

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4721 of 2009**

- Nitin Jain, S/o Shri Gulabchand Jain, Aged about 33 years, R/o Thakur Road, In front of Vinod Readymade, Jagdalpur, Dist.: Bastar (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through : The Secretary, Department of Law, Mantralaya, D.K.S. Bhawan, Raipur (CG)
2. The High Court of Chhattisgarh, Through: The Registrar General, Bilaspur (CG)

---- Respondents

For Petitioner : Shri Vinod Deshmukh, Advocate.
For Respondent No.1 : Shri Shashank Thakur, Govt. Advocate.
For Respondent No.2 : Shri Ashish Shrivastava, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****23/06/2015**

1. The petitioner is claiming appointment on the post of Civil Judge (Entry Level) for which examination was held in the year 2008. In the result declared on 8.9.2008, the petitioner was placed at S. No.1 in the wait listed candidates of open category. The appointment order was issued to one Gyan Prakash Tiwari, who was placed at S. No.22 in the merit list on 8.12.2008. The said candidate informed the State Government and the High Court on 26.12.2008 that since he has been selected in the UP Subordinate Judicial Services, his home State, he is not inclined to

join the services in the State of Chhattisgarh.

2. Soon after becoming aware that one candidate from the merit list has not joined, the petitioner submitted a representation before the Registrar General of the High Court of Chhattisgarh on 21.1.2009 and before the Secretary of the Law and Legislative Affairs Department of the State Government on 22.1.2009 with further representation before the Secretary on 11.8.2009 claiming consideration of his case for appointment on the strength of his placement at S. No.1 in the waiting list. However, the petitioner was not informed about the decision taken on his representation. Therefore, the present writ petition.
3. Shri Deshmukh, learned counsel for the petitioner would strenuously urge that the petitioner made representations before the High Court and the State Government on 21.1.2009 and 22.1.2009 respectively and thereafter has preferred this writ petition before the lapse of one year from the date of issuance of waiting list. Therefore, the petitioner is entitled for a direction to the respondents to consider his case for appointment. He would put forth that non consideration of his case is arbitrary in view of the law laid down by the Supreme Court in **Bharat Sanchar Nigam Limited and others Vs. Abhishek Shukla and another¹**, **State of J & K & Ors. Vs. Sat Pal²**, **State of Orissa and another Vs. Rajkishore Nanda and others³**, **Rakhi Ray and others Vs. High Court of Delhi and others⁴**, **Union of India and another Vs. Pradip Kumar Kedia and others⁵** and the judgment of M.P. High Court in **Kanchan Saxena Vs. State of M.P. and another⁶**.
4. Shri Shrivastava, learned counsel for respondent No.2/High Court and Shri Thakur, learned Govt. Advocate for the State would submit that recruitment to the post of Civil Judge (Entry Level) is governed by the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of

1 (2009) 5 SCC 368

2 AIR 2013 SC 1258

3 (2010) 6 SCC 777

4 (2010) 2 SCC 637

5 (2012) 1 SCC 432

6 2006 (2) MPHT 447

Service) Rules, 2006 (henceforth 'the Rules, 2006') whereunder the appointing authority is not under obligation to mandatorily appoint a person from the wait list whenever any advertised vacancies remain unfilled during the life time of the waiting list. They would submit that the petitioner does not have any enforceable right either to seek appointment or even for consideration of his case, in the absence of any mandatory provision under the rules in this regard.

5. Shri Shrivastava would refer to the judgment of the Supreme Court in the matter of **Raj Rishi Mehra and others Vs. State of Punjab and another**⁷. He would further urge that since after the examination conducted in the year 2008, the available vacancies have been advertised in the successive examinations conducted in the year 2011 and 2012, therefore, the petitioner is not entitled for any relief.
6. The subject recruitment is governed by the Rules, 2006 wherein Rule 5 provides for method of recruitment and appointment. The said rule is reproduced hereunder:-

“5. Method of Recruitment and Appointment -

(1) All appointments to category (a) of sub-rule (1) of Rule 3 shall be made by the Governor by direct recruitment in accordance with the recommendations of the Committee on selection:

Provided that the procedure and curriculum for holding examination for the selection of candidates shall be prescribed by the Committee in consultation with the High Court, as per Schedule-I:

(2) Appointments to categories sub-rule (2) of Rule 3 shall be made by the High Court by selection and promotion amongst Civil Judges on the basis of merit-cum-seniority:

The number of vacancies and the officers to be brought under the zone of consideration for promotion shall be in the ratio 1: 3 and the suitability of the

⁷ (2013) 12 SCC 243

officers shall be tested in accordance with norms prescribed in Schedule-II.

5(A) Time Schedule for filling up vacancies & Recruitment – The projected vacancies and the time schedule for filling up the vacancies shall be in accordance with the order dated 04-01-2007 passed by the Hon'ble Supreme Court in Civil Appeal No.1867 of 2006 (Malik Mazhar Sultan And Anr. Versus U.P. Public Service Commission & Ors.).”

7. The word 'Committee' has been defined under Section 2(b) to mean the Committee for recruitment consisting of three Judges of the High Court nominated by the Chief Justice. Decision of the Committee about eligibility of a candidate has been made final under Rule 9. At the end of selection process, the Committee is enjoined to prepare a list as provided under Rule 10, which is reproduced hereunder:-

“10. List of Candidates Recommended by the Committee.-

(1) The Committee shall forward to the Government a list arranged in order of merit of the candidates qualified for the post. The list shall be published for general information.

(2) Subject to the provisions of these Rules and Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961, candidates shall be considered for appointment to the available vacancies in the order in which their names appear in the list.”

8. Apart from the above quoted Rule-10, there is no provision in the Rules which mandates and obligates the Committee to prepare a waiting list. However, a close reading of Rule 10(2) would make it explicit that there is no reference to the word 'waiting list' in the said provision.
9. Admittedly, the petitioner was not included in the main select list but was placed at S. No.1 in the waiting list prepared by the recruiting agency. There is no provision either as to the period during which waiting list prepared by the Committee would remain operative.

Therefore, the question as to during which period the list would remain valid has no answer under the Rules. In the circumstances, it can be construed as if the life of the waiting list prepared by the Committee, even though there is no express provision for preparation of the waiting list, is co-terminus with the life of the select list. If the matter is considered strictly in terms of the language of Rule-10, once the select list is exhausted by offering appointment to all the selected candidates, the same gets exhausted and preparation of waiting list without there being any express provision under the Rules for preparation and giving life tenure to the same, is superfluous and the waiting list is not workable or executable.

10. In **Raj Rishi Mehra** (Supra), the Supreme Court has held in paragraphs-14 & 15 thus:-

“14. It is true that in response to the advertisement issued in 2007, the State Government and the High Court made appointments from the waiting list against the posts which were made available by dereserving the unfilled posts of reserved categories but that decision cannot be cited as a binding precedent because the rules regulating the recruitment do not impose a duty on the appointing authority to make appointment from the waiting list. That apart, what is of immense significance is that the High Court has taken a conscious decision not to entertain the request made by the State Government for filling up the unfilled reserved posts by appointing the candidates of general category because fresh advertisement had already been issued.

15. The question whether the candidates whose names are included in the waiting list are entitled to be appointed against the unfilled posts as of right is no longer res integra and must be answered in negative in view of the judgments of this Court in *Union of India v. Ishwar Singh Khatri*⁸, *Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat*⁹, *State of Bihar v. Secretariat Asstt. Successful Examinees Union*

8 1992 Supp. (3) SCC 84

9 1994 Supp. (2) SCC 591

1986¹⁰ Prem Singh v. Haryana SEB¹¹, Ashok Kumar v. Banking Service Recruitment Board¹², Surinder Singh v. State of Punjab¹³, Madan Lal v. State of J&K¹⁴, Kamlesh Kumar Sharma v. Yogesh Kumar Gupta¹⁵, State of J&K v. Sanjeev Kumar¹⁶, State of U.P. v. Rajkumar Sharma¹⁷, Ram Avtar Patwari v. State of Haryana¹⁸ and Rakhi Ray (Supra).”

11. In further paragraphs, the Supreme Court considered its earlier decisions in the matters of **Surinder Singh, Rakhi Ray (Supra), State of Punjab Vs. Raghbir Chand Sharma¹⁹ and Mukul Saikia Vs. State of Assam²⁰** to conclude in paragraph-20 thus:-

“20. In view of the abovenoted legal position, the decision taken by the High Court not to enter the petitioners’ name in the register to facilitate their appointment against the dereserved posts or the posts vacated by the general category candidates cannot be faulted, more so because the State Government had already approved fresh recruitment and the Commission issued advertisement for 71 posts including 6 reserved category posts. In the result, the writ petitions are dismissed.”

(Emphasis supplied)

12. In the rules with which this Court is faced in the present case also, there is no specific provision mandating the Committee or appointing authority to exhaust the waiting list within any particular length of time. Similarly, there is no corresponding right in favour of the wait listed candidate to claim appointment only on the strength of inclusion of his name in the waiting list. The set of Rules is thus squarely covered by the observations made by the Supreme Court in the matter of **Raj Rishi**

10 (1994) 1 SCC 126

11 (1996) 4 SCC 319

12 (1996) 1 SCC 283

13 (1997) 8 SCC 488

14 (1995) 3 SCC 486

15 (1998) 3 SCC 45

16 (2005) 4 SCC 148

17 (2006) 3 SCC 330

18 (2007) 10 SCC 94

19 (2002) 1 SCC 113

20 (2009) 1 SCC 386

Mehra (Supra).

13. There is one more aspect which needs attention of the Court is that the subject examination was conducted in the year 2008. Although the petition was filed in the year 2009 itself, during the pendency of this writ petition, 3 more successive examinations have been conducted in the year 2011, 2012 and 2014. Thus the vacancies against which the petitioner was claiming relief were re-advertised in the subsequent selection and have now been filled up. Thus, in view of the lapse of time and subsequent development also, the petitioner is not entitled for any relief.

14. For the foregoing, the writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

Barve