

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

CWP No. 25682 of 2014
Reserved on: 24.10.2017
Date of decision: 13.11.2017

Arun Singh and others

....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

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

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Bhupinder Malik, Advocate,
for the petitioners (in CWP No. 25682 of 2014).

Mr. Jagbir Malik, Advocate,
for the petitioner (in CWP Nos. 12879 and 14169 of 2014).

Mr. P.K. Rohilla, Advocate,
for the petitioner (in CWP Nos. 18496 and 18551 of 2014).

Mr. Surender Pal, Advocate,
for the petitioner (in CWP No. 4049 of 2015).

None for the petitioner (in CWP No. 7766 of 2016).

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of seven writ petitions i.e. CWP Nos. 25682, 12879, 14169, 18496 and 18551 of 2014; 4049 of 2015 and 7766 of 2016 since common questions of facts and law are involved in all the writ petitions.

The core issue in all the writ petitions is whether in the absence of selected candidates joining, it was incumbent upon the official respondents to have gone down on the merit list and offered appointments to those next in line and whether any valid reason was given by the State not

to fill up the vacancies.

In CWP Nos. 25682 of 2014, 4049 of 2015 and 7766 of 2016, the post involved is post graduate teachers in the subject of English. Similarly, in CWP Nos. 12879 and 18496 of 2014, the post involved is PGT Hindi whereas, in CWP Nos. 14169 and 18551 of 2014, the subject is Biology and Sanskrit.

Facts of CWP No. 25682 of 2014

The pleadings in the present case would go on to show that applications were invited by advertisement dated 07.06.2012 (Annexure P-1) by the respondent no. 2-The Haryana School Teachers Selection Board (in short 'the Board') under category no. 12 against 1870 posts of PGT English. The said posts are not for district Mewat for which separate number of posts were invited. The petitioners being eligible, applied for the posts and the result was declared on 30.09.2013. It is the case of the petitioners that they are at Sr. Nos. 7, 3 and 6 respectively in order of merit having secured 55.03, 55.15 and 55.09 (Annexure P-7) after the last candidate of the general candidate had already been selected. 20 candidates of general category have been offered appointments who had not accepted the same and not come for counselling and for documents verification. Resultantly, respondent no. 2-Board had issued notice dated 07.11.2014 (Annexure P-3) that 171 candidates have not reported according to the directions of the department and they were not physically present. Resultantly, one last chance was given to them to appear within 15 days from the date of publication of the notice and if they were unable to give any authentic reason, it would be presumed that they have nothing to say and the case would be sent to the competent authority for cancellation of

their candidature. It is further the case of the petitioners that as per information obtained under the Right to Information Act, 2005, five candidates did not join even after the second chance given by the department as per the information dated 19.11.2014 (Annexure P-4), which is according to the list attached. Similarly, 61 candidates were not eligible and had not been given appointment orders as per Annexure P-4 wherein, total number of selected candidates of PGT English in general category to whom the department had not given the joining orders had been asked for and duly supplied. It is, thus, the case of the petitioners that 81 posts of general category of PGT English remain vacant.

The petitioners had approached the respondents for giving appointment letters but the request had been turned up on the ground that no waiting list had been prepared by the respondent-Board. Resultantly, reliance was placed upon the instructions dated 07.10.1998 (Annexure P-5) that 20 candidates next in order of merit were liable to be appointed as per instructions.

Reliance was also placed upon the judgment in ***CWP No. 13215 of 2009, Gajraj Singh vs. State of Haryana and others*** decided on 05.05.2010 (Annexure P-6) to submit that even in the absence of any wait list, the merit could be operated upon and the next candidate's merit was to be considered in the eventuality or availability of vacancy on account of non-joining of the selectee. It has been further demonstrated that the said judgment has been upheld by the Division Bench in LPA No. 716 of 2011 on 20.04.2011.

Facts of CWP No. 4049 of 2015

In the present writ petition, the post again is of PGT for English

and the stand taken is that the petitioner had been awarded 46.11 marks and was an ex-serviceman. He was first on the wait list in his category and the 12 candidates had not taken up the appointments and due notices have been issued as per the public notice dated 07.11.2014 and 14 were not eligible and 26 posts remained vacant. As per Annexure P-6, the petitioner stood at Sr. No. 1 after the last candidate of the ESM category had been selected. More than 20 posts were still lying vacant and, therefore, the stand of the respondents turning down the request was not justified.

Facts of CWP No. 7766 of 2016

In the said case, the pleadings of the petitioner is that she had secured 55.119 marks for the post of PGT English in the general category and the cut off was 55.31 as per Annexure P-3 and, therefore, the said petitioner would be at Sr. No. 1 in the order of merit after the last candidate in the general category already selected which would be clear from Annexure P-7 in CWP No. 25682 of 2014. In the said case, the respondents had chosen not to file written statement.

Facts of CWP No. 12879 of 2014

In the present case, the applicant is a candidate of a backward class category to the post of PGT Hindi, for which, 1700 posts under category no. 13 had been advertised and there were 170 posts for the reserved category of backward class. It is her case the last selected candidate was at merit 53.07 whereas, the petitioner, as per merit, has secured 52.59 marks. Respondent no. 2-Board had issued notices to 135 candidates for cancellation of the candidature who did not have essential qualifications from deemed university. More than 100 candidates had been given notices for cancellation of their candidature who were over age and

more than 300 candidates had been issued notices for cancellation of their candidature whose experience certificates were bogus.

Thus, she claims right to be considered for selection against the vacant posts, which was being denied on account of not preparing the wait list claiming to have secured only 0.48 marks less than the last selected candidate by placing reliance upon communication dated 20.01.1988 issued to the Secretary, Subordinate Service Selection Board, Haryana by the Chief Secretary. Similarly, reliance was also placed upon communication dated 28.10.1993 and that there should be a waiting list as per the decision of the State Government for the Haryana Public Service Commission.

Facts of CWP No. 18496 of 2014

The petitioner is an applicant against the post of PGT Hindi and claims to have secured 55.90 marks, which is only 0.11 marks less from the last candidate who has secured 56.01 marks and, therefore, seeks consideration on the same principle.

Facts of CWP No. 14169 of 2014

The petitioner is an applicant for the post of PGT Biology and as per the pleadings, the last selected candidate had secured 57.83 marks whereas, the petitioner secured 57.73 marks which is only 0.10 marks less than the last candidate selected. It was the case that notices were issued to more than 135 candidates for cancellation of their candidature since there were 160 posts advertised and large number of candidates were not able to join due to lack of genuine experience certificates, genuine degrees and being over age.

Facts of CWP No. 18851 of 2014

The petitioner is an applicant against category no. 10 for the

post of PGT Sanskrit for which 1465 posts were advertised, out of which 146 posts were for backward class category. It is her case that she is a backward class candidate and the last selected candidate in the said category had secured 52.09 marks whereas the petitioner had secured 47.34 marks. It is accordingly averred that various candidates had applied in different categories and if their cases were rejected, the merit list would have to be recast. Reply of the Board in the said case was that the last candidates had secured 52.09 and the petitioner had secured 47.34 marks and, therefore, due to lesser marks, she could not find space in the selection list.

The State, in its reply in principle, clarified that the selection process had been carried out by the erstwhile Haryana School Teachers Selection board, Panchkula which had been disbanded. The Haryana Staff Selection Commission was now looking after the said process of selection recommendation. The respondent-Haryana Staff Selection Commission filed a short reply that all proceedings pending before respondent no. 2 were transferred to it after its reconstitution on 25.03.2015 on the basis of record received by it. The stand is that for the post of PGT English, which is a group B post, there is no instruction of the State Government for maintaining any waiting list as per information received from the Chief Secretary dated 01.07.2008 (Annexure R-2/1). In such circumstances, no wait list had been prepared. Instructions dated 07.10.1998 (Annexure P-5) related to only group 'C' posts and, therefore, the petitioners not being selected candidates were not entitled for any relief.

Counsels for the petitioners have accordingly submitted that the State had no power to act in an arbitrary manner and not fill up the advertised posts once the candidates had gone through the process of

recruitment. Even though the candidates had a right of mere consideration, but justifiable reasons had to be put forth for not taking the recruitment process to its logical end specially on account of the posts not having been consumed and candidates having not joined, which would be clear from the pleadings that large number of candidates have chosen not to appear. The judgment relied upon by the State in ***Suresh Pal vs. State of Haryana and another, 2009 (6) SLR 763*** was accordingly sought to be distinguished that it was a case of appointment by way of interview. That in the absence of any pleading, there was a merit list prepared the relief had been denied whereas in the present case, the petitioners were entitled for appointments.

The State has justified the non-appointment on the ground that the instructions dated 07.10.1998 (Annexure P-5) apply to Class III posts and the earlier instructions dated 20.01.1988 (Annexure P-25) in CWP No. 12879 of 2014 had been modified. Similarly, it was contended that instructions dated 28.10.1993 (Annexure P-26) in the above said writ petition also pertain to the Haryana Public Service Commission and, therefore, were not applicable. Therefore, the fall back was on the communication dated 01.07.2008 issued by the Chief Secretary to the Haryana Staff Selection Commission that there was no requirement of maintaining any waiting list in respect of group B posts. Reliance was also placed upon the two Division Bench judgments in ***Narender Singh vs. State of Haryana and others, 2006 (5) SLR 312*** and ***Sandeep Kumar vs. State of Haryana and others, 2007 (1) SCT 399*** and also the judgment of the Apex Court in ***Bihar State Electricity Board vs. Suresh Prasad and others, 2004 (2) SCC 681***.

The Constitutional Bench of the Supreme Court in ***Shankarsan***

Dash vs. Union of India, 1991 (2) SCR 567 has observed that the State has no license to act in an arbitrary manner and the decision not to fill up the vacancies is to be taken bonafidely for appropriate reasons while going on to hold that the successful candidates do not acquire any indefeasible right to be appointed. The relevant portion reads thus:-

*“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 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899.***”*

In the present case, as noticeable, specific averments have been

made that as many as 81 candidates had not joined in general category against the 1870 posts of PGT English which had been duly advertised. Similarly, for the ESM category also, it had been averred that 12 candidates had not joined. The Board itself had issued notices and given last chances to the candidates who were within the zone of consideration. The petitioners were, thus, as per the merit list as Annexure P-7, very much within the zone of consideration. The posts not having been consumed, it was axiomatic upon the respondents to proceed and call upon the others in the wait list so that the process of recruitment is taken to its logical end. It is in such circumstances the first writ petition i.e. the present petition came to be filed on 15.12.2014.

In *Gajraj Singh's case (supra)*, the same issue came up for consideration which was also for the post of Lecturer in Hindi and the candidate was ex-serviceman and was seeking consideration on the ground that the selected candidate who had secured 117 marks had not joined and he had secured 116 marks. The co-ordinate Bench had gone on to hold that a merit list should have been prepared and the next candidate will have to be considered even in the absence of any waiting list and since the respondents had neither admitted nor denied the merit of the petitioner and admitted that Vinod Kumar at 117 had refused to join the post.

The said view has been upheld by the Division Bench in LPA No. 716 of 2011 on 20.04.2011 by holding that once the post has not been consumed and meritorious candidates in the merit list are available, then the vacancy could be filled in by inviting next persons in merit. The relevant portion reads as under:-

“Having heard the learned counsel, we are of the

view that the aforesaid contention which has again been raised before us was rightly rejected by the learned Single Judge. It is well settled that once a post has not been consumed and a meritorious candidate in the merit list is available then the vacancy could be filled in by inviting next person in merit. The direction issued by the learned Single Judge are consistent with the principles of equality laid down in Articles 14 and 16(1) of the Constitution. The post of Lecturer in Hindi has to be offered to the most meritorious candidate who may be next in the merit after Vinod Kumar under the exserviceman category. Therefore, no exception is provided to interfere in the view taken by the learned Single Judge. The appeal is wholly without merit and does not warrant admission. Accordingly, the appeal fails and the same is dismissed.”

The Division Bench judgments which have been relied upon by the State pertain to cases of Punjab Police Rules, 1934 wherein, there was a specific bar under the Rules that there would be no wait list. Resultantly, relief had been denied. In the present case, it is the case of the petitioners that in the absence of the selected candidates joining, appointment should have been offered to the next candidates on merit as they were coming within the zone of consideration.

Similarly, the judgment of the Apex Court in *Bihar State Electricity Board's case (supra)* pertains to the issue of the review order passed by the Division Bench of the Bihar High Court in which it had initially set aside the judgment of the Single Judge. In the said case, there had been earlier litigation regarding the advertisements of 1986 and 1992 which had been directed to be filled up on 50% basis each. Only 4 candidates had joined out of the 22 for the 1986 appointments and 18

candidates did not turn up. After 10 years, i.e. in the year 1995, writ petitions had been filed that the next persons should be given appointment which was the subject matter of challenge which had initially been set aside by the Division Bench and then the review had been allowed. It was noticed that the petitioners had fallen beyond the cut off mark and a panel of 22 candidates had been prepared for appointment and, therefore, the said persons were not entitled to be appointed. The facts had turned around on earlier directions given and in such circumstances, the appeal had been allowed.

In the present case, as noticed, vide notice dated 07.11.2014, the persons who had not joined were being given last chance and the first of the writ petitions i.e. CWP No. 12879 of 2014 came to be filed on 07.07.2014. The petitioners have been staking their claim against the unfilled seats and, therefore, the petitioners herein had approached this Court at the earliest on account of the seats not being filled up. The defence of the State has been referred to above in detail. No justifiable reason as such has been given as to why the posts were not filled up and, therefore, the law laid down by the Constitutional Bench would be directly applicable regarding the State's lack of right as such to act in an arbitrary manner.

However, in the case of CWP No. 18851 of 2014, the petitioner has not been able to make out that she would fall within the zone of consideration as per merit as there is a wide disparity between the last candidate appointed and the petitioner. Secondly, nothing has been averred regarding the aspect of candidates not having joined in the said category and at what stage the petitioner was placed on the merit list and, therefore, there is no scope for interference in the said case. Accordingly, no relief can be

granted in the said case.

Resultantly, this Court is of the opinion that the petitioners would be entitled for appointment against the vacant seats which were never consumed being in the zone of consideration and accordingly, the writ petitions are allowed. The petitioners shall be offered appointment letters and the State should operate the merit list in the respective categories in the subjects of English, Hindi, and Biology. In case there are persons senior in merit than the petitioners, they will firstly be offered the said posts and in case the vacancies still exist, the petitioners will be accommodated. The necessary exercise be concluded within a period of two months from the date of receipt of certified copy of the judgment.

13.11.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

