

Select list- Appointments beyond the posts advertised- validity

It has been held recently by the Division Bench of Hon'ble H.P. High Court in CWP No. 1079 of 2012 titled as Kuldeep Sharma vs. The Hon'ble High Court of Himachal Pradesh and CWP No. 2508 of 2012 Shweta Dhingra vs. State of Himachal Pradesh, decided on 19.7.2012, that an authority cannot make any selection/appointment beyond the number of posts advertised, even if there were a larger number of posts available than those advertised.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Per Deepak Gupta, J:

"9. In **Malik Mazhar Sultan(3) and another vs. Uttar Pradesh Public Service Commission and others (2008) 17 SCC 703** the apex Court not only laid down the guidelines and the time frame for holding the test but clearly laid down that all appointment letters must be issued by the competent authority by 1st December and the last date of joining is 2nd January of the falling year. In para 14 it has been further ordered that the select list prepared for all categories of officials shall be valid till the next select list is published.

10. However, in **Rakhi Ray and others vs. High Court of Delhi and others (2010) 2 SCC 637** the Apex Court explained the decision in Malik Mazhar Sultan's case and held that mere inclusion of the name in the select list/panel does not create an indefeasible right of appointment of a candidate. In Rakhi Ray's case the Apex Court decided various issues which are relevant for this case also. After discussing the entire law the Apex Court

held that in case advertisement was not in accordance with the actual position then the appellant should have challenged the advertisement itself and could not later be permitted to challenge the same. Reference may be made to Paras 11, 21 and 22 of the judgment wherein it was held as follows:-

“11. In Mukul Saikia & Ors. v. State of Assam & Ors. AIR 2009 SC 747, this Court dealt with a similar issue and held that "if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised". The Select List "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of Select List had expired as soon as the number of posts advertised are filled up, therefore, the appointments beyond the number of posts advertised would amount to filling up future vacancies" and said course is impermissible in law.

XXX.. XXX... XXX...

21. The appointments had to be made in view of the provisions of the Delhi Higher Judicial Service Rules, 1970. The said rules provide for advertisement of the vacancies after being determined. The rules further provide for implementation of reservation policies in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes. As the reservation policy is to be implemented, a number of vacancies to be filled up is to be determined, otherwise it would not be possible to implement the reservation policy at all. Thus, in view of the above, the question of taking into consideration the anticipated vacancies, as per the judgment in Malik Mazhar Sultan (supra), which had not been determined in view of the existing statutory rules could not arise.

22. In view of above, we do not find any force in the submissions that the High Court could have filled vacancies over and above the vacancies advertised on 19.5.2007, as per the directions issued by this Court in Malik Mazhar Sultan's case (supra). More so, no explanation could be furnished by Shri Ranjit Kumar, learned senior counsel for

the appellants as to why the appellants could not challenge the advertisement itself, if it was not in conformity with the directions issued by this court in the said case.”

11. The Apex Court further held as follows:-

“24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment.”

12. In Arup Das and others vs. State of Assam and others (2012) 5 SCC 559, the Apex Court clearly held that it was impermissible to fill in posts in excess of those advertised. It would be pertinent to refer the following observations of the Apex Court, which read as follows:-

“17. It is well established that an authority cannot make any selection/appointment beyond the number of posts advertised, even if there were a larger number of posts available than those advertised. The principle behind the said decision is that if that was allowed to be done, such action would be entirely arbitrary and violative of Articles 14 and 16 of the Constitution, since other candidates who had chosen not to apply for the vacant posts which were being sought to be filled, could have also applied if they had known that the other vacancies would also be under consideration for being filled up.”
