R.N.R

Before Ajai Lamba, J.

GAGANDEEP AND ANOTHER, —*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondent*

CWP No. 18325 of 2010

8th October, 2010

Constitution of India, 1950—Arts. 14 and 226—Punjab Scheduled Caste and Backward Class Reservation in Service Act, 2006—S.4(5)—Recruitment to P.C.S. (J.B.)—Petitioners applying under S.C. category included in list of candidates shortlisted for main examination—State classifying sub-classes in S.C. Category—Fresh list of S.C. category—Name of petitioners removed—Challenge thereto—High Court in another case declaring sub-classification violative of Art. 14—Supreme Court staying operation of judgment of High Court—Whether petitioners entitled to be allowed to take main examination—Held, no—Petition dismissed.

Held, that interference in writ jurisdiction is not called for. The respondents have taken into account that the judgment passed by this Court in **Devinder Singh,** *versus* **State of Punjab** has been stayed. In such circumstances, sub-classification was required to be provided, which has been done *vide* impugned publication. The respondents have taken one permissible and possible view of the matter and, accordingly, have adopted a course of action, which the writ Court is not required to interfere with, as the action cannot be said to be without justification, imprudent, without reason or unacceptable.

(Para 13)

Further held, that in matters of recruitment, particularly when the posts at issue are of importance (in this case, the posts of Civil Judges/ Magistrates), there should be finality in determination. The decision should not be allowed to be kept in suspension, in dormancy or postponement. The issue of recruitment cannot be kept open so as to await the final decision of the Hon'ble Supreme Court of India, in the Special Leave Petition. Thus, public interest requires that the recruitment process assumes finality as per the schedule provided.

(Para 14)

PK Garg, Advocate, for the petitioner(s).

AJAI LAMBA, J. (ORAL)

(1) Learned counsel for the petitioners contends that the respondents issued Advertisement No. 1 of 2010, for selection in Punjab Civil Service (Judicial Branch). 85 posts of Punjab Civil Service (Judicial) were to be filled up. 29 posts, with backlog of 12 posts, were reserved for Scheduled Castes candidates. Out of the said reserved posts, 50% posts were reserved for Balmiki/Mazbhi Sikhs, if available. The candidates were required to file the applications on or before 17th June, 2010.

(2) The petitioners belong to Ad-dharmi community, which has been categorized by the Government of Punjab as a Scheduled Caste. The petitioners, under the circumstances, filed applications under 'Scheduled Castes category'. The petitioners took the preliminary examination conducted on 8th August, 2010. The result was declared on 9th August, 2010. Both

the petitioners were included in the list of candidates, who were shown as shortlisted to take the main examination, scheduled to be conducted on 15th October, 2010.

(3) On 10th September, 2010, the Government of Punjab, Department of Home Affairs and Justice, issued instructions for revising the list of reserved categories of Scheduled Castes and Balmiki/Mazbhi Sikhs of Punjab. The said letter was approved by the Selection Committee constituted by the High Court,—*vide* letter dated 28th September, 2010. Resultantly, a fresh list of Scheduled Caste candidates of Punjab and Balmiki/Mazbhi Sikhs category was issued on 5th October, 2010 i.e. Annexure P-3. In the fresh list published by the Selection Committee, the names of the petitioners have been removed, who, in the earlier list, were shown as eligible to take the main examination. The respondents have classified sub-classes in Scheduled Caste category of candidates which, in the contention of the learned counsel for the petitioners, is not sustainable in law.

(4) By virtue of this petition filed under Articles 226/227 of the Constitution of India, a prayer has been made for issuance of a writ in the nature of certiorari quashing selection/merit list dated 5th October, 2010 (Annexure P-30.)

(5) Learned counsel for the petitioners has drawn the attention of the Court towards a Division Bench judgment of this Court rendered in CWP 18290 of 2009 (**Davinder Singh versus State of Punjab and** another) decided on 29th March, 2010, to say that while following the judgment of the Hon'ble Supreme Court of India rendered in **E. N. Chinnaiah** *versus* **State of Andhra Pradesh (1),** it has been held that the provisions of Section 4(5) of the Punjab Scheduled Caste and Backward Class Reservation in Service Act, 2006 (for short 'the Act') are unconstitutional. The Scheduled Castes can be considered as a class as a whole and sub-classification would be violative of Article 14 of the Constitution of India.

(6) After pronouncement of the judgment in **Devinder Singh's case** (*supra*), the State of Punjab filed a Special Leave to Appeal Petition

(1) (2005) 1 S.C.C. 394

No. 23507 of 2010 titled '**State of Punjab and another** *versus* **Devinder Singh**' in the Hon'ble Supreme Court of India. *vide* order dated 30th August, 2010 (Annexure P-5), the operation of the judgment of this Court rendered in **Devinder Singh's case** (*supra*) has been stayed.

(7) Learned counsel for the petitioners contends that in case, subsequently, the judgment rendered by the High Court in **Devinder Singh's case** (*supra*) is upheld by the Hon'ble Supreme Court of India, a valuable right of the petitioners shall be defeated. Under these circumstances, the petitioners may be allowed to take the main examination.

(8) I have considered the contention of the learned counsel for the petitioners.

(9) The fact of the matter is that operation of the judgment rendered by this Court in **Devinder Singh's case** (*supra*) has been stayed. In such circumstances, as on date, the respondents have followed the provisions of Section 4(5) of the Act and, accordingly, have prepared a merit list to shortlist the candidates to take the main examination. In these changed circumstances, the petitioners have not been held to be eligible/ shortlisted to take the main examination.

(10) The selection authorities are required to take a decision considering facts and law, at the point in time when the selection process is undertaken or is active. At the point in time, when the decision has been taken operation of the judgment of this Court rendered in **Devinder Singh's case** (*supra*) has been stayed, thereby reviving the provisions of Section 4(5) of the Act. In law, therefore, the said classification has been made permissible and, accordingly, the impugned list has been published.

(11) The contention of the learned counsel for the petitioners that a valuable right of the petitioners would be defeated in case, at a later stage, the Special Leave Petition filed in the Hon'ble Supreme Court of India, is dismissed, cannot be accepted. The administrative authorities required to take a decision. At this point in time, considering the order of stay passed by the Hon'ble Supreme Court of India, a decision has been taken by the respondents that the selection process be concluded accordingly. It is a possible view taken by the administrative authorities which, in my considered opinion, is not required to be interfered with in extra ordinary writ jurisdiction.

(12) This Court has been asked to judicially review the action of the respondent-authorities. The Hon'ble Supreme Court of India in **Mansukhlal Vithaldas Chauhan** *versus* **State of Gujarat. (2)** has held in the following terms (paras 24 to 28) :

"24. In Vice-Chancellor, Utkal University versus S.K. Ghosh (AIR 1954 SC 217 : 1954 SCR 883), this Court pointed out that in a proceeding for mandamus, the Court cannot sit as a Court of Appeal or substitute its own discretion for that of the authority in which the Statute had vested the discretion. It was pointed out :

"(18). We also think the High Court was wrong on the second point. The learned Judges rightly hold that in a 'mandamus' petition the High Court cannot constitute itself into a Court of appeal from authority against which the appeal is sought, but having said that they went on to do just what they said they could not. The learned Judges appeared to consider that it is not enough to have facts established from which a leakage can legitimately be inferred by reasonable minds but that there must in addition be proof of its quantum and amplitude though they do not indicate what the yard-stick of measurement should be. That is a proposition to which we are not able to assent.

(19) We are not prepared to perpetrate the error into which the learned High Court Judges permitted themselves to be led and examine the facts for ourselves as a Court of appeal but in view of the strictures the High Court has made on the Vice-Chancellor and the Syndicate we are compelled to observe that we do not fell they are justified. The question was one of urgency and the Vice-Chancellor and the members of the Syndicate were well within their rights in exercising their discretion in the way they did. It may be that the matter could have been handled in some other way, as, for example, in the manner the learned Judges indicate, *but it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law.* " (emphasis supplied)

(2) (1997) 7 S.C.C. 622

25. This principle was reiterated in **Tata Cellular** *versus* **Union of India** [(1994)6 SCC 651 : AIR 1996 SC 11), in which it was, *inter alia* laid down that the Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers ? ;
2. committed an error of law;
3. committed, a breach of the rules of natural justice;
4 reached a decision which no reasonable Tribunal would have reached; or
5. abused its powers.

26. In this case, Lord Denning was quoted as saying (SCC pp. 681-82, para 83)

> "Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal,. it may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the Courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The Courts will not themselves embark on a rehearing of the matter. See Healey *versus* Minister of Health [(1955) 1 QB 221) : (1954) 3 All ER 449)."

27 Loard Denning further observed as under : (p. 682)

> "If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account

matters which it ought to take into account, the Court will interfere. See Padfield *versus* Minister of Agriculture, Fisheries and Food (1968 Act 997 : (1968) 1 All ER 694)." (emphasis supplied)

(28) In Sterling Computers Ltd. *versus* M&N Publications Ltd. [(1993) 1 SSC 445 : AIR 1996 SC 51 : (1993) 1 SCR 81], it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process? In this case, the following passage from Professor Wade's Administrative Law was relied upon : (SCC p. 457, para 17).

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness in the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts *ultra vires*. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended" (emphasis supplied)

(13) Considering the law laid down by the Hon'ble Supreme Court of India, as referred to above, I am of the considered opinion that interference in writ jurisdiction is not called for. The respondents have taken into account that the judgment passed by this Court in **Devinder Singh's case** *(supra)* has been stayed. In such circumstances sub-classification was required to be provided, which has been done *vide* impugned publication. The respondents have taken one permissible and possible view of the matter and accordingly, have adopted a course of action, which the writ Court is not required to interfere with, as the action cannot be said to be without justification, imprudent, without reason or unacceptable.

(14) In matters of recruitment, particularly when the posts at issue are of importance (in this case, the posts of Civil Judge/Magistrates), there should be finality in determination. The decision should not be allowed to be kept in suspension, in dormancy or postponement. The issue of recruitment cannot be kept open so as to await the final decision of the Hon'ble Supreme Court of India, in the Special Leave Petition. Thus, public interest requires that the recruitment process assumes finality as per the schedule provided.

(15) In view of the above, the petition is dismissed.

(16) Let a copy of the order be given *dasti* under signatures of the Court Reader.

R.N.R.