

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.16641 of 1994

DATE OF DECISION: 01.04.2015

Narinder Singh Yadav

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Amit Jain, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

Mr. D.S. Matya, Advocate for
Mr. S.S. Dinarpur, Advocate
for respondent No.5.

DAYA CHAUDHARY, J.

Petitioner-Narinder Singh Yadav applied for the post of Inspector, Wild Life vide advertisement dated 7.4.1992. He was selected and his name was recommended at Sr. No. 3 in merit. An intimation was sent to him regarding the recommendation. A letter was also issued to Chief Medical Officer at Mohindergarh with a copy to the petitioner to get himself medically examined. In pursuance thereof, the petitioner got himself medically examined and was found medically fit but he was not allowed to join his duties. Many representations were made by him praying

that he be allowed to join his duties as per selection but to no effect.

The present petition has been filed for issuance of a writ in the nature of mandamus directing respondents No.1 and 2 to appoint the petitioner to the post of Inspector, Wild Life on the basis of recommendation made by Subordinate Services Selection Board, Haryana.

Learned counsel for the petitioner contends that the petitioner was found eligible and was selected by Subordinate Services Selection Board, Haryana. His name was recommended for appointment and thereafter the medical examination was conducted and character antecedents were also verified but still he was not appointed. The posts were available at that time and at present also but still the petitioner has not been appointed. Learned counsel further contends that notice of motion was issued while recording the contention of the petitioner that junior in merit to the petitioner has been appointed, whereas, petitioner has not been given appointment. A large number of adhoc employees were working on the post of Inspectors and there was no justification to allow the adhoc employees to hold the posts when selected candidates like the petitioner were available. Learned counsel also contends that on 30.8.2001 a detailed order was passed after hearing counsel for the respondent as well, wherein, it has been mentioned that posts were available and even as per advertisement the number of posts were likely to be increased and decreased. The respondent-State was directed to file an additional affidavit to show as to who was appointed against the vacancy, which became available due to retirement of one Rajpal Singh and whether that appointment was permanent or on adhoc basis. In response to said directions, a detailed affidavit was filed showing that the posts were still available. It is also the contention of learned counsel that the petition was filed well in time but the same was admitted and delay in filling up the

vacancy cannot be considered as there is no fault of the petitioner in case, the petition is admitted. Learned counsel has also relied upon the Division Bench judgment of this Court in **Ms. Ajay Walia Vs. State of Haryana** 1997 (1) SCT 5, in support of his contentions, wherein, under similar circumstances it was held that the petition cannot be dismissed only on the ground of delay and laches when the petition was filed well in time. In that case the selection was made in the year 1982 and writ petition was filed in the year 1995, which was allowed by holding that delay is not relevant.

Learned counsel for the State submits that there were total 14 posts of Inspector Wild Life in the Department, out of which four posts were to be filled by direct recruitment and remaining ten were for promotee candidates. Some employees were promoted as stop gap arrangement on adhoc basis till the appointment of regular candidates who were to be selected by Subordinate Service Selection Board, Haryana. A request was sent to the Subordinate Service Selection Board, Haryana for filling up of three posts of Inspector Wild Life and accordingly the candidates were recommended. During that period the employees who were working on adhoc basis approached this Court and vide orders dated 2.8.1993 and 9.6.1994, stay was granted restraining reversion of two junior inspectors. One Inspector, namely, Rajpal retired on 30.11.1993 and the candidate who was selected at Sr. No. 1 in the merit list prepared by Subordinate Services Selection Board was appointed on 28.7.1994. Thereafter second candidate in the merit list also joined on 12.8.1994. The fourth candidate in the merit list was an ex-servicemen which was a reserve category. He also approached this Court for his appointment and interim order was granted in his favour. No post fell vacant within one year from the date of selection. It has wrongly been mentioned that the post became available due to retirement of one Inspector, namely, Rajpal which has not been

offered to the petitioner. Learned State counsel also submits that the list cannot be allowed to remain valid for a longer period as in the present case the selection took place in the month of November, 1993. Even in case the posts are available, the claim of the petitioner cannot be considered for appointment now as he has no right to claim appointment as a matter of right after expiry of long period as the maximum period for which the list could remain valid for consideration is one year. It is also the argument of learned State counsel that judgment relied upon by the learned counsel for the petitioner is not applicable keeping in view the facts of the case.

Heard the arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also perused the documents available on the file.

Admittedly, applications were invited for filling up three posts of Wild Life Inspectors in Wild Life Department. Out of the said three posts one post was kept reserved for ex-servicemen and two were meant for general category. It was also mentioned in the advertisement that number of posts mentioned in the advertisement are liable to be increased and decreased. Three candidates, namely, N.P. Bhardwaj, Rajinder Prasad and Narinder Singh Yadav (the present petitioner) belonging to General category were recommended for appointment by the Subordinate Service Selection Board at Sr. Nos. 1 to 3, respectively. Candidates, namely, Satya Pal Beniwal and Rajpal Singh were recommended against the category of ex-servicemen at Sr. No.4 and 5, respectively. Three more candidates, namely, Naresh Kumar Narwal, Anil Kumar and Om Parkash were also recommended at Sr. Nos.6,7 and 8, respectively in general category. Candidates, namely, NP Bhardwaj and Rajinder Prasad were recommended at Sr. No. 1 and 2. The name of the petitioner was at Sr. No.3 in merit, whereas, only two posts of general category were advertised.

Resultantly, first two candidates in the merit list were appointed. The petitioner has filed this petition claiming that as he was at Sr. No. 3 of the merit list and his name was also recommended but inspite of available vacancies, he was not appointed. Even some of the candidates who were working on adhoc basis were allowed to continue, whereas, the candidates regularly selected like the petitioner were not appointed. The stand of the respondent in the written statement was that three posts were advertised, out of which, two posts were meant for general category and one was reserved for ex-servicemen. The candidates were to be appointed as per the merit list and accordingly they were appointed. Learned State counsel submits that the petitioner was intimated that in case the candidates at Sr. Nos.1 and 2 in the merit list did not join then the petitioner will be informed. Learned State counsel also submits that some of the candidates who were working on adhoc basis were allowed to continue because of the interim order granted by this Court. It is also the contention of learned counsel for the State that as per instructions issued by State vide letter dated 20.1.1988, the validity of selection for appointment is only for one year and the same has expired. The claim of the petitioner cannot be considered after a period beyond one year inspite of the fact that the posts of general category are available.

In the present case, the posts were advertised on 7.4.1992 and only two posts of General Category were there against which two candidates have already been appointed. As per merit, the name of the petitioner was at Sr. No.3, which shows that the petitioner was in the waiting list at Sr. No.1. The right should have been accured to the petitioner in case any of the selected candidate did not join but both the candidates of general category have joined. Moreso, no interim order with regard to keeping any post vacant was passed. The appointment cannot be

claimed as a matter of right after a long period of more than 21 years. The judgment relied upon by the learned counsel for the petitioner is not applicable keeping in view the facts of the case as the petitioner was not selected against the posts advertised. He was kept in waiting list and the two candidates who were selected had already joined.

Accordingly, I do not find any merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

April 01, 2015
pooja

(DAYA CHAUDHARY)
JUDGE