

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

CWP No.23055 of 2013

Sonia Sharma and others

... Petitioners

Versus

State of Punjab and another

... Respondents

(2)

CWP No.1219 of 2014

Ajay Kumar and others

... Petitioners

Versus

State of Punjab and another

... Respondents

(3)

CWP No.10023 of 2014

Varinder Kaur and others

... Petitioners

Versus

State of Punjab and another

... Respondents

(4)

CWP No.13765 of 2014

Sandeep Kaur Sekhon

... Petitioner

Versus

State of Punjab and another

... Respondents

Reserved on: 25.05.2016

Decided on : 08.07.2016

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

Present : Mr. H.C. Arora, Advocate for the petitioners
in CWP Nos.23055 of 2013 and 1219 and 10023 of 2014.

Mr. Sunny K. Singla, Advocate for the petitioners
in CWP No.13765 of 2014.

Mr. I.P. Goyat, Addl. AG, Punjab.

G.S. Sandhawalia, J.

The present order shall dispose of four writ petitions i.e. CWP Nos.23055 of 2013 and 1219, 10023 & 13765 of 2014, as common questions of law and fact are involved. The facts are being taken from ***CWP No.23055 of 2013 'Sonia Sharma and others Vs. State of Punjab and another'.***

The petitioners seek consideration for appointment in the Master Cadre on the ground that their name figured in the waiting list (Annexures P-2 and P-3) against the 3422 posts advertised on 07.05.2011 (Annexure P-1). The petitioners in the present set of cases had applied for the Hindi Master and Science Master for which 863 and 953 posts, respectively had to be filled up. The details of the petitioners who were in the wait list for the Science subject and Hindi, respectively are as under:-

S.No	Petitioner No.	Name	Place in the waiting list
1	2	Sunita Rani	29
2	3	Balwinder Singh	40
3	4	Sandeep Sharma	19
4	6	Gagandeep Kaur	28
5	7	Jaswinder Kaur	18

6	8	Pooja Bajaj	32
S.No.	Petitioner No.	Name	Place in the waiting list
1	1	Sonia Sharma	42
2	5	Arvind Dogra	39

It is their pleaded case that various candidates who had applied against more than one subject had been selected, and had to give affidavit regarding their choice of posting. Number of vacancies, accordingly, arose in various subjects and appointment letters were issued to the candidates in the wait list. The petitioners had also represented on 03.09.2013 (Annexure P-6) that the 45 posts of Hindi teachers of General Category were lying vacant and petitioner being 42nd rank (general category) could be adjusted. It is their case that a public notice was issued to this effect also for issuing of appointment letters on 09.10.2013 (Annexure P-5) and resultantly they sought appointment on the strength of being in the wait list. It was, accordingly, pleaded that a subsequent advertisement dated 09.07.2012 for filling up 5078 posts in the Master Cadre was not justified. It is their categorical case for being Hindi teacher out of the 43 candidates on the wait list and 47 for the Science category (Annexure P-2 and P-3) appointments had been offered to 31 candidates for Hindi subject and 18 candidates for the Science subject. The respondents had stopped issuing appointment letters on the same date, in spite of a large number of posts having not been consumed.

The State in its written statement took the plea that vide decision dated 28.09.2013 (Annexure R-1) the waiting list of the recruitment process was abolished, as the department has initiated the

process of recruiting 5078 posts of the teachers in the Master Cadre. As per Government instructions waiting lists prepared during the recruitment process should be maintained upto six months from the actual date of recommendation of the recruitment board/Department Selection Committee. Reliance was placed upon the judgment of the Apex Court in ***State of U.P. and others Vs. Raj Kumar Sharma and others 2006 (3) SCC 330*** to plead that mere inclusion of candidates name in the list did not confer any right to selection, even if the vacancies remained unfilled. The petitioners had secured lesser merit, than the last candidate given appointment in both Hindi and Science subject and they are not entitled to be appointed in the master cadre on the basis of the wait list, which had been scrapped. The petitioners having scored lower than the last selected candidates did not have any vested right to seek appointment and the employer acted pursuant to a rational policy

In the replication filed, the petitioners took the stand that the decision dated 28.09.2013 had not been acted upon and till 09.10.2013 respondents were operating the wait list. It has been pleaded that while advertising 5178 posts of teachers of various categories on contract basis, the subject of Hindi had not been included. Reliance has been placed upon the observations made in ***CWP No.20148 of 2012 'Venus Vs. State of Punjab and another'*** decided on 25.10.2013 (Annexure P-8) to submit that the same had been upheld by the Division Bench. It was, accordingly, contended that vacancies should be filled up until there is a valid reason and the State cannot have any licence to act in an arbitrary

manner.

The position of law has been crystallized by the Constitutional Bench of the Apex Court in '**Shankarsan Dash Vs. Union of India**' 1991 (3) SCC 47 wherein it has been held that candidate whose name appears in the merit list, cannot have an indefeasible right of appointment and the State is under no legal duty to fill up all the vacancies. However, the only exception was that the State should not act in an arbitrary manner and there have to be bonafide and appropriate reasons. Relevant observation reads 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 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. Subhash Chander Marwaha and Others**, (1974) 1 SCR 165, **Miss Neelima Shangla v. State of Haryana and Others**, (1986) 4 SCC 268, or **Jitendra Kumar and Others v. State of Punjab and Others**, (1985) 1 SCR 899.”*

Additional affidavit of the Assistant Director office of the Director of Public Instructions (Secondary Education) was filed in pursuance of the order dated 27.02.2015 on account of the fact that it was

noticed that why a discriminatory treatment had been adopted regarding the persons in the waiting list. In the same, it has been averred that 31 candidates for the post of Master Cadre (Hindi) and 18 candidates for Master Cadre (Science) were given appointment from the wait list vide approval dated 28.09.2013 by the Education Minister. The merit list was scrapped in the same way with the approval of the Minister and Principal Secretary School Education. The candidates were being offered appointments on account of the fact that 31 candidates in Hindi and 18 candidates in Science had submitted their affidavit for declining to join on the said post. Therefore, eligible candidates had been given appointment letters. The relevant part of the affidavit reads as under:-

“3. That in this regard it is, it is respectfully submitted that 31 candidates for post of Master Cadre (Hindi) and 18 candidates for post of Master Cadre (Science) were given appointment letter vide approval dated 28.09.2013 given by the Education Minister with respect to the vacancies generated due to candidates selected in more than one subject who had opted to join another subject. Hence appointment letters were given to next eligible candidates according to their merit. The merit lists were scrapped vide order dated 28.09.2013 (R-I) with the approval of the Education Minister and Principal Secretary School Education. It is pertinent to mention that both these orders were passed on 28.09.2013 by PrincipalSecretary/Education Minister.

4. That in respect of the averments made in para-8 and para-10 of the writ petition, it is respectfully submitted that 31 candidates in Hindi and 18 candidates in Science subject had submitted their affidavits for declining to join as Hindi/Science masters/mistress. Therefore the next eligible candidates according to merit list in the relevant subjects were given appointment letters.

5. That all the petitioners have scored lesser merit than the last candidate who had been issued appointment letter by the respondent department in respective selection list in different subjects i.e. Hindi and Science. Hence the petitioners are not entitled to be appointed

teachers in the master cadre on the basis of the abolished waiting list.”

The decision making on 28.09.2013 reads as under:-

“At the time of giving appointments against 3442 post few vacancies remain unfilled due to selection of few candidates in two subjects. Now it is suggested to fill these vacancies by going down the merit. These vacancies were to be filled earlier but due to extension granted in joining time and due to unavailability of relevant data from the field some delay has occurred in this work. Now it is an appropriate official suggestion to scrap the further waiting list. Remaining vacant vacancies shall be re-advertise. It shall be appropriate to apply this order in the case of other subjects also.

Sd/- 28.9.2013

Principal Secretary S.E

Sd/- 28.9.2013

Education Minister”

Sd/-

D.P.I (S.E)

It is not disputed that the public notice was also issued for issuance of appointment letters on 09.10.2013. The said notice reads as under:-

*“OFFICE OF DIRECTOR EDUCATION DEPARTMENT
(SECONDARY EDUCATION) PUNJAB, S.A.S. NAGAR.
PUNJAB SCHOOL EDUCATION BOARD COMPLEX, PHASE-8, S.A.S.
NAGAR.*

PUBLIC NOTICE

The department had issued an advertisement on 07.05.2011 for recruitment of 3442 posts of Master Cadre in various subjects, in reference to which the selection list has been received from Chairman, Departmental Selection Committee for filling up the said posts. The appointment letters had been issued to the selected candidates. On account of selection of number of candidates in two subjects, appointment letters have to be issued to the next candidates in the merit list against posts which have remained vacant. As per the list enclosed, the concerned candidates may collect their appointment letters by appearing in person in the office of Director, Education Department, (Secondary Education), Punjab, S.A.S. Nagar, Punjab School Education Board Complex, Phase-8, S.A.S. Nagar on 09.10.2013 at 10.00 A.M. The candidates may produce proof of submitting application and their

identity card.

Sd/-

*Director, Education Department
(Secondary Education), Punjab.”*

Thus, from the perusal of the above facts one aspect would be clear that though stand of the State is that six months having expired and the wait list had been scrapped. However, appointment letters were issued after the decision was taken to scrap the list, though even more than six months had passed, which would be clear from the above public notice. The fact that the petitioner had been representing for operating the wait list, on account of vacancies being there has not been denied.

Similarly situated persons who are in the wait list have been given the benefit by operating the wait list upto Sr.No.31 and 18 in Hindi and Science subjects, respectively. It has not been denied that the posts in question had remained vacant and could not be filled up by the next meritorious candidate in the wait list, as it has been specifically pleaded in para 13 of the writ petition.

It is settled principle that though the petitioners had a right of consideration and no vested right, but the State is not entitled to act in an arbitrary manner. The decision reproduced above goes on to show that appointment letters were being issued on the same date while taking a decision to scrap the waiting list. The waiting list was also operated while going down the merit as noticed above. The decision making is now justified by way of filing the affidavit that was on account of the said number of persons submitting their affidavits for declining appointment does not find mention in the decision making process as reproduced

above. It cannot be permitted to be filled up and sought to be justified by way of an affidavit. The petitioners thus were similarly situated to other persons in the wait list and thus there has been violation of Article 14 of the Constitution of India. They are accordingly entitled for similar treatment and consideration as persons who were also in the wait list and had been given appointment.

Reliance can be placed upon the Division Bench judgment in ***'Ritu Vs. State of Haryana' 2013 (3) SCT 281***, wherein the proposition of law was also noted but it was held that where there is arbitrariness in the State action, the right of the appellant on the wait list cannot be taken away. The Division Bench had allowed the appeal in the said case, which had been dismissed by the learned single Judge on the ground that the validity of the wait list was to be remain until as per the recommendations of Haryana Staff Selection Commission and as per the instructions. It was noticed that one of recommended candidate had not joined and the appointment had been offered to the next candidate, who had also not accepted the same. The said offer had been made after 8 months and it was on account of the inaction of the respondents, the appeal was allowed. It was held that the right of the appellant would crystallize well in the validity of one year and had the authorities acted with sense of promptitude the petitioners right could not have been taken away.

The Division Bench in ***Letters Patent Appeal No.403 of 2014 'State of Punjab and another Vs. Venus'*** decided on 13.03.2014 noticed the adverse affect that a candidate who was in the wait list would

face and while upholding the order of the learned Single Judge, who had overruled the objections of the State that no person under the wait list had been offered appointment and directed that the wait list be operated by noticing that the action of the State was arbitrary. The relevant observations read as under:-

“One cannot lose sight of the fact that public appointments are very hard to come by. It often happens that a candidate selected during one selection may not be lucky the next time as well. There are a large number of imponderables. Posts may not be advertised for long. The candidate may become overage. Younger candidates may be more competent and may steal a march over the older ones. Hence, any decision not to appoint from amongst the selected candidates or those in the waiting list ought to be only for sound reasons for what is at stake may well be entire future career of the selected candidates.”

The reliance upon the judgment of the Apex Court in '**State of Bihar and others Vs. Amrendra Kumar Mishra' 2006 (sup 6) SCR 650** is without any basis. Perusal of the said judgment would go on to show that the post had been advertised in the year 1987 and the selection had been completed in the year 1992. The writ petition had been filed in the year 2001, after the representation had been rejected in the year 1999. In the present case, the petitioners have been agitating for their grievances to operate the wait list against the available vacancies even before the wait list had been abolished and the same had also been done upto Serial No.31 & 18, therefore, in these circumstances they are entitled for relief claimed.

Similarly in the case of **Raj Kumar Sharma (supra)**, the observations came in the background that it was a case where the State

had earlier also succeeded against the private respondents and in view of the second round of litigation, the appeal had been allowed as earlier the Apex Court had only given the applicant a right to be eligible for the next recruitment against the State of Uttrakhand and not of Uttar Pradesh. The legal issue had pertained to the right of the private respondents at the time of reorganization of the two states.

Accordingly, keeping in view the above discussion, the present writ petitions are allowed. The petitioners and other will be offered appointment letters on the strength of being in the wait list for the advertisement in question for the subject of Hindi and Science within a period of 3 months from the date of receipt of certified copy of this order.

JULY 08, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE