intervening period shall be regularized notionally with effect from June 1, 2007 and the respondent No. 1 shall be accorded all benefits including monetary benefits. The appeal is allowed only to the extent indicated hereinabove.

12. There shall be no orders as to costs.