

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

CWP No. 21748 of 2016 (O&M)
Date of decision: May 26, 2017

Jatinder Singh Kapur and others

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Prateek Pandit, Advocate,
for the petitioners.

Mr. L.S. Virk, Addl. A.G., Punjab.

Mr. Naveen S. Bhardwaj, Advocate,
for respondents No. 2 and 3.

JAISHREE THAKUR, J.

1. The petitioners herein have invoked the extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ or direction especially in the nature of Mandamus directing the respondents to appoint the petitioners to the post of Assistant Engineer/On Training (Electrical).

2. The Punjab State Power Corporation Ltd ('PSPCL' for short) issued an advertisement number CRA-284 dated 08.05.2015 advertising 176 posts of Assistant Engineers/On Training Electrical (**AE/OT (Electrical)**). In the said advertisement, it was mentioned that the number of posts of AE/OT (Electrical) would vary subject to the decision of the High Court in CWP No. 4980 of 2014, CWP No. 21012 of 2014, CWP No. 21646 of 2014 and

CWP No. 10087 of 2014. The petitioners applied for the post of AE/OT (Electrical) pursuant to the advertisement CRA-284/2015. Merit list was prepared and the petitioners were placed at serial No. 61, 62, 64, 67 and 71 respectively. Though 66 posts were earmarked for General Category only, 59 posts were made available under the current advertisement and 7 posts were given to candidates of previous advertisement in view of orders issued by the this Court. Thereafter, candidates at serial No. 26, 45, 55 and 56, though belonging to the Backward Class, were shifted into the general category on account of higher merit. Resultantly, only 55 seats were available to the candidates belonging to the General Category. Out of the 55 candidates called for document checking, 8 candidates at serial No. 6, 7, 8, 10, 12, 23, 38 and 49 did not appear. The last candidate called from the General Category for document checking was candidate placed at serial No. 60. It is contended that 10 seats are lying vacant and the petitioners being next available candidate's on the merit list ought to be offered appointment. The grievance of the petitioner is that once candidates are offered appointment under the rules, they are required to join within a period of 21 days and in case they do not do so the next person on the merit list ought to be offered appointment, which has not been done in the instant case.

3. Per contra, it is argued that the petitioners do not acquire an indefeasible right for appointment merely on account of their name being reflected in the select list. It is submitted that the matter was put up for consideration as to whether or not to call the next 10 number candidates in the waiting-list of the General category under advertisement for document verification, but a decision was taken not to fill up the vacancies in the

current session and to carry forward the same and advertise as and when the need arises. It is also argued that the waiting-list has expired on 30.07.2016, and therefore, no appointment can be offered to the petitioners.

4. I have heard the counsel for the parties and have also perused the record of the case.

5. It is an admitted fact that the petitioners were next in line in the waiting-list at serial number 61, 62, 64, 67 and 71 respectively. Initially 66 posts of AE/OT (Electrical) were advertised in CRA-284/15 in the General category. Since 7 posts have to be filled up under orders of the High Court and 4 from the reserved category, leaving only 55 posts available out of which persons up to serial No. 60 were called for document verification. As per instructions/memo dated 11.01.2013 issued by Punjab State Power Corporation Ltd. regarding extension of joining time of selected candidates in various CRA's for various posts, it has been decided that a candidate who does not join within the period provided in the appointment letter should be given 21 days notice for cancelling their appointment letters and upon cancellation of their appointment letters the controlling authorities be informed accordingly. Another memo was issued in CRA 286 of 2015 dated 21.07.2016 that *"21 days final notice are issued very late thereby defeating the purpose of time bound notice for joining and as candidates get additional time for joining. Moreover further action in such cases like cancellation or appointment letter of such candidates an issue of appointment to next wait listed candidates is also delayed"*.

6. A question that arises for adjudication is, whether the petitioners who had faced a regular process of selection and placed at serial

No. 61, 62, 64 ,67 and 71 respectively in the merit list would be entitled to be appointed against the unfilled vacant posts. Undisputedly, ten posts were to be filled up from the General Category and the petitioners name were next on the merit list for consideration for appointment, against the post which had been advertised, on the selected candidates not joining. It is true that merely on account of name being reflected in the select list, a candidate does not get an indefeasible right for appointment, but it is equally true that the State Government must not act arbitrarily in such matters and should have a justifiable reason for not offering appointments against vacancies that have been advertised. In **Gajraj Singh versus State of Haryana and others in Civil Writ Petition No. 13215 of 2009** decided on 5.5.2010, which has been affirmed by the Division Bench in **LPA No. 716 of 2011 titled State of Haryana and others Versus Gajraj Singh decided on 20.4.2011**, it has been held that once the post is not filled up and other meritorious candidate in the merit list is available, then the vacancy has to be filled up by appointing the next person from the merit list. The petitioners have been agitating from the very beginning that as ten persons have not joined, they should be considered against the unfilled vacancies.

7. An argument has been raised by the counsel for the respondent that the wait list has since expired, and, therefore, no appointment can be offered to the petitioners at this juncture. This argument is without merit. As per the memo of PSPCL itself, there should be no delay in cancelling the appointment of those candidates who do not join after an appointment letter has been issued to them. A reading of the memo would clearly indicate that orders of appointment, if not accepted, should be cancelled so that

appointment can be offered to the next available candidate on the waiting-list. Therefore, it becomes incumbent upon the respondents to cancel the appointment letter in case selected candidate does not join and offer appointment to the next available candidate on the merit list, which has not been done.

8. A similar matter came up for consideration before the Hon'ble Apex Court in a case titled as **R.S. Mittal versus Union Of India, 1995 (3) SCT 284**, where the Central Government did not make appointment against the vacancies that still existed, on the plea that the life of the panel had since expired. The stand taken by the Central Government was not appreciated holding that appointment should have been offered within a reasonable time of the availability of the vacancy to the next candidate. It was held as under: –

“It is no doubt correct that 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. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. 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, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability

of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

9. A Division Bench of this Court in the case of **Ritu d/o Sh. Nafe Singh Vs. State of Haryana and others 2013 (3) SCT 281** allowed the claim of the appellant therein seeking appointment to the post of Hindi teacher, while relying upon the aforesaid judgment. The appellant had applied pursuant to an advertisement issued for the post of Hindi teacher and was on the wait list. Despite vacancies existing, she was not offered appointment on the ground that the wait list had since expired. The Division Bench came to the rescue of the appellant holding that in case the Department had acted promptly in offering appointment as soon as a vacancy occurred, the wait list would not have expired.

10. A similar situation is present in the instant case. Despite memo/instructions of the Department to act promptly in case a person does not join and offer appointment to the next available candidate, the same was not done. The only ground for not for offering appointment to the petitioners is that the wait list has expired, which in the opinion of the court cannot come to the rescue of the respondents, since the Department should have acted promptly once candidates offered appointment did not join. It is an inaction of the appointing authority which suffers from the vice of arbitrariness which can not be sustained.

11. Therefore, in view of the settled law and the ratio, as laid down in the cases referred to above, it is held that the petitioners being the next meritorious candidates available on the merit list ought to have been offered

appointment. Consequently, this writ petition is allowed with the following directions: –

- (i) Respondents will offer appointment to the petitioners in accordance with their merit and vacancy available, subject to their fulfilling all other eligibility criteria.
- (ii) The petitioners herein would be entitled to all notional benefits other than any remuneration for the period not worked.
- (iii) The seniority of the petitioners would be counted from the date candidates from the batch joined service.
- (iv) The respondents herein are also directed to complete the exercise an offer appointment within a period of 2 months from receipt of certified copy of this order.

12. The writ petition stands accordingly allowed.

May 26, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No