

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 18135 of 2015
Date of decision: 22.09.2015

Mohit Chhabra and others

....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. H.C. Arora, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

The present petition has been filed for issuance of directions to respondents to notify the remaining select list also against 524 vacant posts of clerks out of the total 1836 such posts. The petitioners thus claim a right of appointment on the ground that they come within the remaining 524 vacant posts apart from a direction that 170 posts of clerks also be filled up against the candidature of the concerned persons who had acquired the requisite qualification from universities situated in other States through distant mode and whose candidature has been cancelled.

The claim is primarily based upon the 644 vacant posts which could not be filled up pertaining to advertisement no. 4 of 2011 in which 855 posts of clerks had been advertised but on account of the provision of passing the type test, only 211 could qualify. The said issue came up before this Court and the writ petitions were dismissed by the Single Judge on 24.05.2013 on the ground that once the candidate had failed to pass the typing test, his candidature was liable to be rejected and the challenge to the

procedure could not be held out subsequently. The said judgment was upheld in appeal in LPA No. 1581 of 2013 decided on 19.05.2014. In the meantime, the respondents, vide advertisement no. 2 of 2013, advertised 1192 posts in May/June, 2013 against which, as per the case of the petitioner himself, 1317 persons already stand selected. The petitioner now seeks relief of 644 seats, which could not be filled up in the advertisement no. 4 of 2011 to be adjusted in addition to the 1192 seats advertised vide the subsequent advertisement and, therefore, wants a total number of 1836 posts to be filled up.

The same is legally not permissible as per the settled principles. The department is not to fill up posts beyond the ones advertised as it would take away the legal rights of a large number of candidates and in such circumstances, no writ of mandamus can be issued against the settled principle of law. Any posts which have fallen vacant on account of candidates not qualifying will always be filled up by subsequent advertisement and the petitioners have no vested right as such to claim any appointment. Reference can be safely made to the judgment of the Apex Court in ***Arup Das and others vs. State of Assam and others, 2012 (5) SCC 559*** wherein, the said proposition was laid down that the authority cannot make selection and appointment beyond the posts advertised even if there was a large number of posts available than advertised. The relevant observations read thus:-

“10. Having carefully considered the submissions made on behalf of the Petitioners, we are unable to accept Mr. Gupta’s submissions, since the issue raised by him is no longer res integra and has been well settled by a series of decisions of this Court after the

decision in Prem Singh's case (supra). Even in Prem Singh's case, which has been strongly relied upon by Mr. Gupta, the proposition sought to be advanced by him does not find support. 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 14 would also be under consideration for being filled up. In fact, in the decision rendered in Ishwar Singh Khatri's case (supra) which was referred to by the High Court, this Court while considering the preparation of panel of 1492 selected candidates as against the 654 actual vacancies notified, recorded the fact that after filling up the notified number of vacancies from the panel, no further appointments were made therefrom and instead fresh advertisement was issued for further appointment. Since a promise had been made in the minutes of the meeting of the Selection Board that the panel would be valid till all the candidates were offered appointments, this Court held that the Selection Board had taken into consideration anticipated vacancies while preparing the panel. It is on such basis that this Court had observed that it had to be concluded that the Selection Board had prepared the panels containing 1492 candidates, as against the then available vacancies, and, accordingly, the 15 selected candidates had a right to get appointment. It is in such circumstances that

further appointments from the published panel of 1492 candidates, as directed by the Tribunal, were upheld.

11. In a recent decision rendered by this Court in State of U.P. Vs. Raj Kumar Sharma [(2006) 3 SCC 330], this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the Select List does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake.”

Accordingly, the present writ petition is dismissed.

22.09.2015
shivani

(G.S. SANDHAWALIA)
JUDGE