

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2713 of 2016**

Jitendra Kumar Pandey S/o Shri Harendra Kumar Pandey, aged about 31 years, R/o Behind Zila Udyog Kendra, PS Kotwali Basti, Tahsil and District Basti (UP).

---- **Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary, Department Of Khadya Avam Aushadhi Prashashan, Mahanadi Bhawan, Mantralaya, New Raipur, Raipur (Chhattisgarh)
2. Commissioner, Khadya Avam Aushadhi Prashashan, Block I, 4th Floor, Indravati Bhawan, New Raipur, Raipur (Chhattisgarh)
3. Controller, Khadya Avam Aushadhi Prashashan, Block I, 4th Floor, Indravati Bhawan, New Raipur, Raipur (Chhattisgarh).

---- **Respondents**

For Petitioner	:	Shri Prateek Sharma, Advocate.
For respondents/State	:	Shri Gary Mukhopadhyay, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

06/03/2017

1. The present petition has been filed seeking for a direction to the respondents to issue an order of appointment in favour of the petitioner on the post of Food Safety Officer.
2. The grievance of the petitioner is that, the petitioner was a candidate along with other contesting candidates in the advertisement which was issued online for filling up of the post of Food Safety Officer by the respondents. Total number of posts advertised was 71 posts. However, later on during the course of selection process, since certain posts were to be filled up by way of promotion, the number of vacancy was reduced from 71 to 63 posts to be filled up by way of direct recruitment. That, as

per the stand of the respondents, out of 63 posts, 14 posts were to be filled up from unreserved candidates. Indisputably, the petitioner belonged to unreserved category. His name appeared at serial No.2 in the Wait list. Wait list No.1 was one Ajay Singh. An order of appointment was issued in favour of selected candidates on 10.12.2015. However, the candidate whose name appeared in the order of appointment dated 10.12.2015 at serial No.10, Ms. Amita Gupta, did not join the duties. Likewise, the candidates whose names appeared at serial Nos. 11,12 and 15 namely Avinash Diwakar, Ms. Namrata Rathore and Yogesh Kumar Dewangan, respectively did not join their duties.

3. It is pertinent to note that all these four were general category candidates recruited against unreserved category. Since out of these four posts which fell vacant, the respondents have already issued an order of appointment to the persons whose names appeared at serial No.1 in the wait list i.e. Ajay Singh on 26.03.2016. Likewise the names of two female category candidates namely Ms. Richa Sharma and Ms. Roshni Rajput, whose names appeared at serial Nos. 10 and 11 respectively in the same wait list have also been issued with an order of appointment on the same day i.e. 26.03.2016. For the reasons best known, the order of appointment in favour of the petitioner was not issued though he stood at serial No.2 in the said wait list. No plausible explanation or justification was given for not issuing appointment order in respect of present petitioner who stood at serial No.2 in the said wait list being fully eligible for being appointed on the said post particularly when one post was still lying vacant and the respondents themselves

have issue orders of appointment to other similarly placed wait list candidates.

4. A perusal of return which have been filed by the respondents clearly shows that one post is still vacant on account of one of the candidates not joining the duties inspite of order of appointment being issued in his favour. The State in their reply have not given any explanation or justification as to why the order of appointment could not be issued in favour of the petitioner. The sole contention raised by the State is that it is the prerogative of the State Government to decide as to whether an order of appointment has to be issued or not. It is further contended by the State that only because the name of petitioner appears in the select list would not by itself create an indefeasible right in favour of the petitioner for seeking an appointment. It is ultimately the decision of the State Government as to who they want to appoint and who they do not want to be appointed and it is this prerogative which has been exercised by the State in the instant case.
5. Needless to mention that this reply of the State Government itself is not at all justifiable or acceptable for the reason that one could have accepted the said contention of the State if they had taken a policy decision that they do not intend to fill up the vacant posts from among the wait list candidates. But in the instant case, the State has on the post falling vacant from among the candidates who were issued an order of appointment and who did not join the post, have filled up those posts by calling the candidates whose names appeared along with the petitioner in the wait list. The petitioner indisputably stands at serial No.2

in the wait list. The person whose name appeared at serial No.1 has already been issued an order of appointment on 26.03.2016. In addition, two female candidates whose names appeared at serial No.10 and 11 have also been issued an order of appointment on the same day i.e. on 26.03.2016. Therefore, non issuance of an order of appointment in favour of the petitioner who stands at serial No.2 in the same wait list is a clear violation of Article 14 of the Constitution of India. There is clear discrimination being shown by the respondents with no plausible explanation whatsoever given for such prerogative of the State Government which is not at all acceptable.

6. The writ petition, for the aforesaid reasons deserves to be and is accordingly allowed with a specific direction to the respondent No.2 to forthwith issue an order of appointment in favour of the petitioner. No order asto costs.

Sd/
(P. Sam Koshy)
Judge