
(5) Thus, in view of the aforesaid dicta of the apex Court granting indulgence to a counsel being absent from the hearing before the Court on account of strike, would also in a way amount to contribution towards the contempt of the apex Court. It shall be apposite to observe that giving any kind of indulgence to the applicant or to the counsel on account of absence of the counsel having participated in a strike of the lawyers shall be clear violation of the law laid down by the apex Court. Thus, I am afraid this ground is not available to anyone, neither to the counsel nor to the applicant.

(6) However, the learned counsel for the applicant has also not been able to show any case law to the effect that despite the previous application being pending, a second application is maintainable and the relief is claimable accordingly. Thus, the application merits dismissal. I order accordingly.

(7) It may be clarified that the dismissal of this application shall not affect the rights of the applicant while considering the application already filed with the main case.

R.N.R.

Before Swatanter Kumar & S.S. Saron, JJ.

KULDEEP SINGH,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. 1640 of 2002

24th October, 2002

Constitution of India, 1950—Art. 226—Haryana Civil Services Judicial Branch Rules—Rl. 8 (as amended)—Recruitment to the H.C.S. (J.B.)—Govt. notifying six posts for General category candidates—Amended Rl. 8 fixing the number of five additional names which can be sent to the High Court for filling up of unforeseen vacancies that may occur within one year from the date of selection of candidates—Period of one year commences from the date the result of the selected candidates is published in the official gazette—H.P.S.C. recommending names of successful candidates—Petitioner at Sr. No.

9 of the merit list—Claim to unforeseen vacancies—Govt. failing to send additional 5 names for the empanelment in the High Court Register—Non-compliance of Rule 8 by the Govt. resulting in serious remification in all spheres affecting the rights and legitimate expectation of the selected candidates—Petitions allowed while directing the State Government to forward the names of the petitioners in order of merit for empanelment in the High Court Register.

Held, that the purpose of giving additional 5 names is to ensure filling up of unforeseen vacancies that may occur within one year from the date of selection of candidates as a result of examination. There are two pertinent expressions in the latter part of rule 2 i.e. one year from the date of selection of candidates and secondly as a result of examination. None of these two expressions can be ignored while determining the effect and scope of rule 8-A in its composite form.

(Para 16)

Further held, that period of one year must commence from the date the result of the selected candidates is published in the official gazette in terms of Rule 8 Part-D.

(Para 26)

Further held, that one vacancy had occurred within one year from the date of declaration of result/issuance of gazette notification and this vacancy was never offered to a person whose name was squarely and ought to have been empanelled on the High Court register for appointment to the post. First error was committed by the State of Haryana as they did not comply with the statutory requirement of rule 8 (as amended in 1993). They ought to have sent the number of vacancies which were advertised and 5 additional names. This error on the part of the State Government resulted in commission of subsequent errors. These errors have resulted in serious remification particularly to a lawful and legitimate expectation of the petitioner. The High Court in turn did not inform the vacancy position to the Government and the Govt. took no interest in the matter as at a later stage it had issued notification promoting officers of the lower judicial service cadre to the State Higher Judicial Service. This itself was a sufficient indication for the State to take requisite steps for filling up resultant vacancies. The Govt. must act in consonance with the rules

and must take all appropriate steps for timely filling the vacancies in the judicial service in the State. Default in compliance of such provision is found to have serious ramifications in all spheres.

(Para 31)

N.D. Achint, Advocate, *for the Petitioner.*

Amol Rattan, AAG Haryana.

Rajiv Atma Ram, Senior Advocate with Madhu Dayal, Advocate.

H.N. Mehtani, Advocate, *for the respondents*

JUDGMENT

Swatanter Kumar, J.

(1) By this judgment, we would dispose of two writ petitions being Civil Writ Petition Nos. 1640 of 2002 and 6070 of 2002, as common question of law founded on somewhat similar facts arise for the consideration before the Court.

(2) In these petitions under Articles 226/227 of the Constitution of India, the petitioners pray for summoning of the entire record concerning selection process of the Haryana Public Service Commission and then directing the Haryana State Government to send their name to the High Court for inclusion in the roll of register maintained under Rule 8 Part-D of the Haryana Civil Services (Judicial Branch) Rules (hereinafter referred to as the Rules) and further for direction to the respondents to recommend their name for the appointment to the said service in accordance with law.

(3) In order to examine the merit of the case, reference to necessary facts would be appropriate.

(4) For the purpose of convenience, we are referring the facts of Civil Writ Petition No. 1640 of 2002.

(5) The State of Haryana advertised 12 vacancies for the posts of Haryana Civil Services (Judicial Branch). Out of these six posts were reserved for the General category candidates. The petitioners competed for the said vacancies meant for the general category. The

examinations were held between 23rd May to 25th May, 2000. The final result, after *viva-voce*, was declared on 30th August, 2000, on which date the notification was issued and it was duly published in the official gazette on 12th September, 2000. The petitioner secured 56% marks in the written test and 50% marks in the *viva-voce* test. Thus, securing aggregate more than 55% marks. The name of the petitioner was shown in the list of successful general category candidates. He was at serial No. 9. According to the petitioner, names of the six candidates were sent for appointment and the petitioner's name was kept in the waiting list. It is further stated that the respondents should have sent the name of the petitioner as per provisions of rule 8 Part D of the Rules, for the unforeseen vacancies occurred within one year from the date of selection and the High Court should have recommended the name of the petitioner for appointment to the Government, which, in turn, should have appointed the petitioner to the member of HCS (Judicial Branch) against the occurred vacancies. Having failed to do so, the petitioner has suffered serious prejudice and as such he moved a representation dated 26th September, 2000 for inclusion of his name in the roll of register maintained by the High Court and for consequential appointment. Other candidates including Amarjit Singh in CWP No. 6070 of 2002, who has also secured more than 55%, marks made such representations and having failed to get any relief from the respondents, the petitioners have filed these writ petitions.

(6) Upon notice, the respondents filed separate written statements. The High Court filed a short written statement and the stand taken is that the government has not forwarded the name of the petitioner for inclusion in the roll of register, as such question of entering the name of the petitioner in the register or appointing him in service does not arise.

(7) Separate written statements were filed on behalf of the State of Haryana and Haryana Public Service Commission.

(8) According to the Haryana Public Service Commission, no fact is disputed. It is stated in para 12 of the written statement that 12 vacancies were advertised. Six for general category and six for Schedule Caste for recruitment to the judicial branches. The Commission recommended the names including the name of the petitioner at serial

No. 9, as per merit list in the general category. It is admitted that representation of the petitioner was received, however, as it pertains to the State and the High Court, the same was forwarded as no action was called for on part of the Commission.

(9) In reply the State has also not disputed the facts. It is stated that the result was declared on 4th August, 2000 and was gazetted on 12th September, 2000. The name of the petitioner appeared at serial No. 9 of the merit list in the general category. However, only six names in the general category and six name in reserved category were sent to the High Court for appointment after getting their antecedents verified and medical examination conducted, as per rules.

(10) According to the State, under rule 8 the names equivalent to the vacancies advertised plus five names for filling up the unforeseen vacancies were to be sent but as per practice additional 5 names were not sent and the High Court did not take any exceptions to the procedure being followed by the State. Thus, the State administration is not at fault. It has been averred that the petitioner is not entitled to be appointed as Civil Judge (Junior Division) as only one unforeseen vacancy arose within one year against which one Shri Sudhir, a candidate at serial No. 7, has already been appointed. In regard to other unforeseen vacancies, no reference was made by the High Court and no action was taken by the administration as such, the writ petition of the petitioner should be dismissed.

(11) It is admitted that representation of the petitioner was received. The same was considered and forwarded to the High Court and after consultation it was decided that in view of the language of rule 8-A of the Rules, the petitioner is not entitled to any relief. Thus, the respondent prays for dismissal of the writ petition.

(12) From the above narrated facts, it is clear that the controversy revolves on the meaning and interpretation of the rule 8 of the said Rules. Therefore, we consider it necessary to refer to unamended as well as amended rule 8 of the Part D of the Rules, as learned counsel for the parties have referred to and placed reliance upon a Division Bench judgment of this Court in the case of **Rajiv Tyagi** versus **State of Haryana** Civil Writ Petition No. 963 of 1993

decided on 10th November, 1993. The amendment took place in the year 1993. The unamended rule 8 reads as under :—

“8. There is no limit to the number of names borne on the High Court Register but ordinarily no more names will be included than are estimated to be sufficient for the filling up of vacancies which are anticipated to be likely to occur within two years from the date of selection of candidates as a result of an examination.”

Amended rule 8 reads as under :—

“8. The number of names borne on the High Court Register shall not be more than the vacancies advertised by the Haryana Public Service Commission plus five additional names, keeping in view the reservation policy, for the filling up of unforeseen vacancies that may occur within one year from the date of selection of candidates as a result of an examination.”

(13) In Rajiv Tyagi's case (supra), this Court took the view that mere passing of the (Judicial Branch) PCS examination conducted by the H.P.S.C., securing more than minimum standard prescribed marks, no right is vested for securing the post of Subordinate Judge, even if posts were available within a period of two years from the date of selection, as required under Rule 8 of Part D. It was also held by the Bench that rule 8-A of Part-D of the Rule was directory and not mandatory, more particularly in view of the fact that there is no limit provided to the number of posts to be recorded in the roll register of the High Court and the expression '**ordinarily**' in support of such interpretation it was observed by the Bench that the period of two years as contemplated under rule 8 will commence from the date 1st selection list was sent to the High Court.

(14) It would be necessary for us to discuss these findings at some length keeping in view fact that rule 8 of the Rules was amended in the year 1994, materially altering the language of the rule and fixing the number of names which can be sent to the High Court for empanelment on the register.

(15) Another very material development that has taken place in the meanwhile is that a Division Bench of this Court in the case of *Court on its own motion* versus *State of Punjab and Haryana*

and others, Civil Writ Petition No. 14372 of 1998 decided on 12th October, 1998 directed the State of Punjab as well Haryana to hold the examination for the appointment to the post of PCS/HCS (Judicial Service) by both the State of Punjab and Haryana every year. Their Lordships held as under :—

“On a consideration of the matter, we find that no examination for filling up the vacancies in the PCS (JB) or HCS (JB) was conducted by the State of Punjab/PPSC and State of Haryana/HPSC, during the past about two and a half years and even in the past examinations for filling up the vacancies of the judicial branch were not conducted by the respective commissions at regular intervals. In the process, the disposal of cases suffered a lot and the number of pending cases swelled. Keeping that in view, we hereby direct that the two State Governments, in consultation with the High Court, shall notify the vacancies to the respective Commissions (existing and anticipated) every year by February 28 and the respective Commissions shall, thereafter, advertise the vacancies and conduct examinations in respect of the vacancies notified in the month of September every year and make available the list of selected candidates to the State Governments and the High Court in the order of merit on or before December 31, each year. In view of the above directions, this petition stands disposed of in so far as the filling up of vacancies of Subordinate Judges in the State of Punjab and State of Haryana are concerned.”

(16) After amendment of 1994, the rule has been worded with negative expression “*shall not be more than the vacancies advertised by the Haryana Public Service Commission plus 5 additional names.*” In complete contrast to the language of the unamended rule 8, the legislative intent of restricting the number of names which can be placed on the High Court register have not been only limited but the authorities concerned have been debarred from introducing more names than as specified in the amended rule. The purpose of giving additional 5 names is to ensure filling up of unforeseen vacancies that may occur within one year from the date of selection

of candidates as a result of examination. There are two pertinent expressions in the latter part of rule 2 i.e. one year from the date of selection of candidates and secondly as a result of examination. None of these two expressions can be ignored while determining the effect and scope of rule 8-A in its composite form.

(17) It is settled principle of law that rule must be read as a whole to determine its correct interpretation. In the light of the judgment of this Court in *Courts on its own motion* (supra) one aspect of the matter has provided certainty and definiteness further to the language of the rule that the authorities are bound to hold the examination annually and the indefiniteness existing in the unamended rule stands eliminated. Holding of examination every year would not only review admittedly filing of vacancies but by its very language simplicitor an obligation upon the authorities concerned to act expeditiously with intention to maintain the prescribed schedule. The State Governments and the Commission need to work with such coordination that purpose of the rule and the judgment is not frustrated.

(18) The Division Bench relied upon the use of uncertain language in the rule and emphasised on the expression ordinarily to term it as directory. We must interpret rule 8-A in the light of the judgment of the Court on its own motion (supra). The period of one year has direct co-relation to the annual holding of examination by the Commission, as specified in the judgment. When period of one year would commence is the basic question which the Court has to answer.

(19) The provision of Rule 8 command a mandate in regard to both number of names as well as the period for which the name sent would be effective. The cumulative effect of the rule read in conjunction with the judgment of the Court on its own motion (supra) is that Rule 8 is mandatory and is not merely directory in its scope and effect, as it gives no option to either of the concerned authorities to avoid its compliance once the limit of grant of number of posts is necessarily eclipsed by the language of the rule then it cannot be said that it is merely regulatory or directory.

(20) With this background, now we proceed to discuss as to when period of one year commences. The selection of candidates as a result of examination is the point from where period of one year must be reckoned. The expression as a result of the examination cannot be

ignored. The selection indicates completion of a process prescribed under the rules. The expression selection cannot be intermingled or understood as appointment. The expression appointment is a term well known to service jurisprudence. A candidate who is appointed has a definite legal right to the post to which he is appointed, while a person who is merely selected has no defeasible or indefinite right to the post in question, but rule making authority has not used the word selection simpliciter. It is the selection of a candidate as a result of examination. In other words, expression examination cannot be ignored or completely over looked to determine its relevancy to the process of selection. The scheme of the Act as formulated under part C and D is that the examination is conducted by the different Service Commissions and the candidates who qualify in terms of the rules are called for interview, *viva voce*, a merit list on the basis of the written examination and *viva voce* is prepared by the Commission forwarded to the government, then the State government upon compliance of required verification declares the result, which is notified and gazetted by the State government in its official gazette. The State government shall forward the names of such number of selected candidates in order of merit, which would suffice for filling the vacancies as described in Rule 8 part D of the said rules. The names so forwarded by the State are for empanelment on the register maintained by the High Court in terms of Rule 1 of Part D of the Rules.

(21) For determining the date when the period of one year commences discretion in the authorities should be minimised and the date normally should co-relate to appointment which can be knowingly effective and publicly relevant when a document is notified and gazetted in the official gazette, which shall be deemed to have been brought to the notice of all concerned and declaration of the result in the official gazette binds the government and the concerned authority to the correctness thereof. The Public Service Commission has no jurisdiction to declare the result. It only forwards the name of the candidates who have cleared the written test by securing minimum marks and have been subjected to *viva voce* in accordance with the procedure.

(22) We may at this stage usefully refer to the recent judgment of the Hon'ble Apex Court in the case of ***Union of India*** versus ***Ganga Dass (1)***, wherein it was held that publication in the official

(1) 2000 (9) SCC 461

gazette was sufficient proof and no further action would be required thereof even while issuing exemption notification under section 25. Their Lordships held that it is established practice that publication in the official gazette i.e. the gazette of India is an ordinary method of bringing a rule or subordinate legislation to the notice of the person concerned. The role of any of the authorities after publication of the result is quite limited one, leaving the exceptions apart. After publication of the result, selection the main phase of process of selection is completed and the matter in relation to appointment of the candidates commenced.

(23) Whenever it is possible to refer to different dates on reading of the provisions, it will always be better to refer and accept a date which would help in creating certainty and avoid indefiniteness in the implementation of such provisions. Acceptance of any other dates as relevant dates would lead to uncertainty and would not be in consonance with the object of annual examination and likely filling up of vacancies. It will be in consonance with the basic principles of interpretation of rules/subordinate legislation that the rules should be given a meaning which would help in avoiding ambiguity and uncertainty in implementation of the rules under interpretation. It would further cause the statute if the date to be taken as cut off date is known to all concerned. In other words, a public declaration or gazette notification has to be construed as a public declaration or fact of which the public would be deemed to have knowledge of. Various acts to be performed by different concerned authorities after declaration of the result and its gazette notification are more ministerial in nature than substantial in their nature and scope. Forwarding of names, their reference in return to the government and issuance of appointment letters are functions which must be performed expeditiously and as a matter of rule leaving the exceptions apart. The process of selection concludes upon publication of the gazette notification and thereafter process of appointment commences. Both these aspects are complementary to each other and subsequent one accomplished the purpose of first phase. This appears to be the scheme underlying the relevant rules. The High Court plays a very limited role in selection and appointment to the subordinate judicial services. In fact, the Apex Court in the case of *The State of Haryana versus Subhash Chander Marwaha and ors.*(2), observed as under :—

“The High Court does not come into the picture for recommending any particular candidate. After the State

Government have taken a decision as to which of the candidates in accordance with the list should be appointed, the list of selected candidates for appointment is forwarded to the High Court and the High Court then will have to enter such candidates on a Register maintained by it. When vacancies are to be filled the High Court will send in the names of the candidates in accordance with the select list and in the order they have been placed in that list for appointment in the vacancies. The High Court, therefore, plays no part except to suggest to the Government who in accordance with the select list is to be appointed in a particular vacancy. It appears that in the present case the Public Service Commission had sent up the rolls of the first 15 candidates because the Commission had been informed that there are 15 vacancies. The High Court also in its routine course had sent up the first 15 names to the Government for appointment.”

(24) The import of the language of Rule 8 must be understood in its correct perspective and interpretation given which would be introduced the element of certainty rather than ambiguity in the rule. The period of one year has to be construed in the light of the attendant factors like scheme of the rules, purpose sought to be achieved and an approach which would make the provisions more effective and result oriented. We may appropriately refer to the observations of Hon'ble Supreme Court in the case of *Rameshwar versus Jot Ram* (3), where the Court observed as under :—

“A construction which will promote predictability of results, maintainability of reasonable orderliness, simplification of judicial task, advancement by Court of the purpose of legislation, and the judicial preference for what it regards as a sounder rule of law as between competing ones, must find favour with the Court.”

(25) Reference to any other date but the date of gazette notification is likely to result in uncertainty and ambiguity. Correspondence between the government, High Court and the Commission is a kind of official correspondence, which is not for the benefit of the public or even the selected candidates. A candidate who wishes to invoke his claim for appointment as unforeseen vacancy as

occurred would never know when the period of one year expires. It will keep all the concerned in a state of suspense. Reference to such a date for commencement of a crucial period of one year, thus, may not be permissible or even practicable.

(26) In view of the afore-referred discussion, we are of the considered view that period of one year must commence from the date the result of the selected candidates is published in the official gazette in terms of Rule 8 part-D.

(27) After the selections are made, the High Court had in some cases declined to empanel the name on the register of the High Court of selected candidates on the pretext that they have not obtained 55% or aggregate marks in written and *viva voce* test. It is contended on behalf of the petitioners that rules as yet have not been amended. The opinion of the High Court is not binding and they are eligible. Examination of this question would merely be an academic in the present case as both the petitioners, in any case, have obtained more than 55% aggregate marks. Thus, we do not consider it necessary to discuss this aspect of the matter in the present petition.

(28) Having answered the two basic controversies in issue in the present case, we must observe that all the authorities concerned are expected to act expeditiously and avoid delay which is bound to operate prejudicially to the interest of the selected candidates. There is no indefeasible right in any candidate, who has been selected and declared successful as a result of written examination, interview but certainly he has a legitimate expectation in relation to the appointment to the judicial services. Once, the government publishes the result in the official gazette, it is expected that the name would be forwarded to the High Court for empanement in terms of Rule 8 within a reasonable time and in any case not exceeding the period of 30 days from such dates. Thereafter, the High Court is expected to make the appointments expeditiously and refer the matter back to the government for any reason whatsoever or for resultant or unforeseen vacancies occurred during that period. As a matter of rule, not much of controversy should be involved in such process even if there be some reservation, we would expect the authority concerned to complete the appointment process within four months from the date of such gazette notification. The appointments thereafter should only relate to the need to fill up the vacancies arising from expected events. This would help in bringing certainty to the course of appointment to such service

and undue delay can easily be avoided. In the present case, the government had advertised 12 vacancies. 28 names were notified in the result declared as per the past practice. The government had only sent 5 names for the empanelment in the High Court register. According to the government the High Court did not inform the vacancy position to the government and as such the government did not send additional names.

(29) According to the High Court, they had informed the government, may be at a later stage, which fact is not admitted by the State. Be that as it may, with whomsoever fault may lie, adverse consequences thereof cannot be enforced against the petitioners, who are admittedly not at fault and are selected candidates, who even secured more than 55% marks in aggregate. The result was gazetted on 12th September, 2000, though names for the first time were forwarded by the government to the High Court on 16th November, 2000 as per the judgment of the High Court. On the basis of the unamended provisions that would be date relevant for reckoning the requisite period of one year as postulated under Rule 8 of the Rules.

(30) From the records before us, it appears and which is not disputed by either parties appearing before us with one Shri V.P. Chaudhary retired on 5th April, 2000 and in his place a Civil Judge (Senior Division) was promoted on 15th December, 2000, thus, causing a permanent vacancy in the cadre of the State Judicial Service on that date. This vacancy probably was not notified to the High Court. One Ms Poonam Durgan did not join her duty in May 2000 and in her place Mr. Sudhir was given appointment on 5th November, 2000. After lapse of more than one year as unforeseen vacancy occurred. It is also averred that during the period of 2000-2001, 5 unforeseen vacancies have arisen on account of death, retirement and submissions of resignation of the incumbent officers.

(31) From these facts, it is clear that one vacancy had occurred within one year from the date of declaration of result/issuance of gazette notification and this vacancy was never offered to a person whose name was squarely and ought to have been empanelled on the High Court register for appointment to the post. First error was committed by the State of Haryana as they did not comply with the statutory requirement of rules 8 (as amended in 1993). They ought to have sent the number of vacancies which were advertised and 5 additional names. This error on the part of the State government

resulted in commission of subsequent errors. These errors have resulted in serious ramification particularly to a lawful and legitimate expectation of the petitioner. The High Court in turn did not inform the vacancy position to the government and the government took no interest in the matter as a later stage it had issued notification promoting officers of lower judicial service cadre to the State Higher Judicial Service. This itself was a sufficient indication for the State to take requisite steps for filling up resultant vacancies. The government must act in consonance with the rules and must take all appropriate steps for timely filling the vacancies in the judicial service in the State. Default in compliance of such provision is found to have serious ramification in all spheres. On the one hand, it would prejudicially affect the rights and legitimate expectancy of the selected candidates as they would be placed in the state of uncertainty for no fault of their own while on the other prolong delay in filling the vacancies results in being serious increase in pendency of cases, consequently interfering in the administration of justice in the State. The petitioner had filed representations before the Chief Secretary, State of Haryana requesting him to have his name empanelled in the High Court register and prayed for his appointment in the resultant vacancies. The petitioner has been vigilant of his right and in fact also relied upon the judgment of the Hon'ble Apex Court in the case of **Virender S.Hooda & Ors. versus State of Haryana & Anr.** Civil Appeal No. 2286 of 1999, wherein the above question of delay was not considered fatal to the right of the petitioner. The unforeseen vacancies admittedly occurred much subsequent to the declaration of the result and in fact one such vacancy occurred in December, 2000 and even in November, 2001. Thus, we see no reason to deny relief to the petitioner.

(32) In view of the above reasoning, we accept the writ petitions and direct the State government to forward the name of the petitioners in order of merit and the vacancy position available within one year from the date when the result of the successful candidates was published in the final gazette for empanelment in the High Court Register in terms of Rule 8 of the said Rule forthwith. Further we direct the High Court to consider the case of the petitioners for appointment to the Haryana Civil Services (Judicial Branch) in batch of 2000 in accordance with law.

(33) Writ petitions are allowed in the above terms, leaving the parties to bear their own costs.