NC: 2024:KHC-D:11092-DB
WA No.100105 of 2024

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**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 6TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

WRIT APPEAL NO.100105 OF 2024 (S-RES)

BETWEEN:

1. THE LIFE INSURANCE CORPORATION,
BY ITS MANAGING DIRECTOR,
HEAD OFFICE, MUMBAI-400029.

2. THE ZONAL MANAGER,
SOUTH CENTRAL ZONE,
LIFE INSURANCE CORPORATION,
HYDERABAD-500001.

3. THE SENIOR DIVISIONAL MANAGER,
DIVISIONAL OFFICE,
LIFE INSURANCE CORPORATION,
DHARWAD DIVISION, DHARWAD-580008.

...APPELLANTS

(BY SRI. A.P. MURARI, ADVOCATE)

AND:

SOURABH S/O. SUDHAKAR SARAF,
AGE. 31 YEARS, OCC. NIL,
R/O. C/O. L.V. JOSHI COMPOUND,
NEAR YEMMIKERI, MALAMADDI,
TQ. AND DIST. DHARWAD-580007.

...RESPONDENT

(BY SRI. GIRISH V. BHAT, ADVOCATE)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, SET ASIDE THE IMPUGNED ORDER IN WP NO.102956/2022 (S-RES) DATED 14.02.2024 PASSED BY THE LEARNED SINGLE JUDGE AND TO DISMISS THE W.P.NO.102956/2022 (S-RES) WITH COSTS.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT)

1. The Life Insurance Corporation, a statutory body in appeal for laying a challenge to the learned Single Judge's order dated 14th February 2024, whereby the private respondents' W.P. No.102956 of 2022 (S-RES) having been favored, a direction has been issued to the appellant-Corporation "to appoint the writ petitioner as against the permanent vacancy that has arisen after 14.01.2020 till 14.01.2022" (*sic*). Learned Judge has also prescribed a period of two months for compliance of the order.

2. Learned Senior Panel Counsel Prof. A.P. Murari appearing for the appellants vehemently submits that it has been settled position in service jurisprudence that no Court shall direct appointment, although in suitable cases,

direction may be issued for consideration of the candidature for appointment. This norm having been violated in framing the judgment in challenge, there is first lacuna apparent on its face. Secondly, Prof. Murari adds that the private respondent herein, who was figuring at Sl.No.43 in the EWS List was not within the zone of consideration, and this aspect having been lost sight of, another error is added. Lastly he submits that the enlistment in the select list does not saddle the employer with a duty to make appointment. In support of his submission a decision of Apex Court in ***State of Karnatka Vs. Bharathi***[1] is relied upon. So arguing, he seeks allowing of the appeal, and voiding of the impugned order.

3. Learned counsel appearing for the private respondent *per contra* make submission with equal vehemence in justification of the impugned order and the reasons on which it has been constructed. He contends that the LIC being State under Article 12 of the Constitution is

[1] 2023 SCC Online SC 665

bound by its representations made to the candidates who on that basis participated in the selection process and therefore cannot take a stand contrary to such representation. Finally he adds that the doctrine of legitimate expectation come to the rescue of his client. Finally he also repeals the contention of the appellants that his client is not within the zone of consideration. In support of his submission, he banks upon a decision of the U.S. Supreme Court in ***Vitarelli Vs. Seaton***[2]***.*** So contending, he seeks dismissal of the appeal.

4. Having heard the learned counsel appearing for the parties and having perused the appeal papers, we decline indulgence in the matter, broadly agreeing with the submission made on behalf of the private respondent who happened to be the writ petitioner before the learned Single Judge. Ordinarily, it is true, writ Courts do not direct any employer to make appointment of any candidate who figures in the Selection List, inasmuch as selection *per se*

[2] (1959) 359 US 535

does not give an indefeasible right to appointment. However, that is not a thumb rule and in appropriate cases a direction for appointment can also be given. Even otherwise we may construe the operative portion of the order as a direction to consider the candidature of private respondent for appointment to the vacancy in question. This satisfactorily treats the first contention. More is not necessary to deliberate on this.

5. The second contention of the appellants that the writ petitioner is not within the zone of consideration for appointment does not impress the Court, even in the least. The recruitment notification dated 17.09.2019 a copy whereof is avails at Annexure-A at paragraph No.9 and more particularly at internal page No.7 has the following projection:

> *"Empanlement:*
>
> *Recruitment shall be only against the sanctioned vacancies. For this purpose, a ranking list of candidates for appointment shall be prepared. In order to prepare such ranking list the number of persons to be empanelled shall be 20% above notified vacancies. The validity period of the ranking list shall be maximum of two years from the date of*

> *publication or till next recruitment notification, whichever is earlier. Only after filling up the notified vacancies, the persons who are remaining in the ranking list shall be considered for appointment against permanent vacancies as and when the need arises, within the validity period mentioned above."*

The validity period of the selection list being two years and some of notified vacancies still existing, candidates remaining in the selection list need to be considered for appointment, as rightly contended by learned counsel appearing for the private respondent, who is in the waiting list.

6. It is relevant to reproduce another representation of the appellants *inter alia* made to the candidates of EWS and Unreserved Category. That is at the penultimate and ultimate paragraphs of the proceeding dated 14.01.2020 drawn by the Divisional Office of the LIC itself, at Annexure-C. The same read as under:

> *"Validity period of the empanelment list shall be maximum two years from the date of its publication or till next recruitment notification, whichever is earlier. The candidates in empanelment list will be considered against permanent vacancies as and when need arises, within the validity period mentioned above, only after filling up the vacancies from the main ranking list. It should be noted that no right of permanent appointment will accrue to any*

candidate in emapelled list by virtue of his/her name in empanelled list.

No correspondence will be entertained from the candidates whose names do not appear in the list.

All the candidates appearing in the list including empanelment list, are advised to contract he Manager (P&IR) of the Division at following address, by 16.01.2020 to get the information about further process of recruitment."

7. It is relevant to state that the statutory bodies like the appellant – LIC being an instrumentality of State under Article 12 of the constitution, has to conduct itself as a model employer and not as a private entity acting upon its own *whims and fancies.* When such a public entity holds to the candidates in the fray a particular standard which it would abide by in the recruitment process, it is liable to adhere to the same as a matter of public policy, regardless of the statutory backing therefor. Justice Felix Frankfurter of the U.S. Supreme Court in ***Vitarelli Vs. Seaton*** *supra* has observed as under:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged … Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously

> *observed … This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."*

The said observations have been internalized in our system by Apex Court decision in ***B.S. Minhas Vs. Indian Statistical Institute[3].*** This apart the very holding of the appellants to the qualified section i.e., the candidates in the fray of recruitment creates a legitimate expectation in them because of which they had staked their claim for selection and admittedly got selected. Such an expectation cannot be unjustifiably defeated when vacancies do still obtain. All this come to the rescue of private respondent in this challenge to the impugned order.

8. The next contention that the appellant being at Sl. No.43 in the EWS List is not within the zone of consideration and therefore cannot be granted appointment again is difficult to agree with. Reason for this is not for to seek. The Divisional Office of LIC in its proceeding dated 14.01.2020 at Annexure-C has short listed not only the

[3] AIR 1984 SC 363

candidates but also empanelled EWS candidates in which the private respondent happens to be the sole one. Even in the list of empanelled candidates of Unreserved Category (UR) he figures at Sl.No.1. The said letter at internal page No.2 reads as under:

"Empanelled candidates for SC (in order of merit)

S No.	*Rollno*	*Full Name*	*Category*
1	*2711000477*	*P RAJYA LAKSHMI*	*SC*

Empanelled candidates for ST (in order of merit)

1	*2711005929*	*SUPRITHA R*	*ST*

Empanelled candidates for OBC (in order of merit)

		NIL	

Empanelled candidates for EWS (in order of merit)

1	*2711004273*	*SOURABH SARAF*	*EWS*

Empanelled candidates for UR (in order of merit)

1	*2711006731*	*NEERAJAKSHA HALAPETI*	*UR*
2	*2711006794*	*POOJA MOHAN ANGADI*	*UR*
3	*2711006725*	*ROHAN KULKARNI*	*UR*

Therefore, it cannot be gainfully argued that the private respondent was miles away from the zone of consideration.

9. The last contention of Prof. Murari that mere appearance of name in the Final Selection List does not

obligate the employer to grant appointment, there being no right inhering in the candidates, is ordinarily true. Such a view is supported by the decision of the Apex Court in ***Bharathi*** *supra*, wherein paragraph No.13, reads as under:

> *"13. The position that emerges from the above decisions is that the duty to fill up vacancies form the Additional List (waiting list) can arise only on the basis of a mandatory rule. In the absence of such a mandate, the decision to fill all the vacancies from the Additional List, is left to the wisdom of the State. We will however add that State cannot act arbitrarily and its action will be subject to judicial review."*

However, the above view is not a thumb rule, again. A host of factor enter the fray. The duty to appoint the selected candidate in the waiting list arises because of a peculiar terminology employed by the appellants in their Recruitment Notification followed by what has been stated in the proceedings drawn on 14.01.2020, already referred to above. Added it is not the case of the appellants that there is no dearth of employees in the organization. It is also not their case that the subject vacancies need not be filled at all. An Article 12 - entity cannot be readily heard to say that though vacancies in the permanent posts do

galore, it would not make appointment from the select list. In the realm of public employment, right to be considered for appointment once duly selected, assumes proprietary character and that puts the said right on a higher pedestal, opportunity in public employment being constitutionally guaranteed under Article 16. It hardly needs to be stated that a decision is an authority for the proposition that it lays down in a given fact matrix, and not for all that which logically follows from what has been so laid down vide Lord Halsbury in ***Quinn Vs. Leatham***[4]***.***

10. **Need for undertaking periodical recruitment process:**

(a) There is yet another aspect of great importance which is often lost sight of: People pursue education so that they become qualified *inter alia* for employment, public or private. Ordinarily age restriction though variable is prescribed in the matter of public employment. If cut off age for applying for appointment is 30 years for persons belonging to general category, it may be 35 years or so for

[4] (1901) A.C. 495, 506

SC/ST category. Though the vacancies do occur in regular course because of death, disablement, retirement or removal, no recruitment process is undertaken periodically by the public bodies. Ordinarily, it is the discretion of employer to make appointment or not, to the existing vacancies. However, that discretion as any has to be exercised in accordance with rules of reason and justice, said Lord Halsbury in ***Sharp vs. Wakefield***[5]***.*** When accumulated vacancies are continued indefinitely, that would not only affect the efficacy of public administration but render many qualified & eligible job aspirants age barred. It needs no research to know that there has been heart-burn in the younger generation legitimately aspiring for public employment that the recruitment process is not periodically undertaken. Even those bordering the age-bar too would suffer a great anxiety.

(b) Men are mortal and life is short. There is something called 'aging process' that spares none. This needs to be

[5] [1891 AC 173, 179: 64 LT 180]

kept in view by the authorities that be. A large chunk of educated youths cannot be deprived of the opportunity of public employment, which is constitutionally guaranteed. Learned Author Richard Sobel writes:

> "The right to employment has long been fundamental for citizens. From the early republic to the civil rights era, United States Supreme Court decisions from *Corfield Vs. Coryell (1823) to Butcher Union Co. (1884) and Truax (1915) to Roth (1972)* recognized that taking employment is a foundational citizenship right and is preservative of other rights. Though less recognized than voting rights, the constitutional right to take employment facilities and undergirds other rights to pursue the American dream and happiness in social and political dimensions. The right may not be abridged by burdens to its exercise …[6]".

Article 23 of the Universal Declaration of Human Rights, 1948 provides that we shall have the right to employment, to be free to choose our work, and to be paid a fair salary that allows us to live and support our family. The facile generalization that there is no constitutionally assured right to public employment, is to obscure the issue. We need not pause to consider whether an abstract right of the kind, exists. Suffice it to say that in the ever-evolving *Human*

[6] Citizenship as Foundation of Rights, Cambridge University Press - 2016

Rights Jurisprudence, such a right indisputably does exist, with a corresponding duty to undertake recruitment process resting on the public entities. Time has come to tell that in the realm of public employment, recruitment process has to be undertaken periodically with a fair degree of regularity. This view gains support from ***MALIK MAZHAR SULTAN vs. UTTAR PRADESH PUBLIC SERVICE COMMISSION.***[7] It becomes more imperative when evil of unemployment is plaguing our system. An argument to the contrary, if countenanced, would render a large chunk of eligible youths aspiring for public employment, age-barred. Their curse would fall on all branches of the system. That is not a happy thing to happen, in a Welfare State.

In the above circumstances, no other ground having been urged, this unmeritorious appeal, is liable to be dismissed, and accordingly it is, costs having been made easy.

The time for compliance of the impugned order is refixed as two months.

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[7] (2008) 17 SCC 703.

This Court places on record its deep appreciation for the able research assistance rendered by its official Law Clerk Mr. Raghunandan K.S.

Sd/-
(KRISHNA S.DIXIT)
JUDGE

Sd/-
(VIJAYKUMAR A.PATIL)
JUDGE

Vnp* / CT:VP
LIST NO.: 1 SL NO.: 19