

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

1. CWP No.21687 of 2015

Pushpa Devi and others ... Petitioners

Vs.

State of Haryana and others ... Respondents

2. CWP No.25957 of 2015

Sheelwanti and others ... Petitioners

Vs.

State of Haryana and others ... Respondents

3. CWP No.5062 of 2015

Naresh Kumar ... Petitioner

Vs.

State of Haryana and others ... Respondents

Date of decision:24.01.2017

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. K.S. Banyana, Advocate and
Mr. Jasbir Mor, Advocate for the petitioner (s).

Mr. Harish Rathee, Sr. D.A.G. Haryana.

P.B. BAJANTHRI J.

By this common judgment, all the aforementioned writ petition shall be decided together as controversy is identical in all these cases.

For the sake of convenience, facts are taken from CWP No.21687 of 2015. In the instant petition, the petitioners have assailed order dated 1.5.2015 (Annexure P-11) by which the petitioners' claim for appointment to the post of S.S. Master has been rejected.

The Haryana Public Service Commission (for short "HPSC") have notified 372 posts of Social Studies Masters, Education Department, Haryana, on 13.8.2009. The petitioners were candidates for the recruitment.

The HPSC have announced the result on 31.5.2012 and recommended the

selected candidates for appointment to the appointing authority on 6.6.2012 (Annexure R-1). In the said list, the petitioners were placed in the waiting list. The respondents have operated the main list for the purpose of issuing appointment order (Offer of appointment) on 8.11.2012. The appointees with reference to appointment order dated 8.11.2012 were required to report for duty on or before 23.11.2012 since 15 days time had been granted for them to report for duty.

Admittedly, 35 candidates have not reported for duty pursuant to the appointment order issued on 8.11.2012. Thus, the respondents are required to operate waiting list from 24.11.2012 onwards.

Feeling aggrieved by the in action of the respondents in not operating waiting list, the petitioners have approached the respondents by making necessary application under RTI to get necessary information relating to selection process. Office of the Director General Elementary Education informed as under:

“Information about joining report of S.S. Master has been demanded from all the District Elementary Education Officers. Appointment of candidates of waiting list can be considered after receiving information.

Sd/-

Superintendent of H.R.M.-I

For Director General Elementary Education,

Haryana, Panchkula”

Thereafter, the petitioners have approached this Court by filing CWP No.24963 of 2013 and the same was disposed of by this Court on 14.11.2013 with the following observations:

“3. In view of the nature of the order proposed to be passed, it may not be necessary to call for a reply from the State in view of the disclosure of the status of the case in the memo dated

10.8.2013. Since no final decision has been taken, this writ petition may be premature. However, if the petitioners have a right to appointment from the waiting list, they may also have right for consideration of their case within a reasonable time. It is beyond their control to collect information demanded by the Director General, Elementary Education, Haryana, Panchkula from the District Elementary Education Officers. Therefore, in order to secure the ends of justice, a direction is issued to the respondents to conclude the process for determining the number of posts which have remained vacant due to non-joining of selected candidates and in case the vacancies remain unfilled and unconsumed and the claim of the petitioners can be satisfied against those vacant posts, they may be considered and offered appointment in accordance with law. It would be open to the respondents to satisfy themselves as to the eligibility of the petitioners in terms of the rule of service applicable and other formalities as may be necessary prior to offering appointment. Let this exercise be completed within 30 days from the date of receipt of a certified copy of this order.”

For non-compliance of the above order COCP No.268 of 2014 filed and the same was disposed off on 8.5.2015 in view of order dated 1.5.2015 (Annexure P-11).

Concerned respondent passed order rejecting the claim of the petitioners on two reasons. One is that waiting list recommended on 6.6.2012 would be in vogue for a period of one year and it has lapsed. Therefore, question of operating waiting list do not arise and second reason assigned is that Right of Children to Free & Compulsory Education Act, 2009 has been implemented whereby there are surplus of S.S. Masters as on 10.3.2015. As per the departmental data base, the same has been extracted in the impugned order dated 1.5.2015.

Learned counsel for the petitioner (s) submitted that final select list was notified on 31.5.2012 and it was recommended to appointing authority to issue appointment order on 6.6.2012 and it would be in operation for a period of one year i.e. upto 5.6.2013. Whereas the order of appointment issued to the candidates whose names are reflected in the main list on 8.11.2012 with a condition that such appointees shall report within a period of 15 days. Thus, 15 days lapses on 23.11.2012. As and when the selected and appointed candidates have not reported for duty, it was bounden duty of the Selecting Authority to operate waiting list.

In the present case, selected and appointed candidates are required to report for duty on or before 23.11.2012. Since 35 candidates have not reported for duty, it is for the selecting authority to operate waiting list as on 24.11.2012 while cancelling those appointments who have not reported within 15 days from the date of appointment order i.e. 8.11.2012. Waiting list was very much in vogue (i.e within one year from the date of issuance of waiting list i.e. from 31.5.2012 to 30.5.2013 or 6.6.2012 to 5.6.2013 date of recommendation by HPSC). Therefore, the reason assigned by the respondents that waiting list had lapsed is highly arbitrary and contrary to the facts in hand. It was further contended by the learned counsel for the petitioner that second reason assigned in the order for rejecting their claim is that Right of Children to Free & Compulsory Education Act, 2009 has come into force. As per the data given by the department as on 10.3.2015, there are surplus posts of S.S. Masters. Therefore, petitioners cannot be accommodated is not acceptable for the reasons that petitioners' claim relates back to November 2012 as and when selected and appointed candidates from the main list did not report for duty.

Hence, the impugned order is liable to be set aside. It was also pointed out that above mentioned Act, 2009 was very much existence as on the date of advertisement. Hence, it is lame excuse for not appointing petitioners. In fact respondents have shown their intention to operate wait list as is evident from show cause notice dated 12.8.2014 but still respondents refuse to operate wait list.

On the other hand, learned counsel for the respondents-State has vehemently contended that waiting list would lapse after one year as per instructions and in the present case it has lapsed. Further it was contended that Right of Children to Free & Compulsory Education Act, 2009 was not implemented and it was implemented after obtaining departmental data and it was found that there are surplus of S.S. Master as on 10.3.2015. Hence, petitioners cannot be appointed to such vacancies which were not filled up pursuant to 2009 advertisement. Therefore, the impugned order is in order. The same cannot be interfered.

Heard learned counsel for the parties.

Question for consideration in the present petition is whether the petitioners are entitled for seeking a direction to operate waiting list for the purpose of appointing them as S.S. Master against unfilled vacancies on account of non-reporting of candidates from the main list or not?

Undisputedly the advertisement was issued on 13.8.2009 for the posts of S.S. Master and the final select list was notified on 31.5.2012. The select list was recommended by HPSC to appointing authority on 6.6.2012 (Annexure R-1) The petitioners are in the waiting list and the persons who are selected and whose names are reflected in the main list were issued appointed letter on 8.11.2012 and they were required to report

for duty on or before 23.11.2012 having regard to the condition imposed that candidates are required to report for duty within 15 days. It is not disputed that 35 appointees have not reported for duty on or before 23.11.2012.

In view of these facts whether waiting list could be operated or not? Having regard to the date of final result i.e. 30.5.2012 and recommendation of the candidates dated 6.6.2012. If it is in operation till 5.6.2013 for a period of one year then respondents can not say that one year has lapsed from the date of issuance of waiting list. Therefore, petitioners are not entitled for selection and appointment to the post of S.S. Masters is contrary to the facts for the reasons that date of waiting list was notified on 5.6.2012. It would be in force upto 5.6.2013 and the non reporting of appointed candidates from the main list was made known to the respondents on 23.11.2012 the date on which 15 days complete which is one of the condition imposed in the order of appointment dated 8.11.2012. The respondents had time to fill up the posts of 35 vacancies between 24.11.2012 to 5.6.2013. The respondents have not assigned any reason as to why 35 vacancies have not been filled up during the period from 24.11.2012 to 5.6.2013 for which period waiting list is very much in vogue. The object of preparing waiting list is that when a candidate whose name is reflected in the main list failed to report for duty or any other defect in his application or antecedents against him, in such circumstances, the waiting list is required to be operated. The object of preparation of waiting list is defeated in the present case by the appointing authority having regard to the fact that 35 appointees have not reported for duty prior to 23.11.2012. Thus, 35 candidates have been denied the right to seek appointment pursuant to

their names reflected in the waiting list. On 12.8.2014, Director Elementary Education issued show cause notice for cancellation of candidates appointment of the post of S.S. Master to 35 candidates who were not reported and in the notice it is made clear as under:

“Now, it has been decided by competent Authority to cancel your candidature or appointment letter immediately' so that appointment can be offered to other candidates who were standing in waiting list according to their merit. Now office is in the process of cancellation/termination of your candidature/appointment letter.

But before cancellation of candidature, an opportunity of being heard is being provided to you all to show cause why appointment letter/candidature should not be cancelled. Hence, you are required to appear before Additional Director Administration-Elementary at 10:30 A.M. on 25.8.2014 in person and submit your version in writing if any, failing which it will be presumed that you are not interested to say anything and your candidature/appointment order will be cancelled accordingly.”

On 7.10.1998, the Chief Secretary to Government of Haryana directed all the Heads of Department including Registrar, Punjab and Haryana High Court relating to appointment of candidates out of the waiting list prepared by the Haryana Staff Selection Commission. Relevant extract reads as under:

“ii) The Haryana Staff Selection Commission will notify the vacancies/posts immediately after receipt of the requisition from the department. Such advertisement should necessarily indicate the last date for submission of the application along with the conditions of eligibility. Efforts should be made to complete the process of recruitment within one year of the issuance of the advertisement.

These instructions may please be brought to the notice of all

concerned for information and necessary action.”

Perused the reply statement of the appointing authority and cited decisions. On factual aspect appointing authority has committed serious error while not appreciating dates and events of selection and appointment process. Cited decisions are not relevant as the same are distinguishable on dates and events of the case which are not identical.

Accordingly, impugned order dated 1.5.2015 (Annexure P-11) is set aside. Respondent-appointing authority is directed to issue appointment order to the petitioners within a period of three months from today. If the respondents find difficulty in respect of vacancies are concerned as stated by them posts are surplus in view of the implementation of Right of Children to Free & Compulsory Education Act, 2009 as on 10.3.2015, since claim of the petitioners relates back to of the year 2009 and it is required to be taken with reference to the date 23.11.2012 whether the vacancies are available or not since surplus issue is as on 10.3.2015.

It is not disputed that on 23.11.2012 35 vacancies were available as is evident from the issuance of appointment order dated 8.11.2012. Hence, the respondents are directed to issue appointment order with notional benefits to the petitioners. If the respondents find difficulty to say that vacancies are not available, it is for them to create supernumerary posts as one time measure and appoint the petitioners. Such exercise shall be completed within a period of three months from today.

Allowed in the above terms.

24.01.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No