

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

CWP No.16988 of 2014 (O&M)

Date of decision: 22.09.2016

Suman Rani

... Petitioner

versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Tejpal Dhull, Advocate for the petitioner.
Mr. Rajesh K. Sheoran, Additional Advocate General, Haryana.

TEJINDER SINGH DHINDSA, J.

Petitioner assails the action of the respondent/Agriculture Department, State of Haryana in having declined to her appointment to the post of Agriculture Development Officer.

In the year 2009, the Haryana Staff Selection Commission (hereinafter to be referred to as 'the Commission') issued advertisement inviting applications for recruitment to 267 posts of Agriculture Development Officers under the Department of Agriculture, State of Haryana. 115 posts were to be filled up from amongst general category candidates. Petitioner who was eligible in terms of eligibility conditions contained in the advertisement, applied for the post as a general category candidate and subjected herself to a process of selection. The Commission declared the final result on 16.07.2012. The Commission submitted its recommendations to the State Government containing names of 115 candidates belonging to the general category candidates and in addition thereto, 11 other candidates were also declared as successful but their names figured in a waiting list and in which name of the petitioner found mention

at Sr. No.6.

The entire case set up on behalf of the petitioner is that the candidature of 8 candidates, selected and recommended for appointment as Agriculture Development Officer from amongst the 115 belonging to the general category has been cancelled and yet the petitioner who was at Sr. No.6 in the waiting list has been denied appointment. A plea of discrimination has also been raised by contending that as opposed to the candidature of 8 candidates having been cancelled, the waiting list has been operated only to offer appointment letters to the first three candidates from the waiting list whereas the others including the petitioner have been denied such benefit. It has also been contended that 5 posts of Agriculture Development Officers against the general category are still lying vacant and yet the State Government is adamant in not issuing appointment letter to the petitioner and such action is arbitrary, illegal as also violative of Articles 14 and 16 of the Constitution of India.

Per contra, learned State counsel would submit that the recommendations from the Commission were received vide letter dated 23.07.2012. As per Government Instructions dated 20.01.1988, the validity period of such list including that of waiting list is one year from the date of issuance of the letter. Learned State counsel contends that the waiting list pertaining to the general category candidates for appointment to the post of Agriculture Development Officer and in which name of the petitioner was at Sr. No.6 expired on 22.07.2013. It is further sought to be justified that prior to 22.07.2013, offers of appointment of three candidates had been cancelled, namely, Gurmej Singh, Vinod and Gajender Singh and accordingly, the waiting list was operated during the period of its validity and candidates at

Sr.Nos.1, 2 and 3 in the waiting list were issued appointment letters. It has also been argued on behalf of the State that a waiting/panel list is merely a list of candidates found suitable and the same does not clothe such candidate with any in-defeasible right of appointment. It has been contended that the recommendations of the respondent/Commission were merely directory in nature and were therefore not enforceable by way of issuance of a writ of mandamus under Article 226 of the Constitution of India so as to accept the prayer of the petitioner seeking appointment to the post in question.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

The short issue that arises for consideration in the present case is as to whether there has been any arbitrariness in State action?

State Government had issued Instructions vide memo dated 20.01.1988 on the subject of appointment of candidates out of the waiting list prepared by the Recruiting Agency. In terms thereof, the main list as well as the waiting list were to remain valid for a period of one year from the date of recommendations and the list of remaining candidates, if any, after such period was to be scrapped.

Certain facts which are not in dispute and are glaring in nature require notice. The list of recommendations as regards selected candidates as also candidates borne on the waiting list were sent by the respondent/Commission to the respondent/Agriculture Department on 23.07.2012. Name of the petitioner concededly figured at Sr. No.6 in the waiting list against the general category. Such list of selected candidates as also the waiting list would remain alive upto 22.07.2013. The

respondent/Department cancelled the offer of appointment made to three candidates i.e. Gurmej Singh, Vinod and Gajender Singh on 18.03.2013, 10.06.2013 and 16.08.2013. As a consequence of such cancellation of offers of appointment, candidates at Sr. Nos.1, 2 and 3 in the waiting list have been accommodated.

The entire case of the petitioner hinges on the action/inaction on the part of the State Government in respect of three candidates i.e. Shashi Kant, Rahul and Rakesh Kumar whose names appeared at Sr. Nos.16, 49 and 64 respectively in the merit list framed by the respondent/Commission and who did not join the post in question.

Shashi Kant was issued offer of appointment on 13.02.2013 and granted 15 days time to join. He apparently submitted a request for change of station from Hathin to Palwal. Such request was declined by the respondent/Department vide communication dated 19.03.2013. Shashi Kant chose not to join on the post. For inexplicable reasons, the respondent sat over the matter and cancelled the offer of appointment made to Shashi Kant vide memo dated 13.02.2014.

In the case of Rahul, the offer of appointment was issued vide letter dated 13.02.2013. 15 days time was again granted for him to join the post. On his request, an extension in joining, time was granted upto 28.06.2016. Rahul having not joined on the post in spite of such extension having been granted, his offer for appointment was cancelled on 30.07.2013.

Insofar as Rakesh Kumar is concerned, learned State counsel would apprise the Court that he was not even issued any appointment letter as he had not submitted the character certificate and medical fitness

certificate in spite of being called upon to do so. Ultimately, a letter dated 29.07.2013 was received from the Deputy Director of Agriculture, Haryana, Karnal informing respondent No.2 that Rakesh Kumar is not interested in joining on the post as he is already working on the post of Development Officer in a Bank.

The factual matrix noticed hereinabove as regards Shashi Kant, Rahul and Rakesh Kumar would clearly demonstrate that the respondent/ Department had not acted in the matter with due diligence and in spite of candidates having chosen not to join within the stipulated time frame had not cancelled the offers of appointment issued to them. There is no justification whatsoever coming forth on behalf of the State as to why a candidate who has not joined within 15 days of the issuance of offer of appointment, such offer has been cancelled after a period of almost 8 months. Reference in this regard is being made to the case of Shashi Kant, whose name appeared at Sr.No.16 in the merit list. In the case of Rahul, even though offer of appointment was issued on 13.02.2013, State Government was indulgent towards him and granted him extension of time. Even such extension expired on 28.06.2013. Rather than acting with a sense of promptitude and making an offer of appointment to a candidate who otherwise has been selected/recommended by the Recruiting Agency and whose name figured in the waiting list, State Government chose again to sit over the matter and to cancel the offer of appointment of Rahul only after the period of validity of the waiting list had expired. In the case of Rakesh Kumar (merit list No.64), he chose not to even submit the requisite documents which could otherwise fructify into issuance of an offer of appointment. Yet the State Government slept over the matter till 29.07.2013

and as such, stretched matters to an extent when the selected candidate i.e. Rakesh Kumar himself chose to inform that he was not interested in the job.

Is it open for the Government on the one hand to sleep over the matter and on the other hand to confront the petitioner with the defence that the waiting list has now expired?

Similar issue came up for consideration before the Hon'ble Supreme Court in ***R.S. Mittal Versus Union of India, (1995) 3 SCT 284***. The matter pertained to the selection and appointment of candidates for appointment to the post of Judicial Member, Income Tax Appellate Tribunal. The duly constituted Selection Board had prepared a panel of selected candidates which included the name of the appellant therein, namely, R.S. Mittal and the recommendations were sent on 25.01.1988 to the Central Government for consideration. The Central Government, however, did not make any appointment and issued fresh advertisement on 22.02.1990 inviting applications for the same very posts. Such action was sought to be defended on behalf of the Union of India on the plea that the life of the panel was for a period of 18 months and the same stood expired in July, 1989 itself. Deprecating the stand taken on behalf of the Union of India and holding that the appointment should have been offered within a reasonable time of the availability of the vacancy and thereafter to the next candidate, it was observed in the following terms:

“It is no doubt correct that a person on the select-panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view

his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

Identical issue and claim of a candidate whose name figured in the waiting list and was seeking appointment to the post of Hindi Teacher under the Haryana State Education Department came up for consideration before a Division Bench of this Court in **LPA No.1767 of 2012 (Ritu d/o Sh. Nafe Singh Versus State of Haryana & others)** and decided on 04.03.2013. It was held as follows:

“It was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere empanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt. Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies

advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of the receipt of the recommendations i.e. 27.01.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.”

In the considered view of this Court, the ratio and dictum laid down in ***R.S. Mittal*** and ***Ritu's case (supra)*** would be applicable to the facts of the present case as well.

Since the candidates above the petitioner i.e. at Sr. Nos.4 & 5 have not agitated their claim, petitioner at Sr. No.6 in the waiting list is held entitled to be appointed to the post of Agriculture Development Officer.

Writ petition is allowed and the respondent/department is directed to issue appointment letter to the petitioner for the post of Agriculture Development Officer within a period of 30 days from the date of receipt of a certified copy of this judgment. Such appointment shall relate back to the date when other candidates from the waiting list were appointed to the post in question. However, with a view to balance out the equities, the petitioner is held not entitled to the salary for the period she has not worked against the post.

Petition allowed in the aforesaid terms.

22.09.2016

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

i) Whether speaking/reasoned? Yes

ii) Whether reportable? Yes