

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6702 of 2009**

Smt. Lalita Tiwari, Aged about 31 years, W/o. Shri Anupam Kumar Tiwari, R/o. Irrigation Colony, Qtr. No. 1/5, Champa, District Janjgir-Champa Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: Principal Secretary, Panchayat & Rural Development Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Collector, District Korba, Chhattisgarh
3. Chief Executive Officer, Zila Panchayat, Korba, Chhattisgarh
4. Assistant Commissioner, Tribal Welfare Department, Korba, Chhattisgarh
5. Chief Executive Officer, Janpad Panchayat, Pondi-Uproda, District Korba, Chhattisgarh

----Respondents**WPS No. 6705 of 2009**

Shulendra Shriwas, Aged about 25 years, S/o. Shri Yogendra Shriwas, R/o. Kosmanda, Via Champa, District Janjgir-Champa Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: Principal Secretary, Panchayat & Rural Development Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Collector, District Korba, Chhattisgarh
3. Chief Executive Officer, Zila Panchayat, Korba, Chhattisgarh
4. Assistant Commissioner, Tribal Welfare Department, Korba, Chhattisgarh
5. Chief Executive Officer, Janpad Panchayat, Pondi-Uproda, District Korba, Chhattisgarh

----Respondents

For Petitioners	:	Mr. Mateen Siddiqui, Advocate
For State	:	Mr. R.K. Gupta, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****07/08/2018**

1. The present two writ petitions have been filed claiming for the relief of quashment of the order dated 26.08.2009 (Annexure P/1) whereby the representations which the two petitioners had made stand rejected.
2. The facts which led to the filing of the two writ petitions is that an advertisement was published for filling up of the post of Shiksha Karmi Grade-III in the year 2008 vide Annexure P/2 dated 14.01.2008. The petitioners in the present two writ petitions had applied for the said post. The petitioner in WPS No. 6702/2009 Lalita Tiwari, an unreserved category candidate, had applied in the Arts subject, while the petitioner in WPS No. 6705/2009 belonged to the OBC category and had applied for the Science subject.
3. So far as the Arts subject is concerned, the number of posts for the unreserved category was 92 and so far as the Science subject is concerned, the number of post in the OBC category reserved at 01 and in the unreserved category it was 04. After the petitioners were subjected to written examination, the results were declared on 10.06.2008. The petitioner in WPS No. 6702/2009 Lalita Tiwari was placed at serial No. 5 in the waiting list and the petitioner in WPS No. 6705/2009 Shulendra Shriwas was ranked 3rd in the waiting list. Since the validity of a waiting list is 12 months, it was to come to an end on 30.05.2009. However the State Government extended it by one more month and made it valid till 30.06.2009. Since many of the selected candidates had not joined their services, the Department thought of grant of appointment from among the wait list candidates and in the process the petitioners also were called for counseling and verification of the documents on 29th and 30th of August, 2009,

however since the entire process of counseling and verification of all the records and also consideration of the objections (दावा आपत्ति) raised by many of the candidates could not be concluded within these two days and meanwhile the validity of the wait list also stood expired on 30.06.2009, the Chief Executive Officer, Zila Panchayat i.e. respondent No.3 stayed all further process of selection from among the wait list candidates vide his order dated 30.06.2009 (Annexure P/9). Subsequently, the respondent No.2 also sought guidance in this regard from the Department of Panchayat and Rural Development. Meanwhile the petitioners and many other similarly placed persons had filed a writ petition i.e. WPS No. 5555/2009 and which came up for hearing on 25.09.2009, which got disposed of with a direction to assail Annexure P/1 dated 26.08.2009, which was an order passed by the Government on the representations made by the petitioners and similarly placed persons rejecting the same.

4. The present writ petition have therefore been filed challenging the aforesaid order of the State Government dated 26.08.2009. The contention of the petitioners is that since admittedly the position of the petitioners were there in the waiting list and there were a large number of vacancies from the advertisement, in which the petitioners had participated, the petitioner and other wait list candidates should had been considered for appointment. Having not done so the respondents have acted in a malafide manner and therefore an appropriate order deserves to be passed in favour of the petitioners.
5. According to the petitioners, once when there is a waiting list prepared, it is expected that the respondents would honour the waiting list and would fill up the vacant posts which arises on the

non-joining of the selected candidates from among the wait list. According to the petitioner, the moment a selected candidate does not join inspite of an offer of appointment being given, a right is created in favour of the candidates in the waiting list for consideration for appointment against the said post, which fell vacant.

6. The counsel for the petitioners relied upon the orders of this Court passed in WPS No. 6056/2014 dated 16.07.2015, WPS No. 6980/2007, decided on 07.02.2018 and the order of this Court in WPS No. 355/2016 decided on 16.07.2018 and another petition WPS No. 2800/2017 decided on 02.07.2018. Relying upon these judgments, the counsel for the petitioners stressed hard trying to canvas the fact that a right did accrue in favour of the petitioner based on the principles of law laid down in the aforesaid judgments.
7. The State counsel Mr. R.K. Gupta vehemently opposing the writ petitions submitted that admittedly the names of the petitioners were in the waiting list and the validity of the waiting list was only till 30.06.2009. Since inspite of best efforts, the selection process could not be concluded within the validity period, the waiting list and its validity automatically stood lapsed beyond 30.06.2009. According to the Deputy Advocate General, since the validity of the waiting list itself got expired, there was no indefeasible right created in favour of the petitioner. The State counsel further referring to the documents Annexure P/9 & P/10 submitted that there were good and valid reasons at the hands of the respondents with which they could not fill up the vacant posts and since they had valid and cogent reasons for non-filing of the vacancy from the wait list candidates, it cannot be said to be either malafide or arbitrary, unless otherwise proved and

established. It was lastly contended by the Deputy Advocate General that in June 2009 itself i.e. the month in which the validity of waiting list got expired on the basis of the fresh advertisement which was issued, a fresh examination was conducted for filling up of all subsequent vacancies. According to the State counsel, the moment a fresh advertisement has been issued and a recruitment process has been initiated, all earlier vacancies got merged with the subsequent advertisement and the petitioners as such would not have any right left in their favour to claim from a previous recruitment process and for all these reasons the writ petitions, according to the State counsel, deserves to be rejected.

8. So far as the relevant dates are concerned, there is no dispute to the extent that the petitioners had applied for the recruitment process from the advertisement that was published in 2008. The results were declared on 10.06.2008. The petitioners found their place in the waiting list. The validity of wait list was only till 30.06.2009. So far as the respondents having published another advertisement and having held a written examination in June, 2009, as is reflected in the respective returns filed by all the respondents.
9. So far as the right of a wait list candidate is concerned, it is not in dispute that the Hon'ble Supreme Court in a catena of decisions has held that even a selected candidate merely because he finds his name in the select list does not have an indefeasible right for appointment and in the present case the petitioners are only wait list candidates and if we process the records of the present writ petitions, particularly the documents Annexure P/9 & P/10, it cannot be said that the respondents had been either arbitrary or have acted in a

malafide manner. From the records, it appears that the respondents at one stage of time had called upon the petitioners. However, since the time was so short, the validity of wait list itself got lapsed and in between the respondents could not even consider and decide the objections/representations, which were raised by various candidates. Thus there was cogent reasons available with the respondents for not considering candidates from the wait list.

10. In the case of “Union of India & Anr. v. B. Krishna Mohan” in WPC No. 7521/2008 and a bunch of writ petitions decided together on 20.03.2009, in paragraphs No. 16 to 18 has held as under:-

“16. This proposition of law is not only well settled but extends beyond what is submitted by the learned Additional Solicitor General. [In Shankarsan Dash v. Union of India](#), (1991) 3 SCC 47, it has been held that even a candidate on the merit list does not have any indefeasible right to an appointment, even if a vacancy exists. A similar view has been taken in several other cases such as in [Asha Kaul and another v. State of Jammu and Kashmir and others](#), (1993) 2 SCC 573 and [Food Corporation of India and others v. Bhanu Lodh and others](#), (2005) 3 SCC 618.

17. However, what is of importance is what the Supreme Court recently said in [State of Madhya Pradesh and others v. Sanjay Kumar Pathak and others](#), (2008) 1 SCC 456 that if a vacancy exists and it is not filled up, there must be some reasonable explanation for not doing so. In coming to this conclusion, the Supreme Court relied upon [K. Jayamohan v. State of Kerala](#), (1997) 5 SCC 170 and [Munna Roy v. Union of India](#), (2000) 9 SCC 283. Indeed, this view has been consistently expressed by the Supreme Court in several other decisions such as [R.S. Mittal v. Union of India](#), 1995 Supp

(2) SCC 230 and [A.P. Aggarwal v. Government of NCT of Delhi and another](#), (2000) 1 SCC 600.

18. The law, therefore, seems to be quite well settled to the effect that no one has indefeasible or vested right to an appointment, whether he is on the waiting list or on the merit list, but at the same time there must be some reasonable basis for not filling up an existing vacancy or not offering an appointment to a meritorious candidate. If a reasonable or rational explanation does not exist, it would clearly fall foul of [Article 14](#) of the Constitution.”

11. In the instant case, what cannot be brushed aside is the fact that the respondents have immediately taken steps for conducting a fresh recruitment process for all the subsequent vacancies lying vacant up till that date and therefore the moment a fresh recruitment process has been started and the written examination for selection of the same also have been undertaken. There would not be any more previous vacancy left as it got merged with the new post advertised.
12. This Court is of the view that whatever little right, which had accrued in favour of the petitioners, got lapsed, firstly on the ground that the validity of the list itself got lapsed on 30.06.2009 and secondly when respondents initiated a fresh recruitment drive. Moreover undisputedly there has been many further recruitment process also having being conducted, hence by efflux of time by virtue of all the subsequent recruitments that have been under taken, the vacancies which arose on account of non-joining of the posts from the selected candidates in the recruitment drive of the year 2008, also got merged with the subsequent recruitment drive. This itself is a strong ground for non-consideration of the petitioners at a subsequent stage, the writ petition accordingly does not have any strength left.

13. So far as the judgments which have been cited by the petitioners are concerned, none of those writ petitions was with a situation where the respondents had immediately undertaken a fresh recruitment process and many more in the later stages filling up of all subsequent vacancies. Therefore, those judgments are distinguishable on its facts, so far as the claim of the petitioners in these writ petitions are concerned.
14. In the circumstances, the writ petitions deserve to be and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved