

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

**CWP No. 24945 of 2016
Date of Decision: May 23, 2017**

Jasjit Singh

...Petitioner

Versus

**Guru Nanak Dev University, Amritsar
& Another**

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sanjeev Pandit, Advocate
for the petitioner.

Mr. Amrit Paul, Advocate
for respondent No. 1.

JAISHREE THAKUR, J.

1. The petitioner herein seeks issuance of a writ of Certiorari to set aside the appointment offered to respondent No. 2 being not qualified to be appointed as Life Saver, as also a writ in the nature of Mandamus to be issued to the respondent-University to appoint the petitioner on the said post.

2. The respondent-University invited applications by advertisement No. 14/2016 for appointment on the post of Life Saver. The qualifications as specified on the University website was that a candidate must have passed at least 10+2 from any recognized educational board, should have participated in State/National level competition in swimming, must have minimum of 2 years' experience in life saving, with knowledge of Punjabi upto Matric standard. The petitioner had participation certificate as issued by School Games Federation of India/Punjab Swimming

Association/as well as had obtained 1st position in swimming in Punjab University Inter-College Sports Competition in the year 1999-2000. He had also obtained certificate course for Lifeguards as issued by Sports Authority of India. Having the necessary qualifications as well as the experience of working as a lifeguard for over 2 years, the petitioner applied for the post in question. Being denied appointment, the instant writ petition has been filed.

3. Mr. Sanjeev Pandit, learned counsel appearing on behalf of the petitioner, contends that the petitioner is eligible for appointment. It is argued that after the written test was conducted and the result declared, only 03 candidates, including the petitioner, qualified and were called for the physical test. It is submitted that the petitioner secured 1st position in the practical test of swimming but despite that respondent No. 1 selected respondent No. 2 as a Life Saver. It is argued that as per the selection criteria, 50% marks were allotted for theory and 50% marks were for the practical test but the detailed marks of the candidates were not displayed on the website in order to accommodate respondent No. 2.

4. Per contra, Mr Amrit Paul, learned counsel appearing on behalf of respondent No. 1-University, contends that there were 50 marks for theory test and 50 marks for practical test. On adding the marks, 03 candidates qualified and the petitioner was placed at the 3rd position having secured 58 marks in total. Pawan Kumar-respondent No. 2 secured 88 marks, whereas, Manpreet Singh secured 68 marks. On account of Pawan Kumar attaining the highest marks, appointment was offered to him, however, he has failed to join. Furthermore, no waiting list was prepared for the said selection.

5. Admittedly, the petitioner appeared for the post of Life Saver pursuant to an advertisement that was issued by the University. On facing the process of selection, the petitioner obtained only 58 marks and was placed on the 3rd position. The argument raised that respondent No. 2 is not an eligible candidate is not sustainable in view of the fact that he had scored the maximum marks with 88 marks out of 100. The next person in order of merit had secured 68 marks i.e. 10 marks over and above the petitioner. The question that would arise is whether the petitioner herein is entitled to be offered appointment?

6. The law in this regard is settled that merely on the count of the name of a candidate being on the select list, it would give him no right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment. Reliance in this regard is placed upon judgments rendered in *Shankarsan Dash Vs Union Of India*, AIR 1991 SC 1612; *Food Corporation of India and others versus Bhanu Lodha and others*, (2005) 3 SCC 618; *All India SC And ST Employees Association and another Versus A. Arthur Jeen And Others*, 2001 (2) SCT 737; *Manoj Manu And Another Versus Union Of India And Others*, 2013 (4) SCT 532; and *State Of Orissa Versus Raj Kishore*, 2010 (6) SCC 777. It has also been held in a catena of judgments that a Court would not issue any writ of mandamus to the Government to fill up vacancies, since it is entirely their prerogative. The only rider would be that the decision not to fill up the vacancy must be based on some valid reason.

7. In the case in hand, the petitioner, being placed 3rd on the merit list, does not get an indefeasible right to be appointed. Respondent No. 2 had higher marks than the petitioner and was rightfully offered appointment,

which appointment he failed to take up. The respondents decided that the post that had become vacant and should be filled up by initiating afresh recruitment process, which decision cannot be faulted with since no waiting list was prepared. In any case, the petitioner, being 3rd on the select list and lower in merit, cannot raise a claim since the post on its vacancy then had to be offered to the candidate with the next higher marks which would not have been the petitioner. The petitioner herein has not been able to establish violation of any fundamental rights under the Constitution of India for interference by this Court in writ jurisdiction.

8. Accordingly, the writ petition is hereby dismissed.

May 23, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No