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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4804 OF 2014**

Mukesh Kumar Sahu Son of Shri Tiharu Ram Sahu, aged about 33 years, R/o Village Birkona, Post Birkona, Police Station Koni, Tahsil Bilaspur, Civil and Revenue District Bilaspur (C.G.)

---Petitioner**Versus**

1. The State of Chhattisgarh through: the Directorate, Department of Higher and Technical Education, Mantralaya, Indrawati Bhawan Bhawan, Naya Raipur (C.G.)
2. The Director, Directorate of Technical Education, Chhattisgarh, Govt. Girls Polytechnic Campus, Byron Bazaar, Raipur (C.G.)
3. The Collector, District Gariyaband (C.G.)
4. The Principal, Govt. Polytechnic Gariyaband, I.T.I. Premises Gariyaband, Post, Police Station and Tahsil Gariyaband, Revenue District Gariyaband, Civil District Raipur (C.G.)

----Respondents

For Petitioner : Mr. Roop Naik, Advocate

For Respondents/State : Mr. Gary Mukhopadhyay,
Deputy Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

18/01/2016

1. The Principal, Govt. Polytechnic, Gariyaband issued an advertisement for appointment on the post of Skill Assistant. The select list and waiting list were prepared on 24/09/2013. The petitioner could not be selected but he stood as wait listed candidate No. 1. One selected candidate- Mr. Dhanjay Sahu did not join on the post of Skill Assistant, pursuant to which, petitioner made a representation being wait listed candidate for his appointment but respondent No. 4 did not consider and appoint the petitioner on the vacant post, leading to filing of writ petition stating *inter alia* that the petitioner's selection is governed by Chhattisgarh Technical Education Class-III (Non-Ministerial) Service Recruitment Rules, 2005 (in short "Rules of 2005") and validity of select list was 18 months as per Rules of 2005, as such, the petitioner made representation within one year. It was further averred that neither his representation has been considered nor his case has been considered for

appointment against vacant post though his name is at Sr. No. 1 in the waiting list, therefore, appropriate writ or direction be issued against the respondent No.4 to appoint the petitioner on the vacant post of Skill Assistant.

2. Return has been filed opposing the writ petition stating *inter alia* that the petitioner is not entitled for appointment as he is a wait listed candidate, therefore, there is no indefeasible right and life of waiting list has already expired on 23/09/2014, therefore, writ petition deserves to be dismissed.

3. Mr. Roop Naik, learned counsel appearing for the petitioner would submit that waiting list has to be prepared in addition to the select list as per Rules of 2005 and petitioner being a wait listed candidate at Sr. No. 1, his case for appointment has to be considered, as selected candidate- Mr. Dhanjay Sahu did not join on the said post, therefore, appropriate writ or direction be issued against the respondent No.4 to consider and appoint the petitioner on the vacant post of Skill Assistant. He would further submit that waiting list has been prepared on 24/09/2013

and the writ petition was filed on 08/09/2014, therefore, life of waiting list cannot be said to have expired as the petitioner has already approached to this Court within one year. Learned counsel for the petitioner placed reliance in the matters of **State of Jammu and Kashmir and others v. Sat Pal**¹ and **Manoj Manu and another v. Union of India and others**².

4. Mr. Gary Mukhopadhyay, Dy. Govt. Advocate appearing for the State/respondents, would submit that petitioner being a wait listed candidate does not have indefeasible right to be considered for appointment on the post fallen vacant after issuance of select list. He placed reliance in the matter of **Raj Rishi Mehra and others v. State of Punjab and another**³.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and gone through the record with utmost circumspection.

6. The question for consideration is whether the petitioner being a wait listed candidate is entitled for

1 (2013) 11 SCC 737

2 (2013) 12 SCC 171

3 (2013) 12 SCC 243

considered in accordance with applicable rules for appointment on the post which has fallen vacant?

7. Admittedly, instant selection is governed by the Rules of 2005. Rule 12 of the Rules of 2005 provides for list of candidates recommended by the selection committee, which provides as under:-

“12. List of Candidates Recommended by the Selection Committee.-

(1) The Selection Committee shall forward to the Appointing Authority a list arranged in order of merit of the candidates who have qualified by such standards as the Selection Committee may determine and the candidates belonging to the scheduled Caste, Scheduled Tribe and Other Backward Classes, who though not qualified by that standard, but are declared by the Selection Committee to be suitable for appointment to the service with due regard to the maintenance of efficiency of administration. The list shall also be published for general information.

(2) Subject to the provisions of these rules and the Chhattisgarh Civil Service (General Conditions of Service) Rules, 1961, candidate shall be considered for appointment to the available vacancies in the order in which their

names appear in the list.

(3) The inclusion of the candidate's name in the list confers no right to appointment unless the Appointing Authority is satisfied, after such enquiry as may be considered necessary, that the suitable in all respects for appointment to the Service.”

8. The aforesaid rule does not oblige the Selection Committee to prepare a waiting list for the wait listed candidates.

9. In the matter of **Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat**⁴, the Supreme Court has defined the meaning of “waiting list” as under:-

“.....A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared.....”

The Supreme Court has further highlighted the importance of waiting list in paragraph-9, which reads as

⁴ 1994 Supp (2) SCC 591

follows:-

“9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a

vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.”

10. In the matter of **Bihar SEB v. Suresh Prasad**⁵, the Supreme Court has held that in absence of statutory rules to the contrary, the employer is not bound to prepare waiting list in addition to the panel and observed in paragraph-7 as follows:-

“7.We are not shown any statutory recruitment rules which require the appellant Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of Respondents 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard.....”

11. Reverting back to the facts of present case, it would appear that by virtue of Rule 12 of the Rules of 2005, the Selection Committee is bound to forward a list arranged in order of merit of the candidates who have qualified by such standards as the Selection Committee

⁵ (2004) 2 SCC 681

and sub-rule (3) of Rule 12 further held that the inclusion of the candidate's name in the list confers no right to the appointment.

12. In the matter of **Raj Rishi Mehra (supra)**, Supreme Court has categorically held that wait listed candidates have not entitled to be appointed against the vacant post as a matter of right. Paras 15 and 16 of the report states as under:-

“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, 1992 Supp (3) SCC 84, Gujarat State Dy. Executive Engineers' Assn. v. State of Gurjrat and others, 1994 Supp (2) SCC 591, State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986, (1994) 1 SCC 126, Prem Singh v. Haryana SEB (1996) 4 SCC 319, Ashok Kumar v. Banking Service Recruitment Board, (1996) 1 SCC 283, Surinder Singh v. State of Punjab, (1997) 8 SCC 488, Madan Lal v. State of J&K, (1995) 3 SCC 486,

Kamlesh Kumar Sharma v. Yogesh Kumar Gupta, (1998) 3 SCC 45, State of J&K v. Sanjeev Kumar (2005) 4 SCC 148, State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330, Ram Avtar Patwari v. State of Haryana, (2007) 10 SCC 94 and Rakhi Ray v. High Court of Delhi, (2010) 2 SCC 637.

16. In Surinder Singh case, this Court observed as under:

"14.....'9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one

examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.”

13. In consequence of aforesaid legal discussion and keeping in view the law laid down by Their Lordships of the Supreme Court in **Raj Rishi Mehra (supra)**, this Court is of considered opinion that the petitioner being wait listed candidate has no right to be appointed against the vacant post as rules applicable also do not require preparation of waiting list. Consequently, I do not find any merit in the writ petition. The writ petition deserves to be and is accordingly dismissed.

Sd/-
(Sanjay K. Agrawal)
JUDGE