

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 490 of 2015**

Uttam Kumar Bareth son of Late Mangal Prasad Bareth, aged about 36 years,
Resident of Dhobipara, chandni Chowk, Raigarh, Civil and Revenue District
Raigarh, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Department of Public Works
Department, Mantralaya, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Principal Secretary, Department of Public Works, Mahanadi Bhawan,
Mantralaya New Raipur Chhattisgarh
3. Engineer in Chief Department of Public Works, Seerpur Bhawan, Raipur,
Chhattisgarh.
4. Chief Engineer, Department of Public Works, Bridge Zone, Seerpur, Bhawan
Raipur, Chhattisgarh.
5. Superintending Engineer, Department of Public Works, Bridge Construction,
Circle Raigarh District Raigarh, Chhattisgarh.

---- Respondents

For Appellant	: Shri Vivek Bhakta, Advocate.
For Respondent/State	: Shri Y.S.Thakur, Deputy Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Deepak Gupta, Chief Justice

14/07/2016

1. This appeal is directed against the judgment dated 23.09.2015 passed by
the learned Single Judge of this Court whereby he dismissed Writ Petition (S)
No. 3466 of 2015 filed by the writ petitioner.

2. The undisputed facts are that the petitioner applied for appointment to the post of Peon in the Public Works Department of the State of Chhattisgarh pursuant to an advertisement issued by the Department in the year 2013 for filling up of 18 posts of Peon. After completion of the recruitment process, appointment letters were issued in favour of the selected candidates on 09.06.2014. The Petitioner was placed at serial No. 2 of the waiting list.

3. The case of the Petitioner in the writ petition was that the candidates at serial No. 1 and 3 of the merit list namely Dinesh Kumar Chouhan and Kripachand Gendle did not join and these posts were lying vacant and should have been filled up from amongst the persons who were in the waiting list. It is further contended that since two persons had not joined, the Petitioner who was at serial No. 2 of the waiting list should have been offered appointment and he would have thereafter got selected.

4. The stand of the State is that the waiting list was to remain operative for a period of one year from the date of issuance of first appointment and accordingly, the waiting list was alive for a period of one year i.e. w.e.f 09.06.2014 to 08.06.2015 and since the Petitioner had not approached the Court prior to that date, his case cannot be considered. It is also contended that the Petitioner has no right to get the post because admittedly no person junior to him has been appointed and as such it is not a case of discrimination and therefore no writ can be issued in this regard.

5. The learned Single Judge dismissed this petition only on the ground that since the period of validity of the waiting list has expired, no writ of mandamus can be issued directing the State to offer issue of appointment to the Petitioner herein. It is not disputed that two other persons who were working on daily wages had challenged this recruitment process and their writ petition i.e. WP(S) No. 2751 of 2014 was pending. In the said writ petition, these two employees had sought their regularisation. It is not disputed that because the

writ petition of these two persons was pending, the State did not take any steps to fill up the posts which were lying vacant because of the non-joining of the persons at serial No. 1 and 3 of the select list. This writ petition was dismissed on 27.07.2015.

6. It is true that selection does not give right for being appointed but in case the State or any other employer issues an advertisement stating that because number of posts are advertised, if it fills less than the number of posts, some reason has to be given as to why those posts have been left vacant. It may happen that after review it is found that the number of post advertised is more than what is the requirement of the State and then the State for reasons to be given can definitely take a stand that for this reason all the posts are not filled up. This is however not the case at present. It is nobody's case that Peons are not required. The only contention of the State is that since the period of validity of the waiting list is over, therefore, the Petitioner's claim is belated and mandamus cannot be issued.

7. We are not at all in agreement with this submission. The case of the State itself as propounded in its reply filed in the writ appeal also shows that the State did not give effect to the waiting list only because of the pendency of the Writ Petition (S) No. 2751 of 2014. Once that writ petition was dismissed, the only consequence should have been that the first two persons in the waiting list should have been offered appointment. The State cannot blow hot and cold at the same time. No stay order was passed in Writ Petition (S) No. 2751 of 2014. The State itself decided not to give effect to the waiting list because it felt and rightly so that if the writ petition filed by those two daily wagers is allowed, then there would be no post left to be filled up. However, if the State has chosen that course of action, then the waiting list was inoperative for this period not for the fault of the Petitioner and it remained inoperative for all interests and purposes. In such a situation, the waiting list, in our opinion,

cannot be said to have outlived its validity only on the expiry of one year after the date when the first appointment was made. The reason we are holding so is that the purpose of the waiting list is to ensure that if any post of the category fall vacant during that one year they should be filled up from amongst the persons on the waiting list and fresh selection process is not required. The State in its wisdom chose not to give effect to the waiting list because of the pendency of the petitions. The net result was that the State itself stayed the operation of the said waiting list. If the State had not taken this decision, the Appellant would have been appointed. Merely because the State did not chose to give effect to the waiting list for this period of one year does not mean that the waiting list should not be given effect to even after Writ Petition (S) No. 2751 of 2014 was dismissed.

8. With regard to pendency of the waiting list, it would be appropriate to refer the decision of the Apex Court in *State of Jammu & Kashmir & Others v. Sat Pal* {(2013) 11 SCC 737} wherein the Apex Court held as follows:

"11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the recruitment process has been conducted have been filled up...."

9. It is urged that this writ petition is barred because the Petitioner has not come within one year of the issuance of the first letter of appointment. We cannot agree with this submission. The cause of action arises only after the period of one year expired. The State has given no other reason why it did not fill up the posts. Therefore we cannot agree with the submission that the writ petition is hit by the principles of delay and laches.

10. In view of the above discussion, we allow the writ petition and set aside the order dated 23.09.2015 and direct the State to offer letter of appointment to the Petitioner as Peon within two months from today. We however make it clear that he will only be entitled to seniority and wages from the date he joins the post.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE