

*Before : J. V. Gupta, C.J. & R. S. Mongia, J.*  
**STATE OF HARYANA AND ANOTHER,—Appellants.**  
*versus*  
**RAJINDER KUMAR AND OTHERS,—Respondents.**  
*Latters Patent Appeal No. 1180 of 1988.*

18th July, 1990.

*Constitution of India, 1950—Arts. 11, 16 & 226—Selection to the post of Taxation Inspectors—Original requisition of 29 posts enhanced to 79—Board recommending 49 candidates to State Government—Government appointing only 29 persons—Posts lying vacant—Right to appointment—Action of State Government arbitrary.*

*Held, that if posts are available and the selection has been made for those posts and even fresh advertisement is issued for the same very posts and some persons are appointed against those posts on ad-hoc basis to man those posts, then in such circumstances the State Government must give legal justification for not appointing the candidates who have been duly selected. The fresh advertisement for these posts having been issued and members of ministerial staff having been appointed on ad-hoc basis to man these posts, would go to show that there was no legal justification whatsoever in not appointing the writ petitioners who had been duly selected. The inaction of the State Government in not giving appointment to the selected candidates, under these circumstances, is arbitrary and violative of Articles 14 and 16 of the Constitution of India.*

(Para 7)

*Letter Patent Appeal under Clause X of the Letters Patent Appeal against the judgment dated 3rd October, 1988 passed by Hon'ble Mr. Justice M. R. Agnihotri in Civil Writ Petition No. 4307 of 1987.*

*Civil Misc. No. 15636 of 1988—*

*Application under Order 41 Rule 5 read with Section 151 C.P.C. praying that the operation of the impugned judgment dated 3rd October, 1988 passed by the learned Single Judge may kindly be stayed during the pendency of the appeal.*

*Civil Misc. No. 340 of 1990—*

*Application under Section 151 C.P.C. praying that ad-interim stay may be granted by this Hon'ble Court restraining the appellant-State from appointing Taxation Inspectors till the decision of the LPA.*

*Ram Chander, D.A.G. Haryana, for the Appellants.*

*S. S. Nijjar, Sr. Advocate with M/s. T. P. Singh; K. B. Bhandari, Sr. Advocate with Pardip Bhandari, Advocate. for the Respondents.*

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### JUDGMENT

*R. S. Mongia, J.*

(1) By this judgment three letters patent appeals Nos. 1180, 1190 and 1182 of 1988 shall be disposed of. The first two letters patent appeals have been filed against the judgment of learned Single Judge in C.W.P. No. 4307 of 1988, decided on 3rd October, 1988, allowing the writ petition in which there were 17 petitioners. One of the above appeal has been filed by the State and the other by Ravinder Bhatnagar and others, private respondents in the writ petition. The third letters patent appeal (No. 1182 of 1988) has been filed by the State of Haryana against the judgment in C.W.P. No. 7160 of 1987, which was allowed on the same date, i.e., 3rd October, 1988 in the same terms as C.W.P. No. 4307 of 1987. There were two petitioners in C.W.P. No. 7160 of 1987.

(2) Briefly the facts giving rise to the present appeals are that the present respondents (writ petitioners) had not been appointed by the State of Haryana as Taxation Inspectors even though they had been duly selected for these posts by the Subordinate Services Selection Board, Haryana (hereinafter called the 'Board') in an open competition.

(3) On 22nd July, 1982, an advertisement appeared in various daily news-papers on behalf of the Board, inviting applications for 29 posts of Taxation Inspectors, mentioning therein the academic qualifications etc. prescribed for the said posts. In response to the said advertisement, the writ-petitioners had applied and appeared in the written test held on 22nd/23rd May, 1983. Since in addition to the original requisition for 29 posts sent by the State of Haryana, certain more posts became available, the State Government sent revised requisition on 4th July, 1985 for 79 posts of Taxation Inspectors to the Board. Accordingly, the Board made selection against the aforesaid posts and forwarded its recommendations of 49 candidates only to the State Government on 14th January, 1986. An intimation thereof was sent to the selected candidates also, which included the writ petitioners. The Excise and Taxation Commissioner, Haryana, on receipt of the aforesaid recommendations from the Board, got the character verification/ antecedents as well as the medical examination of the petitioners done.

(4) Certain persons who were not successful in the selection made by the Board, approached this Court by way of C.W.P. No. 833 of 1986 (*Joginder Singh vs. The State of Haryana and others*) for challenging the selection of the present respondents (writ-petitioners). The main challenge in that writ petition was the allocation of high percentage of marks for interview. Since the matter was sub-judice and the very selection of the present respondents (writ-petitioners) was challenged, the State Government did not issue appointment letters to them. Ultimately, the matter was decided by Full Bench of this Court and the writ petition was dismissed on 17th July, 1986. The judgment is now reported in 1986(3) S.L.R. 645. Incidentally it may be mentioned that the State's stand in *Joginder Singh's case* (supra) was that the selection was perfectly valid and they were going to give appointments to the selected candidates. Meanwhile, another writ petition (C.W.P. No. 2839 of 1986) was filed by some persons in which the recommendations of the Board against the revised requisition for 79 posts was challenged. This Court stayed the appointments of the Taxation Inspectors over and above 29 posts for which initially advertisement had been made by the Board. Against that order, some of the present writ-petitioners who were respondents in that case, moved the Supreme Court in C.P. No. 304 of 1986. Ultimately, the Supreme Court disposed of the matter with certain observations, which may not be very relevant for the disposal of these appeals. On 10th March, 1987, the writ petitioners in C.W.P. No. 2839 of 1986 moved a misc. application, on which the following order was passed on the same day:—

“Civil Misc. No. 770 of 1987 allowed as prayed. In the additional affidavit dated March 5, 1987, filed by the petitioners in Civil Misc. No. 365 of 1987, it has been stated that as the Haryana Government has notified the vacancies for fresh recruitment and applications, for that purpose have also been invited, the main petition has become infructuous and may be dismissed as such. Ordered accordingly. No costs.”

(5) Before a fresh advertisement was issued for filling the posts of Taxation Inspectors, the above-said writ petitions i.e. C.W.P. Nos. 4307 of 1987 and 7160 of 1987 were filed, seeking the relief as stated in the opening paragraph of this judgment. These writ petitions were allowed by learned single Judge on 3rd October, 1988. It may be stated here that during the pendency of the writ

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petitions, it was ordered by this Court that 20 posts be kept vacant and not filled during the pendency of the writ petitions in order to give effect to the order that may be made in the writ petitions. Even during the pendency of these letter patent appeals, it was ordered by a Division Bench of this Court on 31st May, 1989 that 20 posts which were kept vacant and not filled up during the pendency of the writ petitions in order to give effect to the order that may be made in the writ petitions, would be now kept vacant during the pendency of the appeals as well.

(6) The learned counsel appearing on behalf of the State has reiterated the contentions which were raised before the learned Single Judge, which are:—

- (i) That there is no statutory or legal right which is conferred on the writ-petitioners by mere selection and they cannot ask for a *Mandamus* to the State Government to issue them appointments.
- (ii) That there is no statutory duty on the State Government to give appointments.
- (iii) That the writ was barred by the principles of *res-judicata* because the writ petitioners were a party in C.W.P. No. 2839 of 1986, which was dismissed as infructuous on 10th March, 1987 and since the State Government had taken stand in that writ petition that it had decided not to appoint selected candidates beyond serial No. 22 out of the list of 49 candidates recommended by the Board, the present writ petitioners could not ask for appointments in the writ petitions.

(7) In support of the above two contentions (i) and (ii) that mere selection does not give right to a candidate, and it is upto the State Government whether to give appointment or not, the appellants' counsel relied upon the judgment of the Supreme Court in *State of Haryana v. Subhash Chander Marvaha and others* (1), *Jatinder Kumar and others v. State of Punjab and others* (2), *Mani Subrat Jain v. State of Haryana* (3), and C.W.P. No. 4000 of 1986 (*Dharam Pal and others v. The State of Haryana*), (4) decided by

(1) 1973 (2) S.L.R. 137.

(2) A.I.R. 1984 S.C. 1850.

(3) A.I.R. 1977 S.C. 276.

(4) C.W.P. No. 4000 of 1986 decided on 27th November, 1987.

this Court on 27th November, 1987. There can be no quarrel with the proposition that mere selection does not confer any right for appointment. But if posts are available and the selection has been made for those posts and even fresh advertisement is issued for the same very posts and some persons are appointed against those posts on *ad-hoc* basis to man those posts, then in such circumstances the State Government must give legal justification for not appointing the candidates who have been duly selected. The learned Single Judge while repelling this point of the State Government had rightly relied on the Supreme Court case reported *Neelima Shangla v. State of Haryana*, (5) wherein it has been held that the State cannot deny appointment to a candidate who has been selected by a competent Authority without any legal justification. The Court can go into the legal justification which may be put forth by the State. In the present case no such justification is forthcoming at all. On the other hand, the State Government having already stated in *Joginder Singh's* case (*supra*) that the selected candidates shall be appointed; the fresh advertisement for these posts having been issued and members of ministerial staff having been appointed on *ad-hoc* basis to man these posts, would go to show that there was no legal justification whatsoever in not appointing the writ petitioners who had been duly selected. The inaction of the State Government in not giving appointment to the selected candidates, under these circumstances, is arbitrary and violative of Articles 14 and 16 of the Constitution of India. The only justification which the learned counsel for the appellants had orally given during the course of arguments is that they had given an undertaking in C.W.P. No. 2839 of 1986 that fresh appointments after advertisement shall be made against these posts. It may be mentioned here that apart from the fact that there is no such undertaking by the State Government and that the writ petition was dismissed as infructuous at the instance of the writ petitioners in that case, as is evident from the order dated 10th March, 1987, quoted above. Such an undertaking, even if it is there, being after the selection of the candidates cannot give legal justification to the State Government for not appointing the writ petitioners who were duly selected. Otherwise, we have not been persuaded at all to take a different view in this matter which has been taken by the learned Single Judge.

(8) As far as the plea of *res judicata* is concerned, this is just to be noted and rejected. Firstly, it will be apparent from the order dated 10th March, 1987 that earlier C.W.P. No. 2839 of 1986

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was not disposed of on merits. Rather on the application of the writ petitioners in that case, the same had been dismissed as infructuous. Apart from that, neither the eligibility nor the entitlement of the present writ petitioners for appointment to the posts of Taxation Inspectors was directly or substantially in issue in the previous writ petition filed against the present writ petitioners, nor the same was decided. Consequently, the writ petitions were not barred by the principle of *res judicata*.

(9) In view of what has been stated above, we find no merit in these letters patent appeals which are dismissed. However, there will be no order as to costs.

(10) Before parting with the judgment, it may be observed that, as indicated above, 20 posts of Taxation Inspectors had been kept vacant for the writ petitioners,—*vide* order of this Court dated 31st May, 1989. They had been selected in the year 1986. Because of the litigation, they have been deprived of their appointments as Taxation Inspectors. The Authorities are now directed to give the appointments to the writ petitioners within a period of one month as Taxation Inspectors.

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P.C.G.

Before : S. S. Sodhi, J.

**ADITYA VESH DISCIPLE OF SWAMI DAYA NAND,—Petitioner.**

*versus*

**BHAJAN LAL AND ANOTHER,—Respondents.**

*Election Petition No. 1 of 1989.*

3rd August, 1990.

*Representation of People Act (43 of 1951)—S. 83—Change of symbol—Election symbol allotted to a political party allotted by mistake to a candidate—Such mistake corrected at instance of Election Commission and fresh symbol allotted to candidate within two days—Election challenged on ground that change in symbol materially affected the result of election—Petition not disclosing cause of action—Absence of material facts and particulars to show prejudice caused by change in symbol—Petition dismissed for not disclosing cause of action.*