

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 2387 OF 2011**

Dr. Niranjana Singh Rathore, S/o Shri Narayan Prasad Rathore, aged about 36 years, R/o Ward No.15, Gohda, Sati Bazar, District Bhind (MP).

...Petitioner(s)

Versus

1. State of Chhattisgarh, through Secretary, Department of Veterinary Medical Services (Pashudhan Vikas), DKS Bhawan, Raipur (CG).
2. Director, Veterinary Medical Services (Pashudhan Vikas) Raipur (CG).
3. Chhattisgarh Public Services Commission, through its Secretary, Raipur (CG).

... Respondent(s)

For Petitioner	:	Shri Anshuman Shrivastava, Advocate.
For Respondent-State	:	Shri Ashutosh Pandey, Panel Lawyer.
For Respondent No.3	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order

Delivered on 05/09/2018

1. The challenge in the present writ petition is to the impugned letter dated 29.01.2011, whereby the request by the State Government for publishing of a wait list from which the unfilled vacancy could be filled up was rejected by the Chhattisgarh Public Service Commission.
2. The further relief is for a direction to the respondent/Public Service Commission to prepare a supplementary list in respect of the examination in which the petitioner had applied and participated and lastly it was prayed that an appropriate direction be issued to the respondents to consider grant of appointment to the petitioner from among the wait list candidates against unreserved male vacant post of Assistant Veterinary Surgeon.

3. The brief facts which leads to the filing of the present writ petition was that an advertisement (Annexure P/2) was issued on 14.03.2008 by the Chhattisgarh Public Service Commission (in short "PSC") for filling up of the posts of the Assistant Veterinary Surgeon. The petitioner belonged to the unreserved category and had applied for the said post and the petitioner on being found suitable was called in for the written examination, which he has successfully passed and was also subjected to interview. According to the petitioner he has done well and was hopeful for getting an appointment.
4. That, on 17.01.2009 the PSC declared a select list of 141 candidates, which was short of 61 candidates as per the advertisement, which was published for filling up of 202 posts. Later on the petitioner came to know under the Right to Information Act that about 10 candidates from the select list had shown their unwillingness for joining and these posts were also lying vacant. According to the petitioner, if the respondents would have filled up the entire posts advertised of 202 or would have published a waiting list from which the persons, who had not reported for joining and the vacancy which arose on account of that, could be filled up and since the petitioner's name was at serial No.81 in the order of merit, the petitioner could have been got a chance of appointment.
5. The counsel for the petitioner referred to a Division Bench's decision of this Court in the case of Ishwar Sharan Gupta vs. State of Chhattisgarh, W.A. No. 92/2013, wherein the Hon'ble Division Bench

has opined that it is always proper to publish a supplementary/waiting list of 10-25% of the vacancies unless there is any prohibition, the Division Bench who was also of the view that merely because the Rules do not mandate publishing the waiting list, yet it would always be proper and justified if such lists are prepared to avoid unnecessary hardship and also for the smooth filling up of the posts, which fell vacant on account of the selected candidates, not accepting employment.

6. Per contra, the counsel for the respondents opposing the petition submits that merely because the advertisement was issued for 202 posts by itself would not bind the State Government to fill up all the 202 posts. According to the counsel for the respondents it is always the prerogative and the power which is vested with the State Government to take a decision so far as the number of posts to be filled up and it is within the realm and power which is conferred upon the respondents to either increase the vacancy position or to reduce number of posts to be filled up from the number of posts advertised. According to the respondents, it is also within the power and domain of the respondents to decide as to whether they should publish a waiting list or should not publish a waiting list. Since the Rule does not mandate publishing of a wait list and hence if the State Government has not published a wait list, the same cannot be said to be either arbitrary or bad in law for any reason.
7. Having heard the contentions put forth on either side and on perusal of records, some of the admitted facts so far as the present case is concerned, is that an advertisement was published on 14.03.2008

among others for the post of Assistant Veterinary Surgeon. The petitioner also was eligible and had applied being from an unreserved category. The petitioner was found eligible and permitted to participate in the written examination and thereafter though the post advertised was 202, the PSC declared a select list of only 141 candidates i.e. 61 short of total number of post advertised. There was more than 10 candidates from among the select list who had shown their unwillingness for joining the post and if those 10 posts are to be filled up from the wait list candidates, the petitioner may have been eligible. According to the petitioner, even if the respondents would had filled up 61 posts which they did not fill at the first instance even then the petitioner may have got an opportunity.

8. Now coming to the ground realities, what is necessary to be appreciated is the fact that the petitioner at the time of filing of the writ petition itself was about 36-37 years of age and that 7 years down the line now today in the year 2018 the petitioner must be around 42-43 years of age. As stated in the preceding paragraph the petitioner belongs to the unreserved category and the upper age limit for the said post of Assistant Veterinary Surgeon for unreserved category as per advertisement was 38 years of age. Thus, the petitioner has crossed all permissible age limits for grant of government employment. The case of the petitioner thus gets weakened on this ground alone.
9. So far as reliance of Division Bench decision of the petitioner in case of Ishwar Sharan Gupta (Supra) is concerned, if we peruse the observations of the Division Bench in that case, it would reveal that

the same was more of advisory rather than a directive. It was the observations of the Division Bench that it is always better to have a wait list prepared to meet the vacancy which arose on account of non filling up of the posts advertised. Moreover, the said judgment was one which has been decided much after the impugned order in the instant case dated 29.01.2011 was passed. Therefore, the observations so made by the Division Bench in case of Ishawar Sharan (Supra) cannot be applied uniformly in the facts of the present case in a straitjacket formula.

- 10.** Now coming to the right, if any, accrued in favour of the petitioner is concerned, it would be relevant to refer to judgment of the Supreme Court in case of Rakhi Ray and Others Vs. High Court of Delhi, 2010(2)SCC 637 wherein in paragraph 24 it has been held as under:

“24. 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 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. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment.”

- 11.** So far as non filling up of the total posts advertised is concerned, it would be relevant at this juncture to refer to the observations of the Supreme Court in case of Shankarsan Vs. Union of India, 1991(3) SCC 47 and State of UP & Others Vs. Sanjay Kumar Pathak, 2008(1)SCC 456. In Sanjay Kumar Pathak (Supra) in paragraph 18 the Supreme Court made following observations:

“18.....Even where, it is trite, the names of the persons appeared in the selection list, the same by itself would

not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or mala fide. The State, thus, subject to acting bona fide as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India, is entitled to take a decision not to employ any selected (sic candidate) even from amongst the Select List.”

12. What cannot be brushed aside is the fact that the present is a case where the rules do not mandate publication of waiting list and normally the life of select list has a validity of only one year, if not extended further that too for a limited period. In the instant case all such periods have lapsed and since the validity of the select list itself has got lapsed by efflux of time even if there is no wait list prepared, it too has lost its efficacy.
13. The Supreme Court time and again have reiterated the fact that mere inclusion in the select list by itself does not confer upon the candidates any indefeasible right. Likewise, as regards the right of a wait list candidate is concerned, again the Supreme Court in case of Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and Others, 1994 Suppl(2) SCC 591 in a very categorical terms held that a wait list candidate does not have a vested right to claim appointment on any future vacancy which may arise unless the selection has been held for it.
14. In case of Director, SCTI for Medical Science and Technology and Another Vs. M. Pushkaran, 2008(1)SCC 448, the Supreme Court in paragraphs 11 and 16 held as under :

“11. The law operating in the field in this behalf is neither in doubt nor in dispute. Only because the name of a person appears in the select list, the same by itself may not be a ground for offering him an appointment. A person in the select list does not have any legal right in

his behalf. The selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State.....

16. It is, therefore, evident that whereas the selectee as such has no legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. Each case, therefore, must be considered on its own merit.”

15. In view of the aforesaid legal position as it stands as also the factual matrix of the case where the petitioner as on date has crossed all permissible limits of obtaining government employment, and secondly the fact that rules do not mandate publication of a wait list and also in the light of the judicial pronouncements where it has been held that no indefeasible right accrues in favour of such candidates, this court is compelled to take a decision that the claim of the petitioner does not have much force.

16. Thus, the petition being devoid of merit deserves to be and accordingly stands dismissed.

Sd/-
(P.Sam Koshy)
Judge