PETITIONER:
STATE OF BIHAR & ORS.

Vs.

RESPONDENT:
MD. KALIMUDDIN & ORS.

DATE OF JUDGMENT: 10/01/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MANOHAR SUJATA V. (J)

CITATION:
1996 AIR 1002 1996 SCC (1) 720
JT 1996 (1) 205 1996 SCALE (1)235

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

AHMADI,CJI

Special leave granted.

The Director, Primary Education, Bihar, issued an advertisement on 7.8.1988 inviting applications for appointment to the post of Assistant Teachers. The respondents applied in response thereto. They were interviewed by a Selection Committee some time in July, 1989 and thereafter a panel of 273 persons including the respondents came to be prepared by the said Selection Committee on 19.1.1991. Out of the candidates so selected, the director approved the names of 98 persons for appointment on 30.1.1991 and hence the remaining candidates remained on the panel described as the waiting list. Out of 98 candidates so appointed, 47 belonged to the general category, 43 to the Scheduled Tribes category, 6 to the Scheduled Castes category and 2 to the handicapped category. Out of 98 persons, only 91 joined. The panel for the remaining candidates was prepared on 26.8.1991, which was described as the revised waiting list. Some of the candidates, who were not appointed, moved the High Court by way of writ petition on 20.1.1992. By an interim order of the High Court, the panel was not allowed to lapse.

The Government Basic School, Assistant Teachers Service Encadrement, Appointment and Transfer Rules, 1975 (hereinafter called 'the Rules') framed under Article 309 of the Constitution provides that every teacher will be appointed on probation for two years. It further provides that the list of candidates prepared for direct appointments will be valid for one year from the date of approval of the project by the Selection Committee. The contention of the learned counsel for the appellants, therefore, is that the High Court's order to continue the list beyond one year runs counter to rules framed in exercise of constitutional powers under Article 309 of the Constitution and hence the same

cannot be allowed to stand. He has further pointed out from the decisions of this Court that a candidate placed on the waiting list has no right to appointment and that in any case the waiting list cannot be a list which would ensure indefinitely till every candidate on the list is appointed. According to him under the provisions of clause (6) of Rule 5, the list of candidates prepared could ensure for one year only from the date of approval of the project by the Selection Committee and on the expiry of that period, which in the instant case expired two days before the writ petition was filed, the list would stand exhausted. As against this, the learned counsel for the respondents contended that there were in all 160 vacancies when the advertisement was issued and selections were made and, therefore, at least that number of candidates should have been appointed after the conclusion of the selection. He urged that although a person on a waiting list may not have a legal right to appointment, the Department cannot arbitrarily refuse to make appointments from the panel prepared for that purpose after raising legitimate expectations. Our attention was drawn to certain correspondence exchanged in this behalf to which it is not necessary to refer as the fact that there were 160 vacancies is not disputed. The question then is whether after going through the process of selecting candidates what was the reason for the Government to refuse appointments to selected candidates, at least to the extent of 160 vacancies? The High Court points out in paragraph 8 of the impugned judgment that against 160 vacancies only 98 persons were given appointments out of them 91 reported for duty and the rest were denied appointment for no valid reason whatsoever.

It was next contended by counsel for the appellant that the High Court had entertained the petition after one year i.e. after the list had lapsed, on the erroneous assumption that the respondents had moved the petition before the expiry of one year. According to him the panel of 273 candidates was prepared on 19.1.1991 and hence its life came to an end on the expiry of one year on 18.1.1992 while the petition was filed two days later on 20.1.1992 and was, therefore, clearly after the list had lapsed. The High Court, contends counsel, was wrong in observing:

> "However, as stated above, the writ petition was filed on 20.1.1992. Thus, even if the period or life of the panel was treated to be one year, it is obvious that the petitioners have come to this Court before expiry of the said period."

The above observation, it was said, illustrates the factual error in calculating the time factor.

The fact that the empanelment was done in pursuance of the advertisement issued and selections made as per the prevailing legal position, is not in question. So also it is unexceptionable that merely because a candidate's name is included in the panel does not confer any right to be appointed. See Shankarsan Dash v. Union of India (1991) 2 SCR 567. The question, however, is, if the posts are not abolished or reduced and the vacancies need to be filled up, can it lie in the mouth of Government to say that since a new reservation policy has been adopted, the rules would be amended and appointments would be made thereafter consistent with the revised rules and new policy? The advertisement was issued in 1988. The Memo No.22 dated 19.1.1991 shows that the panel was received in the office of the Regional Director on 18.1.1991. This memo says that the vacancies in

matric trained category in the division were 160. It further desired that the list may be approved at an early date so that long standing vacancies may be filled up. It also points to the paucity of matric trained teachers in various schools. The subsequent letter of 5.6.1991 directs that a panel of candidates of different categories of reservation in order of merit be prepared as per the modified rules of reservation and the same be sent for approval. It further says that unless this is done, no recruitment shall take place. In response to the said letter the Regional Dy.Director of Education informed the Director (Primary Education), vide letter dated 26.8.1991, that he had already submitted the approved panel in the secretarial for appointment of teachers under the amended rules of reservation. This is how the position stood when the writ petition was filed on 20.1.1992.

From the aforementioned facts it is clear that the Selection Committee had prepared the panel or list on 19.1.1991. The first batch of 98 appointments was made therefrom. The reservation rules were then modified. The second batch as per the said modified rules was sent later on 5.6.1991. But the panel was the one prepared on 19.1.1991. Part III of the Rules provides for 'Appointment and Promotion'. Clause (6) thereof reads:

> "Every teacher will be appointed on probation for two years. The list of candidates prepared for direct appointment will be valid for the one year from the date of approval of the project by the Selection Committee."

The life or duration of the panel or list was, therefore, of one year. It, therefore, expired on 18.1.1992 by the force of the above-quoted rule. The Rule having been framed under Article 309 of the Constitution, therefore, had statutory force. The appellant-State was, therefore, right in contending that continuance of the panel or list beyond one year would be a violation of the statutory rule and, therefore, illegal. Even the court could not stop it from lapsing in exercise of judicial discretion unless its constitutional validity was questioned. There is no doubt that the petition was filed after the damage was done, i.e. after expiry of the period of one year. This contention of the State is unexceptionable.

Next, it must be noted that the State Government had by the letter of 27.5.1993 desired to revise its reservation policy and, therefore, had placed a general embargo against recruitment from old waiting lists. It was also stated that rules as per the modified policy are in the process of being formed and further appointments will be as per the revised rules. However, in the present case as pointed out earlier the list had expired long back and had ceased to be operational. The State Government was entitled in law to change its reservation policy in consistent with the constitution. If it was considering a change in the reservation policy of the State, it was not obliged to fill up the existing vacancies.

As held in the case of Shankarsan Dash even if Vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed, unless the relevant rules indicate to the contrary. It is indeed expected of the State to act bona fide and for valid reasons in refusing to make the appointments after the selection process has been gone through. The High Court has, however, come to the conclusion that the State had acted arbitrarily

and irrationally in refusing to make appointments from the select list. We find it difficult to subscribe to this view. In the first place, as pointed out earlier, the select list had lapsed on the expiry of one year. Secondly, the process of appointment was halted as the reservation policy was intended to be amended or modified. The High Court, however, approached the matter thus:

> "The panel thus does not appear to be violative of the reservation policy of the State. So far as the proposed rules of recruitment are concerned, the details of which have not been furnished from which it could be gathered as to whether any substantial or drastic deviation is sought to be made from the existing rules regarding the procedure of recruitment except that training is no longer to be a necessary qualification or condition of eligibility I do not want to go into the correctness of the policy of the State dispensing with the necessity of the training as a condition of eligibility. However, I have serious doubt whether appointment of untrained teachers in preference to the trained ones who are already in panel and available for appointment can be said to be in public interest."

It is on this line of reasoning that the High Court came to the conclusion that the action of the State Government was arbitrary and irrational. Now, as held in Shankarsan Dash's case, a decision to adopt a different policy with respect to the reserved vacancies can be a justifiable cause for halting further appointments from the panel or select list and such an action cannot be condemned on grounds of arbitrariness and/or illegal discrimination. Whether doing away with the training is in public interest or otherwise would depend on the facts and circumstances of each case and that would be a matter to be put in issue if the rules in that behalf are sought to be challenged on the ground of unreasonableness or discrimination. The High Court has said in terms that it does not want to go into the correctness of that policy, yet, expressing a 'serious doubt' it has virtually condemned the policy. In the instant case the Government was desirous of amending or modifying the reservation policy and, therefore, it took a decision to suspend all further appointments from existing panels or select lists. The ultimate outcome of that exercise is not fully brought out on record but it is obvious that the State Government was not acting mala fide and merely with a view to denying appointment to the respondents herein. Merely because notwithstanding the availability of trained personnel the State Government was inclined to change the rules in that behalf does not appear to be a valid ground for contending that the Government had acled mala fide. Without knowing the nature of change it was not open to the High Court to anticipate the policy and brand it as unreasonable.

For the above reasons we are of the opinion that even if it is assumed that the panel or select list had not expired at the date of filing of the writ petition, the refusal on the part of the Government to make appointments from the panel or select list, vide letter dated 27.5.1993, could not be condemned as arbitrary, irrational and or mala

fide. We, therefore, reverse the view taken by the High Court, set it aside and hold that the original Writ Petition was liable to be dismissed and we hereby dismiss the same. No order as to costs.