

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

CWP No.227 of 2014(O&M)
Date of decision: **July 02, 2015**

Berojgar Linemen Union (Punjab) and others ---Petitioners

Versus

Punjab State Power Corp. Ltd. and another ---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

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

Mr.Girish Agnihotri, Sr.Advocate assisted by
Mr.Arvind Sethi, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

By filing this writ petition, the petitioners have sought quashing of the public notice dated 20.12.2013 (Annexure P-6), inviting applications for appointment of 1000 linemen on consolidated salary of Rs.10,000/- per month in the respondent – Punjab State Power Corporation Limited. It has also been prayed that instead of preparing a fresh merit list on the basis of the fresh applications invited through public notice Annexure P-6, the respondent – Corporation be directed to issue appointment letters to the next meritorious 1000 persons on the basis of the merit list prepared in pursuance of public notice issued in January, 2011 vide CRA 267/11 (Annexure P-1/1).

It is averred that petitioner No.1 – Union is a union of unemployed linemen i.e. the persons who have passed two years

apprenticeship from PSPCL/PSTCL (formerly PSEB) and comprises a large number of those persons, who are eligible for appointment as linemen in the respondent – corporation and who had submitted applications in response to the public notice January, 2011 Annexure P-1/1 . Petitioners No.2 to 5 are those persons, who had submitted their applications in response to the public notice Annexure P-1/1, and who would be rendered overage in case the respondents continue with the recruitment process initiated by them through public notice dated 20.12.2013 (Annexure P-6).

The case, as set up by the petitioners, is that in January, 2011, the respondent – Corporation issued advertisement/public notice inviting applications for 5000 tentative posts of linemen on contract basis at a consolidated salary of Rs.10,000/- per month. It was mentioned in the said notice that the candidates who have completed Apprenticeship Training in the trade of Lineman in PSPCL/PSTCL and have passed National Apprenticeship Certificate for the same, are eligible.

Around the same time, **CWP No.4881 of 2011** titled **“Ludhiana Hand Tools Association vs. State of Punjab and others”** was filed challenging this recruitment of 5000 Linemen stating that their appointment would result in wastage of public funds, as the respondent- Corporation already had surplus manpower. Taking note of the divergent views expressed by the State Government and the Punjab State Electricity Regulatory Commission (hereinafter referred to as “the Commission”) on the one

hand which were against the recruitment, and of the respondent-Corporation on the other hand, which justified the recruitment and also stated that it was not bound by the advice of the Commission, the Court vide order dated 19.7.2011 directed the Commission to look into the matter and give its report within two months. Till then the respondent- Corporation was restrained from making the proposed recruitment.

The Commission submitted its report which was taken on record.

When the case came up for hearing on November 9, 2011, the recommendations regarding recruitment made in the report of M/s Price Water House Coopers Pvt. Ltd. an internationally renowned concern (hereinafter referred to as the "PwC report"), which had been commissioned by the respondent- Corporation itself to advice it with regard to the reforms to be carried out in infrastructure and other fronts, and which had also been accepted by the Commission, were noticed. As per this report, for the year 2011, recruitment of 1000 linemen had been recommended. Though there persisted differences between the parties with regard to the binding nature of the recommendations of the Commission, a consensus was reached, which was recorded in the High Court order, that 1000 linemen may be permitted to be recruited. Accordingly the Court directed that 1000 linemen may be recruited on contract basis for two years.

After this order appointment letters were issued to 1000

linemen as per merit list. The respondent- Corporation later filed CM No. 1923 of 2013 seeking clarification of the earlier order dated 19.07.2011 vide which the Corporation had been restrained from making appointment. This C.M. Application was disposed of vide order dated 22.2.2013 stating that the order was clear and unambiguous and did not need clarification.

CWP No.4881 of 2011 was disposed of on 27.11.2013. After taking note of all the developments since the filing of the petition, the contents of the Tariff Order 2010-11 imposing a cut of Rs.100 crores in the employee cost, the report of the Commission and the views of the State Government, it was observed:

“It is, thus, in the fitness of things that respondent No. 2 must operate within certain frame work while having the leverage as an independent public sector corporation to look to its affairs. In the matter of deployment of personnel, it should obtain guidelines from the Commission qua this aspect as that forms the basis of the tariff fixation. In our view this is sufficient to protect the interest of the public at large. We make it clear that the issue of Linemen was taken up only as an illustrative one and, thus, these directions are to be applied across the board for deployment of personnel. This would save money for the State of Punjab as it is professing financial crunch in respect of various aspects pending before the Court.

In compliance with the order passed by this Court on 19.7.2011, the report of the Commission dated 19.9.2011 is available, which would meet the position till that date. For convenience of reference, we reproduce the conclusion as under:-

“Conclusion:

Keeping all the above facts in view, while the commission is for right sizing the overall strength of employees, it is not against recruiting the required manpower of Linemen/SSAs to run the existing and ever expanding power networks of PSPCL and PSTCL in line with recommendations of PwC Reports on PSPCL and PSTCL. Being a Govt. undertaking, it may not be possible for PSPCL/PSTCL to reduce its manpower through retrenchment and the practical solution would be to reduce it through retirement over a period of 2011-15. Recruitments of Linemen & SSAs in the organization to replace such retiring employees should be limited to only the essential requirement. The Commission thus concluded that PSPCL/PSTCL should decide to recruit Linemen/SSAs against CRA No.267/11 in line with PwC Reports.”

Insofar as the view beyond September, 2011 is concerned, guidelines/instructions can be obtained from the Commission.

The writ petitions accordingly stand disposed of.”

Relying on the portion of the report of the Commission extracted in the above order of the Court as per which “*The Commission thus concluded that PSPCL/PSTCL should decide to recruit Linemen/SSAs against CRA No.267/11 in line with PwC Reports.*” it is contended in this petition that the 1000 posts recommended in PwC Reports for the years 2012 and 2013 and which are now sought to be filled by the impugned advertisement are in fact required to be filled up on the basis of merit list prepared/to

be prepared by the respondent – Corporation out of applications received by it in pursuance to the public notice Annexure P-1/1(CRA No. 267/11). Instead of doing so, the respondent – Corporation has issued fresh public notice dated 20.12.2013 (Annexure P-6) inviting applications for recruitment of 1000 linemen. Accordingly the petitioner has impugned the same as being contrary to the directions dated 27.11.2013 of the Hon'ble Court and resulting in frustrating the rights of the petitioners who will not be eligible to compete pursuant to the new advertisement as most of them would be overage.

It is stated in view of the order dated 11.3.2011 (Annexure P-8/1) passed in CWP No.4458 of 2011 directing the respondent – Corporation to re-consider the claim of the petitioners therein for enhancing the upper age limit from 37 to 39 years, in accordance with law, the respondent – Corporation vide public notice Annexure P-8/2 had enhanced the upper age limit for recruitment of linemen from 37 to 39 years. Thus, a valuable right had accrued to various persons who had submitted their applications for appointment to the post of linemen in pursuance to the public notice Annexure P-1/1 and the action of the respondent – corporation in issuing notice Annexure P-6 is to frustrate/defeat the aforesaid valuable right. Accordingly, it has been prayed that the respondent – Corporation be directed to issue appointment letters to next 1000 persons as linemen on the basis of merit list prepared/ to be prepared out of the candidates, who had submitted their applications in response to the public notice Annexure P-1/1 issued in January, 2011.

Controverting the claim of the petitioners, in the written statement filed on behalf of the respondent – Corporation, it has been stated the publication of the advertisement does not give any eligible person a right to claim appointment. It is denied that the observations of the High Court in the order dated 27.11.2013 are a mandate to the effect that recruitment of Linemen etc. in the respondent Corporation would be made against CRA No. 267/11 in line with PwC report. It is contended that the Hon'ble Court has only extracted the relevant part of the report of the Commission and stated that the report takes care of the position upto September 2011 and for recruitments beyond that guidelines/ instructions can be obtained from the Commission.

By filing C.M. No.537 of 2015 the respondent-Corporation has placed on record additional affidavit elaborating its stand in the written statement.

After referring to and quoting from the observations of this Court in the order dated 27.11.2013 while disposing of **CWP No.4881 of 2011** (*supra*), it has been contended that in view of these observations, it is clear that this Hon'ble Court permitted the answering respondents to fill up the posts as per the report of Punjab State Electricity Regulatory Commission. The Punjab State Electricity Regulatory Commission in the report 19.9.2011, concluding part whereof was quoted in the order of the High Court has recommended that PSPCL and PSTCL should decide to recruit the linemen against CRA No. 267/11 as per the report of PwC. M/s

Price Water Cooper in its report under Chapter 6 “**Summary of All Recruitments Proposed**” made , a complete staff study and action plan for recruitment in Punjab State Electricity Board. The relevant is reproduced hereunder:-

Total Recruitments Proposed:-

<i>Designation</i>	<i>PSEB Sanctioned</i>	<i>PSEB Existing</i>	<i>PSPCL</i>	<i>PSCL</i>
AO	59	55	0	4
SSA	2230	1607	0	305
AE	577	433	349	137
Company Secretary	0	0	1	1
JE	3355	2299	615	190
JE Civil	211	125	29	32
Law Officer Gr.II	11	6	5	2
AM-HR	0	0	10	-
AM-IT	0	0	20	

Recruitment Plan:

The following is the recruitment plan for PSPCL:

Recruitment Plan for PSPCL till 2015

<i>Designation</i>	<i>Immediate needs</i>	<i>Rectt Till 2015</i>	<i>Gross Rectt. Needs</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
AE	349	290	639	200	150	125	100	70
Company Secretary	1	0	1	1	0	0	0	0
JE	615	1236	1851	450	450	400	300	250
JE(Civil)	29	3	32	10	10	10	2	0
Law Officer Gr.II	5	0	5	5	0	0	0	0
AM-HR	10	0	10	10	0	0	0	0
AM-IT	20	0	20	20	0	0	0	0
Linemen	0	2685	2685	1000	500	500	350	350
ALM	0	6153	6153	1000	1000	1500	1500	1150
Office Asstt.	0	1675	1675	300	300	250	250	250

The following is the recruitment plan for PSTCL:

Recruitment Plan for PSTCL till 2015

<i>Designation</i>	<i>Immediate needs</i>	<i>Rectt Till 2015</i>	<i>Gross Rectt. Needs</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>AE</i>	<i>137</i>	<i>0</i>	<i>137</i>	<i>50</i>	<i>50</i>	<i>40</i>	<i>0</i>	<i>0</i>
<i>Company Secretary</i>	<i>1</i>	<i>0</i>	<i>1</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>JE</i>	<i>190</i>	<i>0</i>	<i>190</i>	<i>75</i>	<i>75</i>	<i>40</i>	<i>0</i>	<i>0</i>
<i>JE(Civil)</i>	<i>32</i>	<i>0</i>	<i>32</i>	<i>12</i>	<i>10</i>	<i>10</i>	<i>0</i>	<i>0</i>
<i>Law Officer Gr.II</i>	<i>2</i>	<i>0</i>	<i>2</i>	<i>2</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>SSA</i>	<i>305</i>	<i>0</i>	<i>305</i>	<i>155</i>	<i>150</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>AO</i>	<i>4</i>	<i>0</i>	<i>4</i>	<i>4</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>

It is stated that since as per the PwC Report and the Commission Report, the respondent Corporation (PSPCL) was allowed to recruit only 1000 linemen for the year 2011, therefore, there was an urgent need to issue the fresh advertisement and start the fresh recruitment process for hiring 1000 linemen in the year 2013-14. Thus, in December, 2013, a proposal was made for initiating fresh recruitment process for hiring 1000 linemen on contract basis by issuing the advertisement No. 281/13, as per approval of Chairman-cum-Managing Director of PSPCL. Thereafter, an agenda note was prepared in January, 2014 for the Board of Directors of PSPCL to take a decision regarding hiring of 1000 linemen on contract basis against advertisement No. CRA-281/13 and further to resolve that no further action be taken for recruitment of balance 4000 linemen against the advertisement No.267/11.

The Board of Directors in its 32nd meeting held on 3.2.2014 decided to go ahead for the recruitment/hiring of 1000 linemen against the advertisement No.281/13. In the subsequent meeting held on 29.12.2014, the Board of Directors resolved not to take

action for recruitment of balance 4000 linemen against advertisement No.CRA-267/11.

It is thus asserted that the recruitment process in CRA No.281/13 is consistent with the directions of this Court in the order dated 27.11.2013 in CWP No.4881 of 2011.

I have heard Ld. Counsel for the parties and perused the record.

Sh. H.C. Arora, Ld. Counsel for the petitioners has stressed that in terms of the orders dated 27.11.2013 in CWP No.4881 of 2011, any further appointment of Linemen is to be made only from out of the merit list prepared pursuant to CRA 267/11 whereby applications had been invited for recruitment of 5000 Linemen. He states that this is clear from the report of the Commission dated 19.9.2011 which was extracted in the said order and has been thereby approved by the Court. He argued that the petitioners could not get appointments in 2011 only because of the orders of this Court restraining the Corporation from making appointments. He argues that ignoring the petitioners and issuing a fresh advertisement would gravely and irreparably harm the petitioners in as much as many of them are overage and would not be able to compete in response to the new advertisement. In fact, in the first instance, many were able apply in the earlier advertisement only because of the increase in the age limit from 37 to 39 years, which was increased because of Court directions in the writ petition filed by some of the petitioners. He stressed that a decision not to

make appointments from among the merit list, can be taken only for valid, compelling and cogent reasons, and in this case he states there are none, now that the stay order is not in existence and the Court itself has directed that the recruitment be made as per the Commission's recommendations from the CRA 267/11. He repeatedly emphasized that the petitioners are not at fault and their careers ought not to be jeopardised because of the fortuitous circumstances of a Public Interest petition being filed and the stay orders granted therein.

On the other hand, Sh. Girish Agnihotri, Ld. Senior Counsel for the respondent Corporation states the reliance by the petitioners on the order dated 27.11.2013 to contend that the 1000 posts of Linemen now advertised should be filled from the next 1000 candidates in merit as per CRA 267/ 11 is wholly misplaced. He states that in CWP No.4881 of 2011, the Court was only concerned with allegations of overstaffing and the resultant wasteful expenditure in the respondent Corporation and whether the recruitment of 5000 linemen was justified or not. The High Court had asked the Commission to submit its report with regard to this issue. The Commission in its report dated 19.9.2011 concluded that PSPCL/ PSTCL should recruit Linemen/ SSAs against CRA No. 267/11 in line with PwC reports. He asserts that this recommendation of the Commission has to be read in the in the light of the fact that the High Court had called for its report in the context of the challenge to the advertisement for recruitment of 5000 linemen through CRA

267/11. It was in this background that the Commission stated that the Linemen/ SSAs against CRA No.267 of 2011 should be recruited in line with PwC report. The report of the Commission does not mean and could not be read to mean that all subsequent appointments of Linemen whenever made in later years are to be from the merit of CRA 267/11 till 5000 Linemen advertised thereby are appointed. He states that this would be akin to saying that a selection panel prepared far in excess of the available vacancies should operate indefinitely to fill vacancies which will arise in future as well, till the panel is exhausted. He states that in this case the number of vacancies to be filled up from out the merit of CRA 267/2011, has to be limited to the 1000 already appointed in 2011 itself, because that is what was sanctioned by the Court to be filled till Sept, 2011 based on the report of the Commission dated 19.9.2011. The remaining vacancies which are permitted to be filled up in the subsequent years, are the vacancies of the subsequent years and consequently would be future vacancies as far as the CRA 267/11 is concerned and cannot be filled up from the merit list of this advertisement.

I am unable to agree with the contentions of the Ld. Counsel for the petitioner and am of the view that the present writ petition deserves to be dismissed.

At the outset, it is necessary to remind oneself of the settled legal position that even successful candidates have no indefeasible legal right to be appointed and such appointment can be denied for good and rational grounds.

This position has been affirmed times without number. One need only refer the Constitution Bench decision in **Shankarsan Dash v. Union of India, (1991) 3 SCC 47**, wherein, it was observed as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment  51 and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha, Neelima Shangla v. State of Haryana, or Jatinder Kumar v. State of Punjab.”

As the selected candidates have no enforceable legal right to appointment, it has been also held that no mandamus can be claimed for appointment. In this context the following observations are pertinent:

S.S. Balu v. State of Kerala, (2009) 2 SCC 479, at page

484 :

13. *In State of Haryana v. Subash Chander Marwaha* this Court held: (SCC p. 226, paras 10-11)

“10. ... The mere fact that a candidate’s name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. ...

11. It must be remembered that the petition is for a mandamus. This Court has pointed out in Rai Shivendra Bahadur (Dr.) v. Nalanda College that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived.”

14. *In Pitta Naveen Kumar v. Raja Narasaiah Zangiti* this Court held: (SCC p. 273, para 32)

“32. ... A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not

otherwise.”

In the present case, no doubt, vide CRA 267/11, tentatively 5000 vacancies of Linemen were advertised. But because of CWP No.4881 of 2011 having been filed wherein this recruitment was questioned, initially, the respondent-Corporation was restrained from making appointment. It was only later, vide order dated 9.11.2011, 1000 posts of linemen were permitted to be filled up. These orders thus furnished the compelling reason for the non-appointment in the year 2011 and hence the petitioners can raise no grievance regarding the same.

The petition was finally disposed of on 27.11.2013, with directions reproduced earlier which are being interpreted by the parties in their favour. The question is, whether the interpretation of the petitioners is the correct one and consistent with law or the one of the respondents.

In my view, the interpretation of the petitioners cannot be accepted and the orders dated 27.11.2013 in CWP No.4881 of 2011 cannot be understood to mean that any further appointment to the Linemen is to be made only from out of the merit list prepared pursuant to CRA 267/11, whereby, applications had been invited for recruitment of 5000 Linemen. CWP No.4881 of 2011 which was a Public Interest Petition was filed seeking a stay on the recruitment of 5000 linemen on the ground that this would result in wasteful expenditure and it was this issue that the Court was seized of in that petition. The report that the Commission prepared on the directions

of the Court also dealt with this issue. The Commission in its report dated 19.9.2011 concluded that PSPCL/ PSTCL should recruit Linemen/ SSAs against CRA No. 267/11 in line with PwC reports. Thus, in my view, Ld. Counsel for the respondents is right in his assertion that this recommendation of the Commission only means that only such number of posts be filled against CRA 267/11 as are recommended in the PwC report to be filled in the year 2011. Ld. Counsel for the respondent-Corporation is also right in his assertion that this recommendation does not mean and could not be read to mean that all subsequent appointments of Linemen whenever to be made in later years should to be from the merit of candidates who applied in response to CRA 267/11 till 5000 Linemen are appointed. He is right when he asserts that this would be akin to saying that a selection panel prepared far in excess of the available vacancies should operate indefinitely to fill vacancies which will arise in future as well till the panel is exhausted.

As per the recruitment plan prepared for the respondent Corporation in the PwC report, 1000 linemen were to be recruited in 2011. In 2012, 500 Linemen were to be recruited. Similarly 500 Linemen were to be recruited in 2013, and 350 each were to be recruited in the years 2014 and 2015. This Court approved the recommendations of the Commission, which in turn had approved of this PwC report. As only 1000 posts were permitted to be filled up in 2011, hence against the advertisement issued in the year 2011 posts in excess of 1000 posts could not be filled up. Nor could the

posts for the subsequent recruitment years be filled based on this advertisement. Ld. Counsel for the respondents is right that this would be tantamount to advertising future vacancies, a course which has been held to be impermissible by the Hon'ble Supreme Court. Such a course would result in deprivation of the rights under Article 14 and 16 of the Constitution of the candidates who have become eligible subsequent to the earlier advertisement.

The proposition that future vacancies cannot be advertised as these would result in deprivation of the rights of candidates who become eligible subsequently has been settled by the Hon'ble Supreme Court in large number of cases.

Prem Singh v. Haryana SEB, (1996) 4 SCC 319, at
page 330 :

22. In State of Bihar v. Madan Mohan Singh this Court held that the advertisement and the whole selection process were meant only for 32 vacancies. The process came to an end as soon as these vacancies were filled up. If the same list has to be kept alive for the purpose of filling up of other vacancies, it would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and the selection process.

23. In State of Bihar v. Madan Mohan Singh² this Court has in terms held that if the advertisement and the consequent selection process were meant only to fill up a certain number of vacancies then the merit list will hold good for the purpose of filling up those notified vacancies and no further. In that case 32 vacancies were advertised but a select list of 129 candidates was prepared. A

question arose whether more candidates could be appointed on the basis of the said select list. This Court held that once the 32 vacancies were filled up the process of selection for those 32 vacancies got exhausted and came to an end. **It was further held that if the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process...**

25. From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not **for future vacancies**. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.”

In the same manner in **Hoshier Singh v. State of**

Haryana, 1993 Supp (4) SCC 377, it was observed:

*10. The learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. **The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same.** The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.”*

To the same effect are the observations in **Mukul Saikia v. State of Assam, (2009) 1 SCC 386**, at page 395 :

“33. At the outset it should be noticed that the select list prepared by APSC could be used to fill the notified vacancies and not future vacancies. If the requisition and

*advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised, even though APSC had prepared a select list of 64 candidates. 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 fact that evidently and admittedly the names of the appellants appeared in the select list dated 17-7-2000 below the persons who have been appointed on merit against the said 27 vacancies, and as such they could not have been appointed in excess of the number of posts advertised as the currency of select list had expired as soon as the number of posts advertised are filled up, **therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies meant for direct candidates in violation of quota rules.** Therefore, the appellants are not entitled to claim any relief for themselves. The question that remains for consideration is whether there is any ground for challenging the regularisation of the private respondents.”*

Rakhi Ray v. High Court of Delhi, (2010) 2 SCC 637, at page 640 :

*“7. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as “the recruitment of the candidates in excess of the notified vacancies is a **denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution**”, of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies.*

*Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to “improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale”, otherwise the exercise would be arbitrary. **Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law.** (Vide Union of India v. Ishwar Singh Khatri, Gujarat State Dy. Executive Engineers’ Assn. v. State of Gujarat, State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986, Prem Singh v. Haryana SEB and Ashok Kumar v. Banking Service Recruitment Board.)”*

Arup Das v. State of Assam, (2012) 5 SCC 559, at page 563 :

*“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.**”*

Union of India v. Ishwar Singh Khatri, 1992 Supp (3) SCC 84, at page 86 :

“4. Mr Subba Rao for the appellant urged that the candidates included in the panels prepared by the

*Selection Board as far back in June 1984 cannot be held to have the right to appointment against vacancies arising subsequent to preparation of the panels. According to counsel, if that right is conceded it would be arbitrary and contrary to Article 16(1) of the Constitution which guarantees opportunity for all citizens in matters of employment or appointment to any office under the State. There is little doubt about this proposition. The selected **candidates ordinarily will have a right to appointment against vacancies notified or available till the select list is prepared. They in any event cannot have a right against future vacancies.***”

Thus, the advertisement CRA 267/11 has be read as being limited to 1000 posts of linemen. Such number of linemen had been appointed after the order dated 9.11.2011 of this Court. The posts permitted to be filled up in the subsequent years 2012-2015 as per the recruitment plan prepared by the PwC and approved by the Commission in its report dated 19.9.2011, cannot be filled up on the basis of CRA 267/11, as these have to be treated as future vacancies vis- a- vis this advertisement. For filling up these posts permitted to be filled in the years 2012 and 2013, rightly the impugned advertisement has been issued.

Further it is well settled that a selection list prepared can remain valid only for such limited period as prescribed under the relevant rules. If appointments are not made within the said period, then fresh selection is required to be made. Usually the selection list has a validity of only one year. In the present case no rules have been relied upon by the petitioners to show that the selection list

would remain valid even for three-four years. As the petitioners have failed to establish any right in this regard the petition merits dismissal on this ground as well.

Accordingly, there is no merit in the present petition and the same is dismissed.

July 02, 2015
Dinesh

(HARINDER SINGH SIDHU)
JUDGE