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Bharti Yadav and Another Vs Union of India (UOI) and Another

Court: Delhi High Court

Date of Decision: May 20, 2011

Acts Referred: Constitution of India, 1950 â€" Article 14, 16, 16(4), 38, 46
Regional Rural Banks Act, 1976 â€" Section 24
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 â€" Rule 28

Citation: (2011) 5 AD 599 : (2011) 181 DLT 225

Hon'ble Judges: Dipak Misra, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Rahul Nagpal, for the Appellant; Ravinder Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

Sanjiv Khanna, J.
The two Petitioners-Bharti Yadav and Ritesh Kumar have impugned order dated 21st September, 2010 passed by the

Central Administrative Tribunal, Principal Bench, Delhi (Tribunal, for short) dismissing T.A. No. 8/2010.

2. By advertisement dated 23rd January, 2006 applications were invited for posts of Medical Social Service Officer, Grade II (MSSO Grade II,

for short) from eligible candidates. As per the advertisement, there were nine posts in all, three unreserved, two reserved for the Scheduled Castes

and four reserved for Other Backward Classes (OBC). The note No. (iii) to the said advertisement stipulated that number of vacancies for each

post (several posts were advertised) may increase or decrease at the discretion of the appointing authority.

3. The two Petitioners applied for the post of MSSO Grade II and after written test and the interview, a final result notification No. 38/2007 dated

4th June, 2007 was issued. The said notification reads as under:

Final Result Notification No. 38/2007

Following are the names of candidates in order of merit, who have been recommended for appointment to the post of Medical Social Service

Officer Grade-II subject to verification of their eligibility/character and antecedents and being declared medically fit. The offer letters to the under

mentioned selected candidates will be issued separately by the Recruitment Cell in due course.

Roll No. Name Category

75035 Shivani Rai UR

75122 Sophia Joseph UR

75070 Neena Seth UR

75224 Dinesh Kumar SC

75044 Naveen SC

75216 Anju A S OBC

75064 Aftab Alam Shah OBC

75229 Bharti Yadav OBC

75162 Ritesh Kumar OBC

Further action in this regard will be taken by Recruitment cell (Administration). Candidates will be informed accordingly.

4. The Petitioners at serial Nos. 8 and 9 of the above list did not receive appointment letters and it appears that they wrote representations and

even sought information under Right to Information Act. When they did not get positive response, the two Petitioners filed a writ petition in the

High Court which was transferred to the tribunal and was registered as T.A. No. 8/2010. By the impugned order dated 21st September, 2010,

the transfer application has been dismissed.

5. The Petitioners have relied upon office memorandum No. 22011/2/79-Estt (D) dated 8th February, 1982 and the decision of the Supreme

Court in Prem Prakash Vs. Union of India (UOI) and Others, . The short contention raised by the Petitioners, is whether in view of the selection

list or notification No. 38/2007, the Petitioners have a vested right to be appointed to the post of MSSO Grade II. In the case of Prem

Prakash(supra), the office order dated 8th February, 1982 has been quoted and it has been held as under:

15. There is an additional reason in support of the view which we are disposed to take. On February 8, 1982 the Ministry of Home Affairs,

Department of Personnel and Administrative Reforms, issued a notification to the following effect:

Sub: Validity period of list of selected candidates prepared on the basis of direct recruitment/Departmental Competitive Examination.

The undersigned is directed to say that references are being received from time to time from ministries/departments enquiring as to what should be

the validity period of a list of selected candidates prepared on the basis of direct recruitment or Departmental Competitive Examination.

Normally, in the case of direct recruitment a list of selected candidates is prepared to the extent of the number of vacancies (other persons found

suitable being put on a reserve list, in case some of the persons on the list of selected candidates do not become available for appointment).

Similarly, in the case of Departmental Competitive Examinations the list of selected candidates has to be based on the number of vacancies on the

date of declaration of results, as the examination is competitive and selection is based on merit. A problem may arise when there is a fluctuation in

the vacancies after the list of selected candidates is announced.

The matter has been carefully considered. Normally, recruitment whether from the open market or through a Departmental Competitive

Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a

likelihood of vacancies arising in future: in case, names of selected candidates are already available, there should either be no further recruitment till

the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons

already in the list of selected candidates awaiting appointment. Thus, there would be no limit on the period of validity of the list of selected

candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive

Examination.

Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the

appointing authority has the responsibility to appoint him even if the number of the vacancies undergoes a change, after his name has been included

in the list of selected candidates. Thus, where selected candidates are awaiting appointment, recruitment should either be postponed till all the

selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting

appointment and the candidates awaiting appointment from a fresh list from the subsequent recruitment or examination.

Ministry of Finance, etc. are requested to bring the above instructions to the notice of all the appointing authorities under them for information and

guidance.

sd/-

J.K. Sarma,

Director.

It is clear from this notification that if selected candidates are available from the previous list, there should either be no further recruitment until those

candidates are absorbed or, in the alternative, vacancies which are declared for the subsequent years should take into account the number of

persons who are already in the list of selected candidates who are still awaiting appointment. The notification further shows that there should be no

limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful

according to the merit list of selected candidates, the appointing authority has the responsibility to appoint him, even if the number of vacancies

undergoes a change after his name is included in the list of selected candidates.

16. We must record our dissatisfaction, at the fact that the Rules of the Delhi Judicial Service have not been amended so as to bring them in

conformity with the administrative instructions and notifications which have been issued by the Ministry of Home Affairs, Department of Personnel

and Administrative Reforms, from time to time. The situation is virtually chaotic for which, we must clarify, the High Court of Delhi cannot be

blamed. It is surprising that though 13 years have gone by since the Delhi Judicial Service was established, no attention whatsoever has been paid

to a matter which concerns the future of a large number of young men and women who aspire for posts in the Judiciary. The instant case and the

cases of Ajaib Singh and Ram Swarup show that the worst sufferers of this inaction are members of the Scheduled Castes and Scheduled Tribes.

Sooner the Rules are amended, easier will it be for the High Court to administer and superintend the affairs of the subordinate judiciary with the

object of achieving the ideals enshrined in Articles 16(4), 38 and 46 of the Constitution.

17. Though the Rules ought to be amended, that does not mean that administrative instructions can be ignored by the High Court until that is done.

The Assistant Registrar says in Para 9 of his counter-affidavit that ""administrative instructions cannot be allowed to prevail over the statutory rules"".

That would be correct provided that the administrative instructions are contrary to the statutory rules. In this case, Rule 28 itself says that:

Appointments made to the service by competitive examination shall be subject to order regarding special representation in the service for

Scheduled Castes and Scheduled Tribes issued by the Central Government from time to time."" Therefore, far from there being any inconsistency

between the statutory rules and the administrative instructions, it is clear that the two have to be read together.

18. These writ petitions must therefore succeed. Our reasons for allowing the petitions may be summed up thus: in the first place, in the process of

remedying injustice which was done to the two Scheduled Caste candidates of 1979, no injustice can be caused to the Petitioners who had

qualified for the reserved seats in the examination held in 1980. Secondly, the quota of seats available for reserved candidates cannot be made to

depend on the fortuitous circumstance as to how many candidates have qualified for the general seats. The reserved quota must be fixed on the

basis of the total number of vacancies which are to be filled at a given point of time. Thirdly, the notification of 1982 is good authority for adjusting

the Petitioners against the reserved vacancies for the year 1980. The statutory rules and administrative instructions have to be read together by

reason of Rule 28.

6. There is one apparent and relevant distinguishing fact in the present case. The advertisement inviting applications from eligible candidates for the

posts of MSSO Grade II contained a specific stipulation in note No. (iii) that vacancies to each post may increase or decrease at the discretion of

the appointment authority. What has weighed and has been highlighted by the tribunal are the aforesaid clause and the stand taken by the

Respondent that out of nine posts, three posts were existing and six posts were contemplated or anticipated posts, which were to be created. The

process for creation of these six posts was initiated, but no approval was received and these six posts never came into existence. It has been

elucidated that initially appointment letters were issued to three candidates, and subsequently appointment letters were issued to four other

candidates as per the seniority list as some vacancies had arisen during the period of one year from the date of the selection list i.e. 4th June, 2007.

As a result, candidates at serial Nos. 1 to 7 was offered appointment to the post of MSSO Grade II. The panel prepared ceased to be operative

after a period of one year with effect from 4th June, 2007. As no further vacancies had arisen during this period, no appointment letters were not

issued to the Petitioners. There is no factual dispute or any lis raised by the Petitioners on the factual aspect.

7. This being the position, we do not think that the Petitioners have made out a case for interference in the present writ petition. As noticed above,

the decision in the case of Prem Prakash (supra) is not relevant in view of the above factual position as in the present case there was a note in

advertisement inviting applications for the posts of MSSO Grade II stipulating that number of vacancies may increase or decrease at the discretion

of the appointing authority. This distinction is relevant and material and was noticed by the Constitution Bench in Shankarsan Dash Vs. Union of

India, wherein it has been held as under:

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

license 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. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana, or Jatendra Kumar v. State of Punjab.

8. In State of Haryana v. Subhash Chander Marwaha 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7,

who had secured more than 55 per cent marks, were appointed, although under the relevant rules the eligibility condition required only 45 per cent

marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55 per cent marks or more

should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the

High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ

application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the government to

decide how many appointments should be made and although the High Court had appreciated the position correctly, it had ""somehow persuaded

itself to spell out a right in the candidates because in fact there were 15 vacancies"". It was expressly ruled that the existence of vacancies does not

give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were Petitioners in Jatendra

Kumar v. State of Punjab, was turned down holding that it was open to the government to decide how many appointments would be made. The

plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying

for selection or even after selection. It is true that the claim of the Petitioner in the case of Neelima Shangla v. State of Haryana, was allowed by

this Court but, not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been

referred to the Public Service Commission which sent to the government only the names of 17 candidates belonging to the general category on the

assumption that only 17 posts were to be filled up. The government accordingly made only 17 appointments and stated before the court that they

were unable to select and appoint more candidates as the Commission had not recommended any other candidate. In this background it was

observed that it is, of course, open to the government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily

restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and, there must be a conscious

application of mind by the government and the High Court before the number of persons selected for appointment is restricted. The fact that it was

not for the Public Service Commission to take a decision in this regard was emphasized in this judgment. None of these decisions, therefore,

supports the Appellant.

(emphasis supplied)

8. The aforesaid decision makes it clear that a successful candidate does not acquire an indefeasible right to be appointed and an advertisement or

a notification inviting applications is only an invitation to the qualified candidates to apply for recruitment. On preparation of a panel, they do not

acquire any right to the post unless the recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies, but while

exercising the said discretion, the State cannot act in an arbitrary manner. Decision not to fill up a vacancy must be bona fide and for appropriate

reasons and no discrimination can be permitted.

9. Referring to the aforesaid decision, in Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others, , it has been observed as under:

11. So far as the third question is concerned, namely, for how long a panel prepared should be kept alive, it appears that the Government of India

in the Ministry of Finance, Department of Economic Affairs (Banking Division) by its letter dated 30-9-1980 had communicated to the Chairman

of all regional rural banks that the panel should normally be kept alive only for a period of one year and if any deviation from the said guidelines

becomes necessary in the interest of the bank, then it should be undertaken with the prior permission of the Board of Directors and under

intimation to the Government in the Banking Division. Notwithstanding the aforesaid guidelines issued, as it was observed that several rural banks

still took recourse to extending the validity of the panel for long periods stretching over 2/3 years on obtaining the approval of the Board, the

Ministry of Finance by its letter dated 19-9-1983 again communicated to the Chairman of all regional rural banks that preparation of panels to

cover the requirements of regional rural banks for 2/3 years and then extending the validity of the panel beyond one year cannot be construed as

merely a deviation and it is doubtful if it can be considered even as being in the interest of the regional rural bank from a long-term point of view.

u/s 24 of the Regional Rural Banks Act, 1976, a rural bank in the discharge of its functions is required to be guided by such directions as the

Central Government may after consultation with the Reserve Bank give in regard to matters of policy involving public interest. In view of the

aforesaid provisions of the Act, the directions/guidelines issued by the Central Government indicating the periods for which the life of a panel would

be kept alive has a binding effect on the bank, and therefore, in our considered opinion so far as the life of the panel prepared by the rural banks

are concerned, it must be held that the same remain alive ordinarily for a period of one year. The High Court committed serious error in relying

upon the circular of the Ministry of Home Affairs, Department of Personnel and Administrative Reforms to come to the conclusion that the panel

remains alive until all the persons in the panel are appointed. The said conclusion is wholly erroneous and cannot be sustained.

12. Though the panel ordinarily remains alive for one year but in accordance with the guidelines of the Government of India, Ministry of Finance, it

would be open to the Board to extend the said period under intimation to the Government in the Banking Division. In the case in hand, the

resolution of the Board dated 28-3-1985 indicates that the life of the panel had been extended for a further period of six months, and therefore,

after expiry of the said period it was not open for the Court to issue direction to appoint people from the said panel.

(emphasis supplied)

Thus, the validity of the panel selection depends upon the guidelines, policy or the Rules.

10. Decision in the case of Prem Prakash (supra) was distinguished in Babita Prasad and Others Vs. State of Bihar and Others, and it was

explained that the said decision applies when a panel is prepared limited to the existing vacancies and not to cases when the period of expiry of

panel is fixed or when the panel is not co-related to the number of vacancies. Explaining the said position, in paragraphs 24, 25 and 31 it has been

held has under:

24. Mr Tarkunde then placed strong reliance on Prem Prakash v. Union of India and particularly on the following observations appearing in

paragraph 15:

... Once a person is declared successful according to the merit list of selected candidates, the appointing authority has the responsibility to appoint

him, even if the number of vacancies undergoes a change after his name is included in the list of selected candidates.

in support of his submission. Here again the facts were entirely different. The observations extracted above were made on the special facts of the

case as mentioned in paragraph 11 of the judgment. Moreover, selection had been made in that case after holding an examination and a panel for a

limited time had been prepared. The number of candidates in the list was limited to the existence of vacancies, unlike in the present case where

neither any period of expiry of the panel was fixed nor was the panel co-related to the number of vacancies or even prepared as a result of any

process of "selection". The judgment in Prem Prakash case therefore, cannot advance the case of the Appellants.

25. We find force in the submission of Mr Sibal that the purpose of the panel prepared in the instant case was only to finalize a list of eligible

candidates for appointment. The panel in the instant case was too long and was intended to last indefinitely barring the future generations for

decades from being considered in the vacancies arising much later. In fact the future generations would have been kept out for a very long period

had the panel been permitted to remain effective till exhausted. A panel of the type prepared in the present case cannot be equated with a panel

which is prepared having co-relation to the existing vacancies or anticipated vacancies arising in the near future and for a fixed time and prepared

as a result of some selection process. As is apparent, the names of some of the teachers in the panel have existed for more than 16 years. A panel

of this nature, in our opinion, cannot be treated as conferring any vested or indefeasible right to the teachers to be appointed as laid down by the

Constitution Bench in Shankarsan Dash case.

X X X X

31. The non-interference with the appointment of teachers from the panel who stood already appointed cannot in our opinion form the basis of the

Article 14 argument. The fundamental right of equality implies that persons in like situations, under like circumstances, are entitled to be treated

alike. Reasonable classification according to some principle to recognize intelligible inequalities or to avoid or correct inequalities is permissible. It is

in this background that we must divert our attention to the charge of violation of Article 14. Indeed, if the action of the State can be shown to be

arbitrary, then notwithstanding any classification it would offend Article 14 and be liable to be struck down. Those who had been appointed out of

the panel as and when the vacancies arose and had continued in service did acquire some right to so continue and the action of the State

Government in protecting their services cannot be said to infringe Article 14, which even though all pervasive, has to be considered in the facts and

circumstances of each case. The appointed and the non-appointed teachers formed separate and distinct classes. In saving the appointments of

those who stood already appointed and were serving there was no arbitrariness whatsoever on the part of the Respondents. It indeed is nobody"s

case that the decision taken by the State was actuated by any motive or the scrapping of the panel after July 2, 1989 was mala fide. Even

otherwise, when the State decided to respect the equities which have arisen in favor of the teachers already appointed and serving, no fault can be

found with it. Equity reforms and moderates the rigor and hardness of the law and the State acted fairly and bona fide to respect and balance the

equities in favor of the appointed candidates. We must, therefore, reject the charge of arbitrariness in view of the peculiar facts of this case more

particularly since we have already found that the persons on the panel had not acquired any indefeasible right to appointment merely by being

placed on the panel. It also deserves to be noted here that the Appellants had not questioned, as it is, the validity of appointment of the teachers,

already appointed, but have on the other hand sought treatment similar to the one of the appointed teachers. The decision to save the appointments

of the teachers already appointed, who form a distinct and separate class, is therefore, fair and reasonable and does not suffer from the vice of

arbitrariness. It does not in any way offend Article 14. This view also accords with the judgment in Subash Chandra Marwaha case and the law

laid down by the Constitution Bench in Shankarsan Dash. We must, therefore, reject the argument of discrimination between the two classes of

teachers, namely, those who stood appointed and the others who were waiting be appointed and in whose favour no indefeasible right accrued,

only by being brought on the panel, to be appointed.

(emphasis supplied)

11. Prem Prakash case (supra) was again distinguished in Union of India and others Vs. K.V. Vijesh, wherein reference was made to the case of

Shankarsan Dash (supra) and it was held as under:

7. In view of the above pronouncement of this Court the order of the Tribunal directing absorption of the Respondent solely on the ground that his

name was included in the select list cannot be sustained. The reliance of the Tribunal on the judgment of this Court in Prem Prakash case,

particularly, the above quoted passage was wholly misplaced for, in that case, the notification regarding recruitment specifically providing that once

a person was declared successful according to the merit list of selected candidates the appointing authority had the responsibility to appoint him

even if the number of vacancies had undergone a change after his name had been included in the list of selected candidates. It further provided that

where selected candidates were awaiting appointment, recruitment should either be postponed till all the selected candidates were accommodated

or, alternatively, intake for the next recruitment reduced by the number of candidates awaiting appointment. Relying solely on the above notification

this Court made the earlier quoted observations in Prem Prakash case. In absence of any such rules governing the appointment of the Respondent,

the Tribunal was therefore not justified in passing the impugned order.

8. Though the above discussion of ours was sufficient to set aside the impugned order, we had - keeping in view the observations of this Court in

Shankarsan Dash case - called for and looked into the relevant records of the Railways to ascertain whether the Railway Administration had acted

arbitrarily in rejecting the Respondent''s claim and, for that matter, whether appointments had been made according to the comparative merits of

the candidates or not. The records not only indicate that the contention of the Railways that the Respondent was placed at the bottom of the list is

correct but also that the appointments have been made according to the comparative merits of the candidates. It cannot, therefore, be said that the

rejection of the Respondent''s claim was arbitrary or discriminatory.

(emphasis supplied)

12. Similar view has been taken by the Supreme Court in the case of State of Rajasthan and Others Vs. Jagdish Chopra, , and S.S. Balu and

Another Vs. State of Kerala and Others, wherein several earlier judgments have been noticed and referred to with approval.

13. A full bench of this Court in Maninder Kaur v. Delhi High Court ILR (1995) Del 695 examined the effect of the office memorandum dated 8th

February, 1982 and the decision in Prem Prakash (supra), which was followed by a Division Bench of this Court in P.K. Bhasin v. Union of India

(1994) 2 DL 368. The contention raised by the Petitioner therein was rejected, inter alia, observing as under:

36. The office memorandum dated 8th February, 1982 is Annexure P.4 to the writ petition of Malkhan Singh. The said memorandum has also

been reproduced in the decision of the Supreme Court in Prem Parkash''s case. A perusal of the said memorandum shows that it is applicable in a

case where a person is declared successful according to merit list of selected candidates which is based on the declared number of vacancies. The

responsibility vests on the appointing authority to appoint such a person even if number of vacancies undergo a change after his name has been

included in the list of selected candidates. It is thus evident that if a candidate has not been selected against the declared number of vacancies no

right flows to him on the basis of the aforesaid Memorandum. Mr. Malkhan Singh had applied against one post reserved for scheduled caste. For

that post Mr. Padam Singh was selected, recommended and ultimately appointed. Likewise, the declared number of vacancies when Mr. Sanjay

Kaul applied were four which were reserved for scheduled castes and scheduled tribes. It was notified in the advertisement that these vacancies

shall be filled from general category candidates in the event of suitable candidates from reserved category were not available. Only one candidate

Mr. L.D. Maul belonging to scheduled castes community was found suitable. No other candidate from reserve category was found suitable. The

High Court, however, prepared a panel of six candidates of general category. The name of Respondent Nos. 9, 7 and 8 were at Serial Nos. 1, 2

and 3 respectively in the panel prepared in 1988. Mr. Sanjay Kaul was at serial No. 6 on the panel. There were also other advocates at serial

Nos. 4 and 5 of that panel. Against the four declared number of vacancies, one from scheduled caste community and three from general category

were selected, Mr. Kaul cannot claim right to the appointment against a future vacancy. In case the contention that the entire panel is to be

exhausted irrespective of the number of vacancies which may have been notified for selection is accepted, it may lead to continuing the panel in

perpetuity which would be arbitrary and would infringe Articles 14 and 16 of the Constitution thereby depriving other eligible candidates for being

considered for public employment. In this regard we may also notice a recent decision of the Supreme Court in the case of Gujarat State Dy.

Executive Engineers'' Association Vs. State of Gujarat and Others, (8) The Apex Court has held that a candidate from the waiting list has no right

to claim appointment to any future vacancy which may arise unless the selection was held for it. The effect of making appointments of candidates

from the waiting list on candidates who become eligible for competing for vacancies available in future, was expressed by Supreme Court in the

following words:

A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the

contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the

vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from

the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from

the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become

eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments,

there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from

the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which

may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates

either from the open or even from service.

37. It is also well settled that empanelment gives no right of appointment. The Supreme Court in the case of State of Bihar and Others Vs.

Secretariat Assistant Successful Examinees Union 1986 and Others, has held:-

It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment.

Empanelment is at the best a condition of eligibility for purposes of appointment and by itself does not amount to selection or create a vested right

to be appointed unless relevant service rule says to the contrary [See Shankarsan Dash Vs. Union of India, d Sabita Prasad and Ors. V. State of

Bihar and Ors. 1992 (3) Scale 361.

We are, therefore, of the opinion that the directions given by the High Court for appointment of the empanelled candidates according to their

position in the merit list against the vacancies till 1991 was not proper and cannot be sustained. Since, no examination has been held since 1987,

persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court

would prejudicially effect them for no fault of theirs. At the same time, due to the callousness of the State in holding the examination in 1987 for the

vacancies advertised in 1985 and declaring the result almost three years later in 1990 has caused great hardship to the successful candidates. The

State was expected not to act in such a leisurely manner and treat the matter of selection for appointment to services in such a casual manner. We

must record our unhappiness on this state of affairs. There is no justification for holding the examination two years after the publication of

advertisement and declare the result almost three years after the holding of the examination and not issuing any fresh advertisement between 1985

and 1991 or holding examination for making selections. We expect the State Government to act in a better manner, at least hereinafter and since

Mr. Rao, the learned senior counsel has shared our concern and assured us of advising the State Government accordingly, we say no more on that

aspect at this stage.

38. The decision of the Division Bench in Bhasin''s case directing adjustment against future vacancies results in depriving other eligible candidates

for being considered for the said vacancies. In our view the ratio of Prem Prakash''s case was not correctly applied by the Division Bench. We

may also notice that the Division Bench after rightly noticing in Para 89 of the aforesaid report that the principle laid down in Prem Parakash''s case

will not be attracted seems to have erred in the later portion of the judgment (Para 106) in directing on strength of Prem Parkash''s case that

candidates once selected and empanelled must be accommodated in future vacancy which came into existence during the tendency of the writ

petition. There are reasons for preparing larger panel than the number of vacancies. It is possible that a recommended candidate may not come

forth to join the Service or even after selection and recommendation there may be hurdles in his appointment like medical clearance etc. In order to

avoid delay in the recruitment, a larger panel is prepared so that person next on the panel can be recommended for appointment. This, however,

would not mean that in case the number of selected and recommended candidates to the extent of the existing vacancies join, the other candidates

on panel are required to be adjusted against future vacancies. As held hereinbefore, this would lead to continuing the panel in perpetuity which is

neither permissible in law nor in the interest of the Service.

(emphasis supplied)

14. If we apply the aforesaid principles to the facts of the present case, as noticed above, the Respondents have given explanation why they did

not issue appointment letters to the Petitioners, though they were selected and their names were included in the selection list/panel. It is pointed out

that there were six new or anticipated vacancies which were to be created in the MSSO Grade II but these vacancies did not fructify as a result of

which appointment letters were not issued to the Petitioners. The selection panel or list made by notification dated 4th June, 2007 was valid for a

period of one year and accordingly ceased to be a valid panel thereafter by efflux of time. The aforesaid explanation given by the Respondent has

not been controverter and denied. It is also not the case of the Petitioners that vacancies had arisen during the life span of panel with effect from

4th June, 2007, but appointment letters were not issued.

15. In view of the aforesaid reasoning, we do not find any merit in the present writ petition and the same is accordingly dismissed. There will be no

order as to costs.