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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 22.09.2016****Judgment delivered on 13.01.2017****WA No. 146 of 2016**

1. Jeetlal Banjare S/o Late Suratiya Banjare, Aged About 39 Years Occupation-Presently Working As Daily Wages Employee Under Forest Department, R/o Village Khaira, Post, Police Station And Tahsil Mahasamund, Civil And Revenue District Mahasamund (Chhattisgarh)

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through : The Directorate, Department Of Higher And Technical Education, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
2. The Director, Directorate Of Technical Education, Chhattisgarh, Govt. Girls Polytechnic Campus, Byron Bazaar, Raipur (Chhattisgarh)
3. The Collector, District Gariyaband (Chhattisgarh)
4. The Principal, Govt. Polytechnic Gariyaband, I.T.I. Premises Gariyaband, Post, Police Station And Tahsil Gariyaband, Revenue District Gariyaband, Civil District Raipur (Chhattisgarh)

---- Respondent**And****WA No. 147 Of 2016**

1. Mukesh Kumar Sahu S/o Shri Tiharu Ram Sahu, Aged About 34 Years R/o Village Birkona, Post Birkona, Police Station Koni, Tahsil Bilaspur, Civil And Revenue District Bilaspur, (Chhattisgarh)

---- Petitioner**Vs**

1. The State Of Chhattisgarh Through: The Directorate, Department Of Higher And Technical Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. The Director, Directorate Of Technical Education, Chhattisgarh, Govt. Girls Polytechnic Campus, Byron Bazaar, Raipur, (Chhattisgarh)
3. The Collector, District Gariyaband (Chhattisgarh)
4. The Principal, Govt. Polytechnic Gariyaband, I.T.I. Premises Gariyaband, Post, Police Station And Tahsil Gariyaband, Revenue District Gariyaband, Civil District Raipur, (Chhattisgarh)

---- Respondent

For Appellants	Mr.Kishore Bhaduri and Mr. Roop Naik, Advocates
For Respondent	Mr. UNS Deo, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

C A V Judgment

1. The appellants would assail the orders dated 18.1.2016 passed by the learned Single Judge in WPS Nos. 4796 and 4804 of 2014, whereby, their writ petitions for consideration of their case for appointment on the strength of their position in the waiting list have been dismissed.
2. Undeniably, in the selection process initiated by the Principal, Government Polytechnic, Gariyaband, the appellant Mukesh Kumar Sahu applied for the post of Skill Assistant, whereas, appellant Jeetlal Banjare applied for the post of Tracer (Draftsman). At the end of selection process, select list and

waiting list were prepared on 24.09.2013. The respective appellants could not be selected, as they failed to secure position in the main list of selected candidates, however, they were placed as wait listed candidates at serial No.1 for their respective posts. For both the posts, the selected candidate namely Dhananjay Sahu in the appeal preferred by Mukesh Kumar Sahu and one Manoj Kumar Sahu in the appeal preferred by Jeetlal Banjare did not join on the subject post, pursuant to which, the appellants represented the matter for their appointment, but the same was not considered. Prayer for consideration of their names has been dismissed by the learned Single Judge on the ground that the wait listed candidate has no right to be appointed against the vacant post.

3. Shri Kishore Bhaduri, learned counsel appearing with Shri Roop Naik, learned counsel for the appellants, would refer to document Annexure P/6, filed in WPS No.4804 of 2014 to submit that the Principal, Government Polytechnic, Kabirdham had also issued similar advertisement under the same set of Rules i.e. the Chhattisgarh Technical Education Class-III (Non-Ministerial) Service Recruitment Rules, 2005 (for short "the Rules, 2005") and has offered appointment to wait listed candidates, therefore, the appellants are also entitled to similar relief, as their selection was also conducted under the Rules, 2005. Shri Bhaduri would further contend that in **Sumit Kumar Gupta v State of**

Chhattisgarh and others¹, this Court has passed an order allowing the petition preferred by a wait listed candidate.

4. Per contra, Shri U.N.S. Deo, learned Govt. Advocate appearing for the State, would submit that the appellants being the wait listed candidates have no right to be appointed, therefore, the appeals deserve to be dismissed.
5. Rule 12 of the Rules, 2005 speaks about the list of candidates recommended by the Selection Committee. The said Rules enjoins the selection committee to forward to the appointing authority in order of merit of the candidates. It does not speak about the list of selected candidates and wait listed candidates separately, therefore, in a given case, the selection committee can prepare a joint list of all the candidates recommended for appointment either through the main list or in case any candidate does not join the same to be filled by the wait listed candidates, who have been recommended in the list prepared under Rule 12 (1) of the Rules, 2005.
6. We are convinced that when under the same set of rules, the Principal of Government Polytechnic of another District has offered appointment to wait listed candidates and the appellants are also included in the list of wait listed candidates recommended to the appointing authority, they are entitled for consideration of their case as held by the Supreme Court in

¹ WPS No.2446 of 2015 (decided on 28.10.2015)

State of U.P. v. Ram Swarup Saroj², wherein it is held that claim of a candidate included in the panel was not defeated because currency of panel expired during pendency of litigation, when the candidate has made representation during its validity.

7. Similarly, in **Viernder S. Hooda and others v State of Haryana and another**³, the Supreme Court has held thus in paras 3 & 4 :

3. So far as the first conclusion recorded by the High Court is concerned, it is clear that this Court, while disposing of the appeal filed by the appellants, made clear that it would be open to the appellants to file a proper writ petition before the High Court for putting forth appropriate contentions on the basis of earlier selection in the context of circular dated 22-3-1957 read with circular dated 26-5-1972. This order was passed by this Court on 13-10-1995 and the appellants filed a writ petition on 29-1-1996. Particularly when Appellants 2 and 3 were allowed as co-petitioners in the special leave petition before this Court, we do not think that the High Court was justified in deciding against the appellants on the ground of laches. The fact that there were further vacancies available and when 9 vacancies were advertised to be filled up within a period of six months after announcement of the previous selection cannot be disputed at all. In terms of the circulars issued by the Government on 22-3-1957 and 26-5-1972 when such vacancies arise within six months from the receipt of the recommendation of the Public Service Commission they have to be filled up out of the waiting list maintained by the Commission. In respect of the vacancies which arise after the expiry of six months it is necessary to send the requisition to the Commission. It is also made clear that if the Commission makes recommendations

2 (2000) 3 SCC 699

3 (1999) 3 SCC 696

regarding a post to the Department and additional vacancies occur in the Department within a period of six months on the receipt of the recommendations, then the vacancies which occur later on can be filled in from amongst the additional candidates recommended by the Commission. It is urged on behalf of the appellants that letter dated 7-1-1992 indicated that the cadre strength in the Haryana Civil Service (Executive Branch) was 440 and the officers filling these posts were around 129 and there was a shortfall of 111 and 23 posts had to be filled up by direct recruitment. Thus 12 posts for direct recruitment were vacant when the advertisement for recruitment was made which was held in 1991. Therefore, the appellants' case ought to have been considered when some of the vacancies arose by reason of non-appointment of some of the candidates. Therefore, the Government ought to have considered the case of the appellants as per the rank obtained by them and the appellants had to be appointed if they came within the range of selection. Thus when these vacancies arise within the period of six months from the date of previous selection the circulars are attracted and hence the view of the High Court that vacancies arose after selection process commenced has no relevance and is contrary to the declared policy of the Government in the matter to fill up such posts from the waiting list.

4. The view taken by the High Court that the administrative instructions cannot be enforced by the appellants and that vacancies became available after the initiation of the process of recruitment would be looking at the matter from a narrow and wrong angle. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.

8. Yet again in **A.P. Aggarwal v Govt. of NCT of Delhi and another⁴**, the Supreme Court, following **Virendra S. Hooda** (surpa) held thus in paras 10, 11 & 14. :

10.....There is no dispute in this case that the vacancy was created by resigning of the post by M.L. Sahni within a period of six months of the date of joining the same. The list recommended by the Select Committee and accepted by the Government contained a panel of two names and the post is such it is not possible to make local arrangements to fill up the vacancy. Nor is it desirable to keep it vacant for a long time or till the completion of fresh recruitment.

11. In our opinion, this is a case of conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. Even if it is to be said that the instructions contained in the office memorandum dated 14-5-1987 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is conferred and also satisfy the mandatory requirement of the statute. It is not therefore open to the Government to ignore the panel which was already approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any state that the appellant is not fit to occupy the post. No attempt was made before the Tribunal or before this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection.

4 (2000) 1 SCC 600

14. In *R.S. Mittal v. Union of India* the question arose with regard to selection of candidates to the post of Judicial Member, Income Tax Appellate Tribunal. The selection was made by a Selection Board consisting of a sitting Judge of this Court. The Selection Board prepared a panel of selected candidates which included the name of the appellant before this Court and sent its recommendations. The candidates who were at Nos. 1 and 2 in the panel did not accept the appointment. The Bench observed that though a person on the select panel has no vested right to be appointed to the post for which he has been selected he has a right to be considered for appointment and at the same time the appointing authority cannot ignore the select panel or decline to make an appointment on its whims. The Court said that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, ordinarily there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a person who is on the select panel. However, on the facts of the case, the Bench did not give any relief to the appellant as he was only at No. 4 and no information was available about the stand of the person who was at No. 3 of the select panel. While reversing the findings given by the Central Administrative Tribunal to the extent indicated in the judgment, the Bench dismissed the appeal but directed the Government to pay the cost of the proceedings to the appellant which was quantified at Rs 30,000.

9. Similarly in **Sheo Shyam and others v State of U.P. and others**⁵, the Supreme Court has held that in absence of any statutory rules, the period of validity to be reckoned from the date on which last recommendation was made by UPSC.

5 (2005) 10 SCC 314

10. In the cases at hand, both the appellants were placed at Serial No.1 in the waiting list published on 24.09.2013. When one of the person in the main list did not join, they submitted representation within one year from the date of issuance of select list, therefore, in view of the settled legal position in **Ram Swarup Saroj** (supra), **Virender S.Hooda** (supra) and **Sheo Shyam** (supra), the writ petitions should have been allowed.
11. We accordingly set aside the impugned orders dated 18.01.2016 passed by the learned Single Judge in WPS Nos.4796 of 2014 and 4804 of 2014 and allow the said writ petitions directing the concerned authority to consider the appellants' name for issuance of appointment order, subject, however, to the appellants being eligible in all other respects in accordance with rules.
12. As a sequel, both the writ appeals are allowed to the extent indicated above.
13. There shall be no order as to cost (s).

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Chandra Bhushan Bajpai