

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

**Date of decision: 22.03.2017**

**1. CWP No. 24290 of 2013**

Dhanwant Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

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**2. CWP No. 16107 of 2014**

Dalip Kumar and another

...Petitioners

Versus

State of Punjab and another

...Respondents

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**3. CWP No. 3722 of 2015**

Jagjeet Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

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**4. CWP No. 13312 of 2015**

Amandeep Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

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**CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present: Mr. H. C. Arora, Advocate,  
for the petitioners in CWP-24290-2013.

Mr. P.S. Khurana, Advocate  
for the petitioners in CWP-16107-2014.

Mr. Parvesh Saini, Advocate,  
for the petitioner in CWP-13312-2015.

Mr. Sukhdev Kamboj, Advocate  
for the petitioner in CWP-3722-2015.

Mr. Rupam Aggarwal, DAG, Punjab.

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**JAISHREE THAKUR, J.**

1. By way of this order I proposed to dispose of above referred four writ petitions as the facts and the question of law involved in all these cases are identical. For brevity facts are being extracted from **CWP No. 24290 of 2013**.

2. The instant writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus or any other appropriate writ directing the respondents to issue appointment letters to the petitioners as Vocational Masters (in their related subjects) with retrospective effect from 14.01.2012.

3. In brief, facts are that the petitioners pursuant to an advertisement issued by the School Education, Department of Punjab on 23.09.2009 applied against 2106 Vocational Masters/ Mistresses. The petitioners were called for counseling and thereafter were put on the waiting list. Several candidates who had been issued appointment letters in various disciplines did not join their duties, despite a public notice dated 24.12.2011 asking them to do so. Since several posts were lying vacant and candidates did not submit their joining pursuant to the public notice issued, writ petitions were filed by candidates in the waiting list, seeking directions that the waiting list should be operated and appointments to be offered to those who are in the zone of consideration. One such writ petition that came to be decided on 25.10.2013 was **CWP No. 20148 of 2012** titled **Venus vs. State**

**of Punjab and another.** During the pendency of this writ petition, another public notice was issued on 09.01.2013 giving time to the other candidates who had not joined their duties. The petitioners too filed a **writ petition No. 20807 of 2012** titled **Dalip Kumar and others vs. State of Punjab and others** seeking a direction to the respondents to issue appointment letters, which writ petition was disposed of by the High Court directing the respondents to consider the claim of the petitioners. The matter was considered and eventually request of the petitioners was declined. Aggrieved, the instant writ petition has been filed with a prayer that the unfilled seats which could not be consumed by the selected candidates in the main select list should be filled and appointment letters issued.

4. Per contra, learned counsel appearing on behalf of the respondents-State submits the writ petitioners cannot claim the benefit of the judgment rendered in **Venus** case (supra) decided on 25.10.2013 as the waiting list was scrapped on 09.08.2013. Reliance has also been place upon a judgment rendered in **Sukhwinder Singh and others vs. State of Punjab and others, CWP No. 6031 of 2014**, decided on 29.04.2016 where the similar relief sought for was declined.

5. I have heard learned counsel for the parties and perused the record of the case.

6. Admittedly, the petitioners herein had applied pursuant to the advertisement that was issued in 2009. After the counseling was held, they were put in the wait list . The only plea in the writ petition is that a direction be issued to the respondents to fill up the unconsumed seats by operating the wait list that was prepared subsequent to the counseling. In this regard,

learned counsel for the petitioners relied upon a similarly situated candidate Venus, who was on the wait list, and the judgment rendered in *Venus's case* (supra) decided on 25.10.2013 gave directions for appointment. In the instant case, after the High Court had directed the respondents to consider the case of the petitioners, it had been decided on 02.04.2013 that the claim of the petitioners would be considered at a later stage when the process of issuance of appointment letters to selected candidates is complete and thereafter the process of filling subsequent vacant posts would start. Subsequently, the government in its wisdom decided to scrap the wait list and, therefore, issued a fresh advertisement.

7. It is to be noted that the petitioners, though having requisite qualifications were on the wait list. The petitioners only have a right of consideration and no vested right of appointment as such. In a similar matter that came up for hearing in the case of *Sukhwinder Singh and others* (supra) a similar prayer had been made by the candidates who were on the wait list pursuant to counseling for the posts advertised in the year 2009 advertisement, learned Single Bench came to hold that the petitioners would have no right to ask for the wait list to be operated and appointments offered keeping in view the fact that the State had already withdrawn the offer as far back as on 09.08.2013.

8. The contention of learned counsel for the petitioners herein is that they would be covered by the judgment rendered in *Venus case* (supra) wherein a similarly situated candidate had approached this Court and a Single Bench of this Court had directed appointment to be offered which decision has been upheld upto the Apex Court, is an argument which has no

merit. The judgement rendered in ***Venus's*** case (supra) is distinguishable as what weighed with the court was that there was discrimination and wait list had been operated for some candidates in the backward class category. The fact that the wait list had been scrapped was probably not in the notice of the court .

9. The judgment rendered in ***Sukhwinder Singh's*** case (supra) notes that the candidates on the wait list do not have an indefeasible right to be selected. The petitioners herein have tried to distinguish the judgement rendered in ***Sukhwinder's*** case by submitting that the aforementioned case was decided primarily on the ground of delay, since the petitioners therein had approached this court only after the judgment rendered in ***Venus's*** cases, whereas the petitioners herein had approached the courts well in time before the judgment rendered in ***Venus's*** case (supra). However , a reading of the judgment referred to above would reflect that the Single bench was conscious of the law laid down regarding the rights of a candidate who was on the wait list. The law is well settled by the Constitutional Bench of the ***Apex Court in Shankarsan Dash vs. Union of India 1991(3) SCC 47***, wherein it has been held that a wait listed candidate does not have an indefeasible right of appointment and the State is under no legal duty to fill up all the vacancies. The only exception made out was that the State should not act in an arbitrary manner. Relevant observations made therein 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 bona fide 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 and Others, (1974) 1 SCR 165, Miss Neelima Shangla v. State of Haryana and Others, (1986) 4 SCC 268, or Jitendra Kumar and Others v. State of Punjab and Others, (1985) 1 SCR 899.”*

10. In a recent judgment reported as ***Raj Rishi Mehra and others vs. State of Punjab and another*** 2013(2) SCC 243 it has been held that a person who is on the wait list do not have a right to be appointed against the unfilled posts. Para 15 of the same reads as under :-

*“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 1992 Supp (3) SCC 84, Gujarat State Dy. Executive Engineers' Association v. State of Gujarat and others 1994 Supp (2) SCC 591, State of Bihar v. Secretariat Assistant Successful Examinees Union 1986 and others (1994) 1 SCC 126, Prem Singh and others v. Haryana SEB and others 1996) 4 SCC 319, Ashok Kumar and others v. Chairman, Banking Service Recruitment Board and others (1996) 1 SCC 283, Surinder Singh and others v. State of Punjab and another (1997) 8 SCC 488, Madan Lal and others v. State of J&K and others (1995) 3 SCC 486, Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and others (1998) 3 SCC 45, State of J&K and others v. Sanjeev Kumar and others (2005) 4 SCC 148, State of U.P. and others v. Rajkumar Sharma and others (2006) 3 SCC 330, Ram Avtar Patwari and others v. State of Haryana and others (2007) 10 SCC 94 and Rakhi Ray and others v. High Court of Delhi and others (2010) 2 SCC 637."*

11. In a recent case of ***State of J&K & Ors. Vs. Sat Pal*** reported as ***2013 (11) SCC 737*** while upholding appointment as directed by the High Court to a wait listed candidate, their Lordships recognised that "*It would be a different legal proposition, if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates on the waiting list.*"

12. As has been held in the case of ***Loveleen Kaur vs. State of***

**Punjab and others, LPA No. 1781 of 2014** decided on 03.11.2014, that a selection process cannot be kept pending till eternity so as to confer right on the applicants for appointment. No doubt there are judgments to the effect that if a person is on the wait list, he should be considered for appointment in case the posts remain vacant, but in the case in hand, a conscious decision had been taken by the State government to scrap the wait list .

13. Therefore, while relying on the aforesaid judgments to hold that a person who is on the wait list would not have an indefeasible right to appointment and the observations made in **Loveleens Kaur's** case that the selection process has to attain finality and cannot be kept open ended, these writ petitions stand dismissed.

**22.03.2017**

Satyawan

**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.