

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. LPA No.2024-2014 (O&M)
Date of Decision: August 29, 2016

State of Haryana and another
VersusAppellants

Karambir Singh and another
.....Respondents

2. LPA-1125-2015 (O&M)

State of Haryana and others
VersusAppellants

Ashok Kumar and others
.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr.R.D.Sharma, DAG, Haryana
for the appellants.

Mr.Naveen Panwar, Advocate
for the respondents.

.....

SURYA KANT, J.

[1] This order shall dispose of LPA Nos.2024 of 2014 (**State of Haryana and another vs Karambir Singh and another**) and 1125 of 2015 (**State of Haryana and others vs Ashok Kumar and others**) as the question of law which arises for consideration is common in both.

[2] The issue for determination is whether candidates placed in the waiting list for appointment to the Posts of Math Masters and Social Studies Masters are entitled to seek a writ of mandamus for their appointment, even if

the Department has come up with a plea that there are surplus teachers in those subjects?

[3] Another related question that arises for consideration is whether a candidate in the waiting list can be directed to be appointed even after expiry of the validity period of the waiting list?

[4] The facts of each case may be noticed briefly:

LPA No.2024-2014

[5] 1037 posts of Math Masters/Mistress were advertised by Haryana Staff Selection Commission (for short, 'the Commission') vide advertisement No.4/2009. The respondents applied for those posts and on the basis of overall performance they were kept in the waiting list. The respondents represented for their appointment but such claim having not been accepted, they approached this Court by way of CWP No.5626 of 2012 which was disposed of with a direction to the Competent Authority to decide their claim within four weeks. Pursuant thereto the Director, Elementary Education Haryana passed the order dated 06.07.2012 (Annexure P-5), which is self speaking. The claim of writ –petitioners for appointment was rejected on the plea that keeping in view the overall latest position of vacancies in the cadre of Math Masters it was not possible to appoint the candidates from waiting list and that none of their juniors has been given appointment. In the order, the competent authority gave the details of vacancies in a tabulated form and reached to the conclusion that before re-structuring of the department there were 5535 sanctioned posts of Math Masters against which 4805 incumbents were working. After re-structuring, it was reduced to 2144

posts only, against which 4694 incumbents are already working. In this manner, 2550 Math Masters are already surplus.

[6] The aggrieved petitioners again approached this Court in which the Department filed the written statement explaining data based fact-situation, and also admitting that six vacancies were available at the time when the petitioners had submitted their representation for appointment. On this premise, learned Single Judge vide order under appeal has directed for their appointment against such available vacancies though on notional basis.

LPA-1125-2015

[7] The respondent-writ petitioners applied for 247 posts of SS Masters/Mistresses which were advertised by the Commission vide advertisement No.6/2006 and as per the final result, they were placed at Serial Nos.1, 2 and 3 in the waiting list. They further averred that some of the candidates who were in the main list did not join hence they were entitled to be upgraded and included in the main list and are entitled to be appointed.

[8] The appellants took a categorical stand before the learned Single Judge that the recommendations from Commission were received on 02.02.2010 and the selection list was valid for a period of one year only. The validity of selection list thus expired on 01.02.2011, hence the claim of the petitioners was rejected by way of speaking order dated 06.07.2012. Further plea regarding non-availability of posts was also taken.

[9] Learned Single Judge vide order under appeal observed that since time and again notices were being sent to the candidates higher in merit asking them to join and those candidates have not come forward to join,

hence the respondent-writ petitioners are entitled to be offered appointment.

[10] In this factual backdrop the questions as formulated at the outset, have arisen for consideration and to further determine whether, in the facts and circumstances, a writ of mandamus could be issued to offer appointment to the respondents?

[11] Since the afore-stated questions could be effectively answered on ascertaining the correct facts re: availability of vacant posts, we directed the State of Haryana on April 28, 2016 to file a specific affidavit with regard to the status of the available vacancies.

[12] In deference thereto the Joint Director, Elementary Education Haryana has filed two separate affidavits dated 12.08.2016 in both the appeals and in LPA No.2024 of 2014, the averments made are to the following effect:-

“That in compliance of the above mentioned order of this Court it is submitted that as per data collected as on dated 11.03.2016, total sanctioned cadre strength of all subjects (including Math Masters) in the Elementary Education Department Haryana is 18365. It is further submitted that in the present case the respondents who are from waiting list at Serial No.3 & 5 are claiming appointment as Math Master against the candidate of main selection list who did not join. Therefore, the detail of the sanctioned strength of Math Master as on 11.03.2016 is given below:-

Master	Sanctioned			Working			Surplus
	Promote	Direct	Total	Promote	Direct	Total	
Math	707	1437	2144	849	2590	3439	1295

4. *That no candidate from the waiting list has been given appointment as Math Master from the recommendation dated 12.01.2011 and the validity of the recommendation was already expired on dated 11.01.2012.*
5. *That since the posts of Math Masters are already surplus due to the implementation of Right of Children to Free and Compulsory Education Act 2009 (RTE 2009). Therefore, to appoint further as Math Master will burden the State exchequer.”*

[13] Similarly in LPA No.1125 of 2015, the affidavit filed by the Joint Director, Elementary Education Haryana reads as follows:-

“ *That in compliance of the above mentioned order of this Court it is submitted that as per data collected as on dated 11.03.2016 total sanctioned cadre strength of all subjects (including S.S.Masters) in the Elementary Education Department Haryana is 18365. It is further submitted that in the present case, the respondents who are from waiting list at Serial No.1 to 3 are claiming appointment as SS Master against the candidate of main selection list who did not joint. Therefore, the detail of the sanctioned strength of S.S.Master as on 11.03.2016 is given below:-*

Master	Sanctioned			Working			Surplus
	Promote	Direct	Total	Promote	Direct	Total	
S.S.	724	1470	2194	3624	3324	6948	4754

4. *That no candidate from the waiting list has been given appointment as S.S.Master from the recommendation dated 02.02.2010 and the validity of the recommendation was already expired on dated 01.02.2011.*
5. *That since the posts of the S.S.Masters are already surplus due to the implementation of Right of Children to*

*Free and Compulsory Education Act 2009 (RTE 2009).
Therefore, to appoint further as S.S.Master will burden the
State Exchequer.”*

[14] In view of the above-stated categorical stand taken by the respondents that after restructuring of cadre strength, there are surplus Masters in the subjects of Maths as well as Social Studies (SS), we are of the considered view that no direction for appointment of the candidates out of the waiting list could be issued, for such appointments would be a further addition to the surplus man power.

[15] Similarly, the waiting list cannot be allowed to operate perpetually and once its life time expires, it cannot be revalidated save where appointments have been made on pick and choose basis and a candidate lower in merit has been appointed. No such instance has been pointed out by writ -petitioners.

[16] It may also be mentioned here that while issuing notice in these appeals, operation of the order passed by the learned Single Judge was stayed. The order under appeal thus has not been given effect till date.

[17] For the above stated reasons, we allow the appeals; set aside the order passed by learned Single Judge and dismissed the writ petitions.

(SURYA KANT)
JUDGE

August 29, 2016
meenuss

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No