

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

CWP No.6031 of 2014

Sukhwinder Singh & others

... Petitioners

Versus

State of Punjab & others

... Respondents

(2)

CWP No.8031 of 2014

Surinder Singh

... Petitioner

Versus

State of Punjab & another

... Respondents

(3)

CWP No.8083 of 2014

Ravinder Singh Sandhu

... Petitioner

Versus

State of Punjab & another

... Respondents

(4)

CWP No.8122 of 2014

Ravinder Kaur

... Petitioner

Versus

State of Punjab & another

... Respondents

(5)

CWP No.9679 of 2014

Sukhdeep Singh

... Petitioner

Versus

State of Punjab & another

... Respondents

(6)

CWP No.8313 of 2015

Surjit Kaur

... Petitioner

Versus

State of Punjab & another

... Respondents

(7)

CWP No.4056 of 2016

Seema

... Petitioner

Versus

State of Punjab & another

... Respondents

Reserved on: 08.04.2016

Decided on : 29.04.2016

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

Present : Mr.R.K.Arora, Advocate, for the petitioners
(in CWP-6031, 9679-2014 & 4056-2016).

Mr.Gurmeet Singh Guri, Advocate, for the petitioners
(in CWP-8031, 8083 & 8122-2014).

Mr.Rajiv Joshi, Advocate, for the petitioners
(in CWP-8313-2015).

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

This judgment shall dispose of 7 cases, bearing CWP-6031, 8031, 8083, 8122 & 9679-2014, 8313-2015 and 4056-2016, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-6031-2014 titled *Sukhwinder Singh & others Vs. State of Punjab & another*.

Petitioners seek quashing of the public notice dated 09.08.2013 (Annexure P24) and 19.09.2013 (Annexure P25) whereby decision was taken for withdrawal of the earlier public notice dated 09.01.2013 (Annexure P22). Vide the earlier notice, one last opportunity had been granted to the selected candidates who had been issued appointment letters to submit their joining report. Reliance has been placed upon CWP-20148-2012 titled *Venus Vs. State of Punjab & another*, decided on 25.10.2013 (Annexure P26) to contend that in similar situation, directions had been issued to operate the waiting list and issue appointment letters.

The plea taken by the petitioners is that in pursuance of the above-said judgment, appointment letters had been issued to the selected candidate on 13.03.2014 (Annexure P28) to the post of Vocational Mistress (Taxation Practices). As many as 35 candidates, who were in the waiting list, were also entitled for similar consideration for appointment to the post of Hindi Master/Mistress under the Scheduled Caste (R&O) Category against the unfilled vacancies, pursuant to the advertisement dated 23.09.2009 (Annexure P1). The petitioners, who had applied against the advertisement dated 03.09.2009 against the 7654 posts of Teachers, out of which, 713 posts were reserved for Hindi Masters/Mistresses and 72 posts were reserved for candidates belonging to Scheduled Caste (R&O) Category. It is the case of

the petitioners that as per the provisional merit list published, they had marks ranging from 58.15 to 58.5333 and therefore, as per the provisional merit list, their names were shown at various serial numbers ranging from 156 to 666. The last candidate appointed in the category was having 58.6833 and was offered the appointment and a waiting list was prepared (Annexure P5). Petitioner No.7- Veerpal Kaur was highest in the merit list at Sr.No.4 whereas the others were at various serial numbers, thereafter, upto Sr.No. 7 to 19. A large number of candidates did not join their duties, as per the appointment letter issued to them and the candidate at the waiting list No.3, were absorbed on the request of her representation dated 26.11.2011 (Annexure P8).

It was contended that for other categories, persons shown at waiting list had been offered appointments and public notice had been issued on 26.12.2011 whereby selected candidates had been given further time to join upto 04.01.2012, despite the fact that period allowed in their appointment letter for joining had expired. Candidates who are at Sr.Nos.1 to 3 had filed CWP-1675-2012, which was disposed of on 31.01.2012 (Annexure P12), with a direction to consider their case for appointment. On 04.04.2012, department again allowed candidates, who were in the waiting list, to join, in pursuance of the same advertisement. The petitioners (in CWP-1675-2012) had filed COCP-1627-2012, wherein the defence of the respondents was that their claim was

under consideration and the case was adjourned. In the meantime, the State issued public notice dated 09.01.2013 whereby more time was granted to the selected candidates to join their posts. Thereafter, the decision dated 09.08.2013 was brought before this Court in the Contempt Petition that they have decided not to operate the waiting lists prepared for recruitment of 7654 teachers and the waiting list had been cancelled, which was followed up by the second notice dated 19.09.2013. Resultantly, reliance was placed upon the judgment in the case of Venus (supra) to contend that the said order had been upheld in LPA-403-2014 on 13.03.2014 and the appointment order had also been issued on the same date. The services of the persons appointed were to be regularized vide memo dated 10.01.2014 and accordingly, the inaction of the respondents was challenged.

The State, in its written statement, took the plea that the claim of the petitioners was based on the waiting list, which had been ordered to be withdrawn. The last candidate had the merit of 58.6833 and no candidate having less marks than the petitioners had been appointed and there was no legal vested right of the petitioners. It was pleaded that appointments given to candidates in the wait-list was prior to the decision taken regarding cancellation of the wait list and in pursuance of the directions issued by this Court in the writ petitions which had been followed up by filing of contempt petitions. The above-said candidates had

approached this Court by way of writ petitions prior to the cancellation of the waiting list and therefore, the present petitioners could not equate themselves with the said candidates.

The judgment in the case of Venus (supra) was sought to be distinguished on the ground that the petitioner in the said case was at Sr.No.1 in the waiting list in the General Category, which had not been operated and the Category of Backward Class had been operated and the said petitioner had approached this Court in the year 2012. Two candidates in the waiting list, namely, Bindu Bala and Arminder Kaur had been appointed, in pursuance of the order dated 13.03.2014 in COCP-1627-2012 arising out of CWP-1675-2012. Resultantly, it was averred that the writ petition suffers from delay and laches and is liable to be dismissed.

Counsel for the petitioners have, accordingly, submitted that petitioners are similarly placed as Venus (supra) and therefore, the State should be directed to operate the wait list and the notice/order dated 09.01.2013 and 19.09.2013 should be quashed. Further reliance has been placed upon the Division Bench judgment, which was upheld in LPA-403-2013, upholding the decision of the Learned Single Judge. Reliance has also been placed upon the judgment in **Naresh Kumari Vs. State of Punjab & another 2015 (2) SCT 121**, which was further upheld in LPA-1436-2015, decided on 30.09.2015.

Counsel for the State, on the other hand, submitted

that there is no vested right on the petitioners who are fence-sitters as they had only approached this Court after the decision of the Letters Patent Appeal on 13.03.2014, in the present case and even in other cases, after the decision on 25.10.2013, whereby the Learned Single Judge had allowed the writ petition. Whereas, in Venus (supra), the petitioner had approached this Court earlier, before the State had decided to scrap the wait list on 09.08.2013.

After hearing arguments of counsel for the parties, this Court is of the considered opinion that there is no merit in the present set of cases. Similar challenge raised to the public notices dated 09.01.2013 and 19.09.2013 has been repelled by this Court in CWP-6589-2016 titled *Inderpreet Singh & others Vs. State of Punjab & another*, decided on 07.04.2016. Reliance was placed upon observations of the Division Bench in LPA-1781-2014 titled *Loveleen Kaur Vs. The State of Punjab & others*, decided on 03.11.2014, which also pertains to the same public notice dated 23.09.2009. In the said case, the candidate had not appeared before the authorities conducting the counselling and only filed a representation before the Chairman of the Selection Committee, subsequently, which was not entertained. The writ petition had been dismissed and the said order was upheld by the Division Bench, while noticing that once the selection process has concluded, it cannot be kept pending till eternity so as to confer right on the applicants. Relevant observations read as under:

“We do not find that any such direction can be given. The publication to conduct counseling was done through a public notice. The second counseling was conducted in the year 2011 i.e. more than 3 years earlier. The selection process once concluded, cannot be kept pending till eternity so as to confer right on the applicants for appointment. However, as and when any fresh advertisement seeking appointment is issued, it shall be open to the appellant to apply in accordance with law.

We do not find any merit in the appeal and the same is hereby dismissed.”

It is not a matter of dispute that the initial offer of appointment was to be given on contract basis, on a consolidated salary, which was also given in the case of Venus (supra) also vide the appointment letter issued, after being successful in the writ petition. The said appointment was @ Rs.9400/- per month, as per the terms and conditions of the advertisement.

The State, thereafter, took a decision, which would be apparent from the communication dated 10.01.2014 (Annexure P30) to regularize the service of those teachers, as per the terms and conditions in their appointment letters. It was only, thereafter, in view of the decision in Venus (supra), the present set of writ petitions have been initiated, on 25.03.2014 and the petitioners had never approached this Court at prior point of time. It is not disputed that the State has further advertised the posts of Punjabi Masters/Mistresses etc. in December, 2015, keeping in view the vacancies in hand, on account of the posts not being filled up and fresh applications have been received against the said

advertisement. The petitioners only had a right of consideration and no vested right of appointment, as such and it would not be appropriate, at this belated stage that the wait list should be asked to be operated, especially keeping in view the fact that the State had already withdrawn the offer way-back on 09.08.2013.

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. 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.”

A similar view was taken in **Raj Rishi Mehra & others Vs. State of Punjab & another (2013) 2 SCC 243** wherein candidates whose names had been included in the select list for recruitment in the Punjab Civil Services (Judicial Branch) had staked their claim on account of the resignation of 2 of the appointees. In the said case also, fresh advertisement had already been issued. Resultantly, while placing reliance upon the settled principle, it was held that the right to be appointed against the unfilled post was no longer *res integra*. Relevant observation reads 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' Association v. State of Gujarat and others](#) 1994 Supp (2) SCC 591, [State of Bihar v. Secretariat Assistant Successful Examinees Union](#) 1986 and others (1994) 1 SCC 126, [Prem Singh and others v. Haryana SEB and others](#) 1996) 4 SCC 319, [Ashok Kumar and others v. Chairman, Banking Service Recruitment Board and others](#) (1996) 1 SCC 283, [Surinder Singh and others v. State of Punjab and another](#) (1997) 8 SCC 488, [Madan Lal and others v. State of J&K and others](#) (1995) 3 SCC 486, [Kamlesh Kumar Sharma v.](#)

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

The Division Bench also, while upholding the judgment of Venus (supra) noticed that the right of the candidates was till a decision was taken to scrap the wait-list and the exception was only till that point of time. As noticed above, the petitioners who are fence-sitters, cannot be given the benefit as they had never opted to initiate any litigation at an earlier point of time, i.e., before the decision to withdraw the wait-list had been taken and it was only after one of the candidates had become successful, they have approached this Court and cannot take benefit of the ratio of the judgment in Venus (supra) in the above facts and circumstances.

Similarly, the judgment in Naresh Kumari (supra) would be of no help to the petitioners. In the said case, the issue of withdrawal of the wait-list was not subject matter of consideration before the Court, which is, now, the defence of the State that in the said case, the offer had been withdrawn. In the said case, the relief of appointment had only been declined on the ground that no candidate lower in merit had been appointed and accordingly, it was held that there was no purpose of re-advertising the said posts afresh and that vacancies would have to be carried forward,

therefore, relief was granted and thus, the petitioners' reliance upon the same is unwarranted for.

Resultantly, this Court is of the opinion that the petitioner has no vested right or entitlement to seek operation of the wait-list once the State had already taken a decision to scrap the same, especially, keeping in view the fact that the petitioner had approached this Court at a belated stage.

Accordingly, keeping in view the above discussion, all the writ petitions are, hereby, dismissed.

APRIL 29, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE