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K. JAYAMOHAN

v.

STATE OF KERALA AND ANR.

APRIL 25, 1997

B

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Service Law :*

C

*Appointment—Candidate interviewed and kept in select list—But not appointed—High Court holding that he acquired no absolute right to appointment and it is not incumbent upon the authorities to appoint him—On appeal held, merely because a candidate is selected and kept in waiting list, he does not acquire any absolute right for appointment—Even if there is a vacancy it is not incumbent upon the Government to fill up the same—Hence no interference called for.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3384 of 1997.

From the Judgment and Order dated 25.7.96 of the Kerala High Court in W.A. No. 997 of 1996.

E

T.L.V. Iyer, Ajit Pudussery for the Appellant.

Ms. Malini Poduval and N. Sudhakaran for the Respondents.

The following Order of the Court was delivered :

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Leave granted. We have heard learned counsel for the parties.

This appeal by special leave arises from the judgment of the High Court of Kerala, made on 25.7.1996 in Writ Appeal No. 997/96.

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The admitted facts are the two posts of Lecturers in Physical Education were advertised for recruitment in the year 1988 through the Public Service Commission. Written Test and oral interviews were conducted in the year 1992 and the Select List, a long list of 10 candidates was prepared by the Public Service Commission; the appellant stood at No. 10 in the said list. Two other candidates selected have already been appointed. Since

H there often exist some vacancies, the appellant, one of the selected can-

didates, made a representation to appoint him. That was rejected on the ground that pursuant to the amendment to the Kerala Collegiate Education Service Special Rules, 1994 which came into force with retrospective effect from March 13, 1990, higher qualifications were prescribed and since the appellant did not fulfil the requisite qualification, he was not eligible and could not be appointed. When the appellant filed writ petition, the single Judge and on appeal the Division Bench of the High Court held that merely because he was kept in the select list, he acquired no absolute right to appointment and it is not incumbent upon the authorities to appoint him. Thus, this appeal by special leave.

Shri T.L.V. Iyer, learned senior counsel for the appellant, whether when asked to find out the selection is made only to two posts or more, points out from page No. 2 of the judgment of the High Court that the advertisement is only for two posts. In view of the fact that the advertisement was restricted to the existing vacancies, namely, two posts, it is not incumbent upon the authorities to appoint the candidate from the waiting list. He has no right to appointment. It is contended that such an appointment is violative of Articles 14 and 16(1) of the Constitution of India as the candidates eligible when selected are denied of the opportunity for applying for selection and get their *rights tested*.

It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non- appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference.

The appeal is accordingly dismissed. No costs.

G.N.

Appeal dismissed. G