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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-11160-2014
Date of Decision:30.11.2017**

Mai Chand

.....Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Raman Chawla, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G.,Haryana.

Mr.P.S.Jammu, Advocate,
for respondents no.3 to 5.

AMOL RATTAN SINGH, J. (Oral)

The controversy in this writ petition has been already recorded by this Court in its order dated 13.11.2017, which is to the following effect:-

“The petitioner in this petition was selected for appointment to the post of a Clerk, pursuant to a selection process initiated in the year 1987, with the written test, which is stated to have been the sole criteria for selection, having been conducted in the year 1989, the petitioner being at serial no. 2635 in the merit list of 4373 candidates.

(Learned counsel for the petitioner submits that the petitioners' merit list number shown as 2472 in paragraph 2 of the petition is erroneous).

The factum of the petitioner being at merit no. 2635 of the aforesaid merit list is not denied by the respondents in their written statement.

The said selection having become subject matter of prolonged litigation, eventually it went up to the Supreme Court and was adjudicated upon in **Roshni Devi vs. State of Haryana** (1998) 8 SCC 59, wherein it was firstly directed that the appointments made from the list prepared on 15.10.1989 would not be annulled and further, that the last person from the aforesaid merit list being at serial no. 4645, “persons occupying higher position than him could be considered for appointment to the post of Clerk if there exist any vacancies for them”.

On what was implied by their Lordships as regards the existent vacancies, was further explained in the directions given in that case.

Despite the aforesaid directions, a large number of people still not having been given appointments, various writ petitions came to be filed, and a co-ordinate Bench, vide its judgment in CWP No. 5972 of 2011 and connected matters, directed that 12 of the petitioners in that bunch of petitions, be given appointments, the stand of the State being that there were only that many vacancies available.

The said judgment having been challenged by way of 25 appeals, a judgment came to be passed by a Division Bench of this Court on 09.11.2012 (the lead case being LPA No. 1509 of 2010) titled as **Baljit and others vs. State of Haryana and others**, eventually giving the following directions:-

“We thus set-aside the direction of the learned Single Judge given in the order dated 03.08.2010 or other orders which confined to the filling up the posts on the basis of the inter-se merits of the writ petitioners alone. Instead, it is directed that 103 number of vacancies which according to the State of Haryana still exist pertaining to the period 15.10.1989 to 18.11.1995 shall be filled up strictly on the basis of the merit position in the merit list prepared by the respondents.

With the aforesaid directions, all the aforesaid Letters Patent Appeals and Civil Writ Petitions are disposed of.”

Thus, 103 vacancies still existent as pertained to the period 15.10.1989 to 18.11.1995, were ordered to be filled up strictly as per the merit list prepared by the respondents.

Pursuant to the aforesaid directions (which are not denied to have become final) the respondent Haryana Staff Selection Commission is stated to have issued a public notice on 02.01.2013, a copy of which has been annexed as Annexure R2/1 with the written statement of respondents no. 1 and 2.

Essentially, the notice reflects what was directed by the Division Bench, inviting applications/claims from all “eligible meritorious candidates” seeking appointment from the merit list prepared on 15.10.1989.

It was also stated in the public notice that if no claim is received within a period of 15 days from the date of publication of the notice, it would be presumed that the candidates are not interested in seeking appointment to the posts of Clerks in the selection process in question.

It is now the case of the respondents that the petitioner not having applied to the Commission within the stipulated period of 15 days, he had no right of appointment, even in terms of the judgment of the Division Bench.

In response to the aforesaid stand of the respondents, a replication has been filed by the petitioner, stating therein that the aforesaid public notice was neither served upon the petitioner, nor was any public notice issued in any newspaper.

Further, learned counsel for the petitioner has also produced in Court today, an order passed by the Additional Director (Administration) in the office of the Director, Secondary Education Haryana, dated 08.05.2013, appointing 39 persons as Clerks.

Learned counsel for the petitioner submits that therefore, with only 39 persons having been appointed as Clerks, despite the directions of the Division Bench that 103 persons be appointed as per the vacancies existing for the period referred to, the respondents are actually in violation of the aforesaid orders.

The Secretary, Haryana Staff Selection Commission, is directed to file his affidavit, stating firstly, as to how many persons were recommended for appointment as Clerks, pursuant to the aforesaid direction of the Division Bench; and secondly, the mode of communication to the 103 eligible candidates, as per the order of merit, in the merit list in question. It would also be stated as to whether any individual letters were sent to those 103 candidates as would be expected, (naturally at the addresses available in the records

of the Commission), as the direction of the Division Bench is of the year 2012, pertaining to a selection of the years 1987/1989.”

In pursuance of the aforesaid order, an affidavit of Sh.Mahavir Kaushik, Secretary, Staff Selection Commission, has been filed in Court today by the learned State counsel, which is to the effect that pursuant to the orders of the Division Bench dated 09.11.2012, a public notice was issued on 02.01.2013, which was uploaded on the website of the respondent-Commission, “which is in the public domain.” It is also stated that the notice was published in the newspaper Amar Ujala(Hindi) on 04.01.2013, in the Aaj Samaj, also in Hindi, on 05.01.2013, and in The Tribune (English) on 06.01.2013 as also on that date in the Dainik Bhaskar (Hindi).

Hence, the inference taken in the aforesaid affidavit is that the orders of the Division Bench stand duly stood complied with, with adequate notice having been given to the 103 candidates who were directed to be appointed by the orders of that Bench.

In the face of the aforesaid stand of the Commission, it is to be noticed again that the selection process was one which was initiated in the year 1987, with the written examination held in the year 1989, and eventually the direction of the Division Bench was issued in the year 2012, i.e. 23 years later.

The Division Bench specifically overruled the decision of a co-ordinate Bench of this Court with regard to offering appointments to only the 12 petitioners before the Court at that stage, and instead directed that 103 candidates, as per merit, be given appointments against the vacant seats existent for the period between 1989 to 1995.

That being so, and the present petitioner not being an appellant before the Division Bench, he would not be expected to know of the directions and therefore, in the opinion of this Court, it was incumbent upon the respondent-Commission to actually inform each of the 103 candidates, or atleast those who were not appellants before the Division Bench, of the directions issued by the Court, by way of individual letters issued to them at the addresses available in the record of the Commission, obviously on the basis of the application forms filled in way back in the years 1987/1989.

That not having been done by the respondent-Commission, this petition is allowed and the petitioner, if he falls within the merit list of a 103 candidates as were to be offered appointments in terms of the aforesaid direction of the Division Bench in LPA No.1509 of 2010, shall be offered an appointment within a period of two months from the date of receipt of a certified copy of this order.

He, upon such appointment being given, shall be granted all benefits as have been granted to the candidates already appointed in terms of the orders of the Court in that appeal.

November 30, 2017

dharamvir

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO