

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

CWP No. 20150 of 2014
Date of decision: 05.07.2017

Manisha and others

....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Jitender Nara, Advocate,
for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The petitioners, who are three in number, seek a writ in the nature of mandamus to be allowed to join on the posts of Female Supervisors with the respondents against the four vacant posts lying in the general category.

It is the case of the petitioners that vide advertisement no. 1 of 2011 dated 19.03.2011 (Annexure P-1), the Haryana Staff Selection Commission invited applications for 278 posts of Female Supervisors in the Department of Women and Child Development-respondent no. 2. On the basis of the interview, the result was finalized on 04.10.2013 (Annexure P-2) and the petitioners were put in the wait list alongwith others. On 20.06.2014, the petitioners alongwith 11 more candidates (total 14) were called to appear on 02.07.2014 alongwith the original testimonials on account of the fact that they were in the wait list. It is not disputed that 9 persons were accordingly given appointment vide letters dated 11.08.2014

(Annexure P-4).

The petitioners represented on 20.08.2014 (Annexure P-5 colly) bringing to the notice of the respondents that 4 candidates who had been selected, their appointment had been withheld on account of the fact that their certificates and degrees had been found fake in the verification process and, therefore, appointments had been not confirmed and rather their services had been terminated. Therefore, they sought consideration for appointment on the strength of the wait list and also brought to the notice that others had already been appointed. Respondent no. 2 also asked for affidavits in a format which was duly enclosed that they would be appointed and their case was under consideration vide communication dated 10.09.2014 (Annexure P-6).

A perusal of the format would go on to show that the services of 4 candidates had been terminated but the re-verification process was on and accordingly a condition was put that in case during re-verification, if the certificates are found correct, the services of the petitioners were liable to be terminated without assigning any reason. It is not disputed that the petitioners duly submitted the prescribed undertaking to the respondents' officials.

Counsel for the petitioners has also pointed out from the record obtained from the department whereby, it would be apparent that even at one stage, the petitioners had been assigned places of posting against the concerned vacancies as per their merit. However, on account of the imposition of Code of Conduct due to the Haryana Vidhan Sabha Elections, the matter was kept hanging and it is apparent that no action was taken and also on account of the fact that re-verification process was carrying on.

Resultantly, the petitioners approached this Court on 23.09.2014.

In the written statement filed by the State, no serious opposition as such has been raised and it has been admitted that the services of those 4 candidates were terminated vide speaking order dated 27.05.2014. It is also not disputed that as many as 4 FIRs against the selected persons were also lodged and, therefore, the re-verification was never done. The only defence now taken is that the validity of waiting list had expired on 23.10.2014 and, therefore, an offer of appointment could not be issued to the petitioners as the waiting list was to remain valid for a period of one year from the date of recommendations.

Counsel for the petitioner is accordingly well justified in submitting that on account of no fault of the petitioners and on account of inaction on the part of the respondents, they cannot be faulted. The fact that they were already on the wait list, the petitioners are liable to be appointed and the wait list was liable to be operated as would be clear that within the prescribed period also, the petitioners had been called initially on 20.06.2014 (Annexure P-3) and 9 persons were also given appointments on 11.08.2014. Thereafter also, the respondents on 10.09.2014 (Annexure P-6), had taken necessary undertaking before the expiry of the period of one year but failed to act upon the assurance of the appointment and let the matter drag leading to the denial of the appointment.

In such circumstances, the defence now which has been taken that a period of one year has expired is without any justification. The petitioners cannot be faulted for the inaction of the respondents or on account of the fact that the Code of Conduct had come into play once 4 candidates' certificates had been found forged and their services had been

terminated and even FIRs had been lodged. The process of reverification did not arise as such and the appointment should have been given forthwith and the purpose of the wait list was, thus, frustrated. Reliance has been rightly placed upon the judgment in ***Ajmer Singh vs. State of Haryana and others, 1991 (1) CLJ (Service) 86.***

Reliance can be placed upon the judgment of a three Judge Bench of the Apex Court in ***Shankarsan Dash Vs. Union of India 1991(2) SCR 567*** wherein similar direction was issued that until it can be shown that there was a valid reason for not filling up the vacancies, candidates could not be discriminated against. The relevant para reads as under:-

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in ***State of Haryana v. Subhash Chander Marwaha,****

(1974)1 SCR 165, Miss Neelima Shangla v. State of Haryana, (1986)4 SCC 268, or Jitendra Kumar and others v. State of Punjab and others, (1985)1 SCR 899.”

Accordingly, keeping in view the above, the present writ petition is allowed. Direction is issued to the respondents to operate the wait list and to appoint the petitioners forthwith within a period of 4 weeks from the date of receipt of certified copy of the order. To avoid further disputes regarding seniority, the petitioners will also be held entitled to the same seniority as per the appointments made on 11.08.2014.

05.07.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No