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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.657 of 2016

Niraj Kumar Singh, aged about 33 years, S/o Shri Rama Shankar Singh, R/o Albela Para, P.S. Kanker, District Kanker (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Tribal Welfare, Mahanadi Bhawan, Naya Mantralaya, District Raipur (C.G.)
2. Commissioner, Tribal Welfare, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
3. Chhattisgarh Professional Examination Board, Through its Controller, Chhattisgarh Professional Examination Board Campus, Pension Bada, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Vinay Pandey, Advocate.

For State/Respondents No.1 and 2: -

Mr. Gary Mukhopadhyay, Deputy Govt. Adv.

For Respondent No.3: Dr. Saurabh Kumar Pande, Advocate.

AND

Writ Petition (S) No.670 of 2016

Neeraj Chaturvedi, S/o B.P. Chaturvedi, aged about 29 years, at present R/o Behind BTI, Janjgir, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Tribal Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
2. Commissioner, Scheduled Caste and Scheduled Tribe Development Department, Chhattisgarh, Raipur (C.G.)
3. Chhattisgarh Professional Examination Board, Through Chairman, Chhattisgarh Professional Examination Board, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Raghavendra Pradhan, Advocate.
For State/Respondents No.1 and 2: -
Mr. Gary Mukhopadhyay, Deputy Govt. Adv.
For Respondent No.3: Dr. Saurabh Kumar Pande, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/02/2017

1. Since both the petitions involve common question of law and fact, they are clubbed together and heard analogously and are being disposed of by this common order.
2. Vacancy of 182 posts of unreserved open general category of Hostel Superintendent Class-D was advertised by the State of Chhattisgarh, Department of Tribal Welfare and examination was conducted by the Chhattisgarh Professional Examination Board, Raipur on 17-8-2014, and result / combined merit list was declared on 17-10-2014, whereas the final merit list was notified on 12-11-2014. On 19-3-2015, appointment letters were issued to 182 selected candidates in which 69 selected candidates did not join, however, 2 candidates, who had joined on the post, had resigned. Thus, 71 (69+2) posts of Hostel Superintendent Class-D remained vacant. Against 71 posts, the exercise was undertaken in which on 5-10-2015, documents were verified and ultimately, on 7-11-2015, counselling was conducted and appointment letters were issued on 10-11-2015 to 71 selected candidates, but only 55 candidates joined and thus, 16 posts again remained vacant and in the meanwhile, the validity of select

list expired. Now, the present writ petitions have been preferred by the petitioners stating inter alia that they are the selected meritorious candidates and they ought to have been called for appointment against 16 vacant posts, therefore, a writ of mandamus be issued to the respondents for considering their case for appointment on the said post of Hostel Superintendent Class-D, as the respondents have issued fresh advertisement and therefore the said advertisement is untenable and bad in law.

3. Return has been filed by the State/respondents No.1 and 2 opposing the writ petitions stating inter alia that validity of select list had already expired on 11-11-2015.
4. Mr. Vinay Pandey, learned counsel appearing for the petitioner in W.P.(S)No.657/2016, submits that the petitioner's case has not been considered ignoring his merit and that 16 posts are lying vacant and new advertisement has been issued. He further submits that the petitioner has vested right in his favour to be appointed and new recruitment for 16 posts which has fallen vacant pursuant to the earlier advertisement dated 12-7-2014 is bad and unsustainable in law.
5. Mr. Raghavendra Pradhan, learned counsel appearing for the petitioner in W.P.(S)No.670/2016, would also join and argue on the same line.
6. Mr. Gary Mukhopadhyay, learned Deputy Government Advocate appearing for the State / respondents No.1 and 2, would submit that life of the select list had expired on 11-11-2015 and these writ

petitions have been filed on 29-2-2016 and 1-3-2016, respectively, which suffer from delay and laches as such, the validity of merit list cannot be extended for more than 2 years, even the rule does not prescribe the period of validity of merit list.

7. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost care and caution.
8. It is undisputed that the merit list was first notified on 12-11-2014 and against 71 left over posts, 55 candidates joined on 10-11-2015, thereafter, 16 posts remained vacant, but in the meanwhile, on 11-11-2015, one year period has already elapsed and therefore the validity period of merit list stood expired. The subject advertisement is governed by the Chhattisgarh Tribal and Scheduled Caste Welfare Subordinate Educational Service Cadre (Class-III Non-Ministerial) Service Rules, 2011 (for short 'the Rules of 2011') of which Rule 12 states about preparation of select list on the recommendations of the selection committee, but the said Rules do not provide any validity period of the select list.
9. Now, the question is, if the subject Rules by which the advertisement is governed, is silent about the period of validity of the select list, then what should be the period of validity of the select list.
10. This question is no longer *res integra* and did not detain me as in the matter of **State of Rajasthan and others v. Jagdish Chopra**¹

¹ (2007) 8 SCC 161

Their Lordships of the Supreme Court have clearly held that a panel/merit list should be valid for one year if the rules are silent on this point, the period of validity of select list should be one year, and observed in paragraph 9 as under: -

"9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. [In State of Bihar v. Amrendra Kumar Mishra](#)² this Court opined: (SCC p. 564, para 9)

"9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel."

It was further held: (SCC p. 565, para 13)

"13. The decision noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period." "

11. The principle of law enunciated in **Jagdish Chopra's** case (supra) has been followed with approval in the matter of **Girdhar Kumar Dadhich and another v. State of Rajasthan and others**³ holding that duration of select list is ordinarily one year and duration, if

² (2006) 12 SCC 561

³ (2009) 2 SCC 706

extended, must be done according to law as such extension cannot be presumed.

12. Thus, applying the principle of law laid down in the above-stated judgment, in the instant case, the validity of select list stood expired on 11-11-2015 and now, the subject recruitment has been issued in the year 2016. The further question would be, whether the petitioners being selected candidates are entitled to be considered in accordance with the applicable Rules for appointment on the post which has fallen vacant. The Rules of 2011 which are applicable do not oblige the selection committee to prepare a waiting list for wait-listed candidates.

13. In the matter of **Gujarat State Dy. Executive Engineers' Association v. State of Gujarat and others**⁴, the Supreme Court has defined the meaning of "waiting list" as under:-

"8. ... A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. ..."

The Supreme Court has further highlighted the importance of waiting list in paragraph 9, which reads as follows:-

"9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick

4 1994 Supp (2) SCC 591

up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.”

14. In the matter of **Bihar State Electricity Board v. Suresh Prasad and others**⁵, the Supreme Court has held that in the absence of statutory rules to the contrary, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and observed in paragraph 7 as follows:-

“7. ... We are not shown any statutory recruitment rules which require the appellant Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of Respondents 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard. ...”

15. In the matter of **Raj Rishi Mehra and others v. State of Punjab and another**⁶, the Supreme Court has categorically held that wait-listed candidates are not entitled to be appointed against the vacant post, as a matter of right. Paragraphs 15 and 16 of the report state as under: -

5 (2004) 2 SCC 681

6 (2013) 12 CC 243

"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](#)⁷, [Gujarat State Dy. Executive Engineers' Assn. \(supra\)](#), [State of Bihar v. Secretariat Asstt. Successful Examinees Union](#) 1986⁸, [Prem Singh v. Haryana SEB](#)⁹, [Ashok Kumar v. Banking Service Recruitment Board](#)¹⁰, [Surinder Singh v. State of Punjab](#)¹¹, [Madan Lal v. State of J&K](#)¹², [Kamlesh Kumar Sharma v. Yogesh Kumar Gupta](#)¹³, [State of J&K v. Sanjeev Kumar](#)¹⁴, [State of U.P. v. Rajkumar Sharma](#)¹⁵, [Ram Avtar Patwari v. State of Haryana](#)¹⁶ and [Rakhi Ray v. High Court of Delhi](#)¹⁷.

16. In [Surinder Singh](#) case (supra), this Court observed as under: (SCC p. 494, para 14)

"14. ... '9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The

7 1992 Supp (3) SCC 84

8 (1994) 1 SCC 126

9 (1996) 4 SCC 319

10 (1996) 1 SCC 283

11 (1997) 8 SCC 488

12 (1995) 3 SCC 486

13 (1998) 3 SCC 45

14 (2005) 4 SCC 148

15 (2006) 3 SCC 330

16 (2007) 10 SCC 94

17 (2010) 2 SCC 637

constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.' (Gujarat State Dy. Executive Engineers' Assn. case (supra), SCC p. 599, para 9)"

16. In **Jagdish Chopra's** case (supra), the Supreme Court has even also held that it is well-settled principle of law that even selected candidates do not have legal right to appointment. (See **Shankarsan Dash v. Union of India**¹⁸ and **Asha Kaul v. State of J & K**¹⁹.)

17. Reverting back to the facts of the present case, it would be apparent that though the Rules of 2011 do not provide any validity period during which the select list would remain in operation, but the Supreme Court in **Jagdish Chopra's** case (supra) has clearly held that in case the rule is silent, the validity period for the select list would be one year as such, in the instant case, validity period of the select list has expired on 11-11-2015 and thereafter, advertisement for 16 posts of Hostel Superintendent Class-D, which remain unfilled and fallen due for recruitment, has been issued, as there is no provision for preparation of waiting list. Therefore, the State Government is absolutely justified in issuing advertisement for the subject post as a backlog vacancy in which there is no legal error. In the circumstances, I do not find any error of jurisdiction in the impugned advertisement and the petitioners are not entitled to be considered for appointment on

18 (1991) 3 SCC 47

19 (1993) 2 SCC 573

the subject post.

18. In view of the above, the petitions have no force and deserve to be dismissed and are accordingly, dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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