

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 2995 of 2009

Gulrej Shah S/o Shri Shamsuddin Shah, aged about 31 years, R/o Dharampura, No.2 Quarter No.H/27-28, Jagdalpur, District Bastar (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Forest, D.K.S.Bhawan, Raipur (C.G.).
2. Conservator of Forest, Jagdalpur, Circle Jagdalpur, District Bastar (C.G.).
3. Director, Forest School, Jagdalpur, District Bastar (C.G.).

---Respondents

For petitioner	:	Shri Vimlesh Bajpai, Advocate.
For State	:	Shri S.P.Kale, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/07/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 30/01/2009 whereby the respondent No.2 had issued an order for cancellation of the recruitment process initiated for filling up the post of PTI as certain deficiencies/irregularities were detected in the course of recruitment process.
2. The counsel for the petitioner submits that, infact, the department itself in Annexure-P/5 dated 10/02/2009 has stated that, no prejudice has been caused to the recruitment process and that the department i.e. the respondent No.3 has infact given the report whereby he has on scrutiny of the selection process though has given a finding of certain irregularities

having been shown, but he has reached to the conclusion that no prejudice whatsoever had been caused to those persons who were allowed to participate in the recruitment process and no discrimination or for that matter nobody has been victimized on account of the said recruitment process and therefore the recruitment process could be further proceeded with and orders of appointment can be issued.

3. According to the counsel for the petitioner, once when the respondent No.3 has given this report, the respondents ought to have proceeded further and granted the appointment to the petitioner who stood first in the order of merit in the select list.

4. Per contra, the State counsel opposing the petition submits that, it is a case where the department on an enquiry found that, there were certain irregularities in the course of recruitment process and once when these irregularities were detected, the department thought it fit of cancelling the entire recruitment process and going in for a fresh selection process. Therefore the State cannot be found fault with on the impugned action and thus prayed for rejection of the Writ Petition.

5. Having heard the contentions put forth on either side and on perusal of record what clearly reflect is that, the State Government had vide order dated 21/10/2008 constituted a Committee for the purpose of recruitment of PTI. The said Committee had framed certain guidelines for the purpose of scrutinizing the applications received for the post of PTI. However, contrary to the guidelines laid, certain irregularities have been committed at the

behest of the respondent No.3 to the extent of granting marks for experience to certain people who were also called in for the interview whereas they were not infact entitled for those marks for experience.

6. Likewise, it was also found that though there were 87 candidates who have applied, but there were no information as to why 22 applications were rejected as there were no reasons assigned for rejection of the same.

7. All these reflects that there were certain irregularities and thus the recruitment process being defective stood established. Under such circumstances if the department has chosen for a fresh recruitment, the petitioner as such should not be aggrieved of.

8. This Court further is of the view that, only because the name of the petitioner is reflected in the select list by itself would not give any indefeasible right in favour of the petitioner for claiming appointment.

9. The law by now is well settled that, unless an order of appointment has been issued and the candidate joins his/her services, the candidate as such cannot have right or claim over the recruitment process which has not been concluded.

10. Recently, this Court in WPS No.710/2017 and analogous Writ Petitions decided on 20/06/2018 in somewhat similar Writ Petitions had referred to a couple of decisions of the Hon'ble Supreme Court on the subject wherein in paragraphs 11 of the said judgment, it has been held as under:-

“11. In the case of **Kulwinder Pal Singh and Another v. State of Punjab and others** reported in (2016) 6 SCC 532 the Supreme Court in paragraphs-10, 11 & 12 has held as under:

“10. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible 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 (vide Food Corporation of India v. Bhanu Lodh (2005) 3 SCC 618; All India SC & ST Employees’ Association & Anr. v. A. Arthur Jeen (2001) 6 SCC 380 and UPSC v. Gaurav Dwivedi (1999) 5 SCC 180.

11. This Court again in State of Orissa v. Rajkishore Nanda (2010) 6 SCC 777, held as under:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment.

Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required...”

12. In *Manoj Manu v. Union of India* 2013 (10) SCALE 204:

(2013) 12 SCC 171, it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the court would not issue any mandamus to government to fill up the vacancies.”

11. Earlier a similar view has also been taken by the Supreme Court in the case of *U.P. Bhumi Sudhar Nigam Ltd. Vs. Shiv Narain Gupta* reported in 1994 Supp (2) SCC 541.

12. In view of the aforesaid legal decision as laid down by the Hon'ble Supreme Court in the judgment cited above and also the view taken by this Court in the aforementioned Writ Petition, when we compare the facts of those cases with the facts of the present case, we find that in the instant case, pursuant to the decision of the respondents for a fresh recruitment, the petitioner also can participate in the said selection process and if he is meritorious, he can still get the appointment if found suitable.

13. Thus, this Court does not find any strong case made out by the counsel for the petitioner calling for an interference with the impugned order.

14. The present Writ Petition thus being devoid of merits deserve to be and is accordingly rejected.

15. As a consequence, the interim order also stands vacated.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit