

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 2800 OF 2017**

Vijay Pandey S/o Shri M.L. Pandey Aged About 34 Years R/o Ganga Nagar, Sector-2, Presently Working As C.M.O. Janpad Panchayat Pendra, District Bilaspur (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Secretary, Finance And Planning Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
3. Chhattisgarh Public Service Commission, Through Secretary, Shankar Nagar Marg, Raipur, District Raipur, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Anand Shukla, Advocate.
For Respondent-State	:	Shri Shashank Thakur, Govt. Advocate.
For Respondent No.3	:	Shri Sudip Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02.07.2018

1. By way of present writ petition, the relief sought for by the petitioner is for quashing of the impugned order dated 01.12.2016 (Annexure P/1) passed by the Home Department, Govt. of Chhattisgarh whereby the claim of the petitioner for appointment has been refused only on the ground that the validity of the waiting list in which the name of the petitioner appears stood expired.
2. The brief facts relevant for the adjudication of the present dispute is that the petitioner along with other candidates had applied for the State Service Examination, 2011 conducted by the Chhattisgarh Public Service Commission (in short, PSC) by which six posts of Deputy Commandant was advertised. After the selection process

were complete and merit list was published, the name of the petitioner finds place at serial No.1 in the waiting list.

3. The grievance of the petitioner was that from among the selected candidates, one candidate namely Nand Kumar Pandey did not join service within the stipulated period and the post fell vacant, therefore, the respondent authorities ought to have called upon the petitioner whose name stood at serial No.1 in the wait list. Thus, the respondents have with malafide intention not filled up detrimental to the interest of the petitioner. According to the petitioner, it is a case where the State Govt. itself at the first instance on 09.12.2014 had requested the PSC to recommend the name of two candidates whose name appeared in the waiting list to fill up two vacant posts which arose on the candidates who had not joined the service in spite of offer of appointment being made. Of the two posts which stood vacant, one post was from the unreserved category and one post was from among the reserved category.
4. In response to the request made by the State, the PSC has recommended the name of two candidates one being the case of the petitioner vide their letter dated 23.01.2015. Thereafter the State did not act upon the recommendation made by the PSC and in the course the validity of the waiting list got lapsed and they finally issued order dated 01.12.2016 (Annexure P/1) refusing to consider the case of the petitioner only on the ground of the validity of the waiting list getting lapsed.
5. The counsel for the petitioner was of the view that since the claim of the petitioner became live during the validity period of the original

select list itself, only because of the inaction on the part of the respondents by itself would not make the validity of the wait list lapsed. According to petitioner, the wait list was originally published on 30.12.2013. The normal validity of the wait list is 18 months i.e. in the instant case the list would be valid till 29.06.2015. One of the selected candidate namely Nand Kumar Pandey did not join his duties on being offered appointment. The claim of the petitioner became live on 05.09.2014 by which time Nand Kumar Pandey had to join his duties, and therefore the right of the petitioner got created on this date.

6. It is the further contention of the petitioner that even thereafter during the validity of the list itself the State had requested the PSC vide letter dated 09.12.2014 seeking for recommending the names of candidates from the waiting list. The PSC also gave a favorable recommendation on 23.01.2015. During this time also, the list was within its validity period. Thus, the petitioner prayed for an order to be passed in favour of the petitioner directing the respondents to consider granting of appointment to the petitioner.
7. Opposing the petition, learned counsel for the respective respondents submitted that the only ground on which the claim of the petitioner has been rejected was of the validity of the waiting list getting expired. According to respondents, though there is no dispute so far as the State Govt. having called for the recommendations from the PSC and the PSC also making its recommendation as early as on 23.01.2015, but the fact remains that the order of appointment could not be issued during the validity

period of wait list that was only till 29.06.2015 and thereafter the petitioner did not have any indefeasible right in his favour for seeking appointment against the wait list and thus prayed for rejection of the petition.

8. Having heard the contentions put forth on either side and on perusal of records, the sole contention left to be considered is whether the rejection of the claim of the petitioner on the ground of wait list getting expired was proper, legal and justified.
9. The undisputed facts of the case are that wait list was published on 30.12.2013. The validity of said list was for 18 months i.e. uptill 29.06.2015. One of the selected candidate Nand Kumar Pandey did not join the duties after offering an order of appointment. Thus, the claim made by the petition on 05.09.2014 was well within the validity of the wait list. Further, the State makes a request to the PSC for recommending the names of two candidates to fill up two posts which fell vacant on account of non joining of the selected candidates vide their letter dated 09.12.2014 which again was within the validity period. The PSC also responded the said request vide letter dated 23.01.2015 recommending the candidature of the petitioner to be filled up and this was also well within the validity period. Thereafter, the State showed a lethargic approach for issuance of the order of appointment in favour of the petitioner and in between the validity period of wait list stood expired o 29.06.2015.
10. In *Shankarsan Dash Vs. Union of India*, 1991 (3)SCC 47, the Supreme Court in a very categorical terms has held that even though indefeasible right to those selected candidates for

appointment cannot be attributed, yet it does not mean that the State has a license of acting in an arbitrary manner and if the State intends not to fill up the vacancy created, there has to be bonafide and appropriate reasons for the same.

11. Again in case of K. Jayamohan Vs. State of Kerela 1997(5)SCC 170, it has been held that though the government need not fill up the vacancy by those in the waiting list, yet the appointing authority must give reasonable explanation for non appointment from among the wait list candidates.
12. In case of Sri Kant Tripathi Vs. State of UP, 2001 (10)SCC 237, it has been held by the Supreme Court that a wait list candidate has a vested right to be considered when the selected candidate did not join and the wait list still is in operation.
13. In State of Jammu & Kashmir and Others Vs. Sat Pal, 2013(11)SCC 737, in paragraphs 11 & 12 it has been held as under :

“11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil) Grade-II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of

Junior Engineer (Civil) Grade-II on 22.4.2008. The aforesaid offer was made, consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22.4.2008, because the vacancy was offered to Trilok Nath on 22.4.2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23.8.2011 (extracted above), that the waiting list was valid till May, 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, in so far as the present controversy is concerned.

12. The date of filing of the representation by the parties concerned and/or the date on which the competent authority chooses to fill up the vacancy in question, is of no consequence whatsoever. The only relevant date is the date of arising of the vacancy. It would be a different legal proposition, if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates on the waiting list. The offer made to Trilok Nath on 22.4.2008 by itself, leads to the inference that the vacancy under reference arose within the period of one year, i.e., during the period of validity of the waiting list postulated by the rules. The offer of the vacancy to Trilok Nath, negates the proposition posed above, i.e., the desire of the employer not to fill up the vacancy. Herein, the appellants wished to fill up the vacancy under reference. Moreover, this is not a case where the respondent was seeking appointment against a vacancy, over and above the posts for which the process of selection/ recruitment was conducted. Based on the aforesaid inference, we have no hesitation in concluding that the appellants ought to have appointed the respondent Sat Pal, against the vacancy which was offered to Trilok Nath.”

- 14.** The very principles that are laid down from the aforesaid judgments is that when candidates in waiting list are not being appointed despite vacancy and the advertised post not being filled up, the requirement is that the appointing authority should be able to provide legally acceptable justifiable reasons for non appointment of the candidates in the waiting list. The inaction on the part of the government in not taking action for filling up of the vacant post form among the wait list candidate on account of selected candidate not joining the office without any justifiable reason appears to be

arbitrary, bad in law and illegal. The action on the part of the respondents becomes all the more arbitrary for the reason that both the State Govt. at the first instance and the PSC thereafter had made correspondence with each other showing their interest in filling up of the vacant post that arose on account of non joining of the selected candidate from among the wait list. It is under such circumstances that a right stands created in favour of the petitioner.

15. What also cannot be lost sight of is the fact that the vacancy which arose and the correspondence made by the State and PSC thereafter were all during the validity period of wait list. A perusal of return filed by the State as also by the PSC would reveal that except for the lapse of time, both the respondents have not been able to show any justifiable reasons for not initiating steps to fill up the vacant post from among the wait list candidates.
16. For all the aforesaid facts and circumstances and also in the light of the judicial pronouncements referred to in the preceding paragraphs, the action on the part of respondents amounts to arbitrariness. On being query put to the counsel for the respondents, they fairly admitted that the post which fell vacant has not been till date filled up.
17. The respondents are directed to ensure steps for considering the case of the petitioner for grant of appointment on the post of Deputy Commandant in the cadre to which he has applied for at the earliest preferably within an outer limit of 60 days from the date of receipt of certified copy of this order.

- 18.** Needless to mention that the petitioner would also be entitled for seniority and he should be placed right below those who were appointed from the same process of selection. Since the petitioner has not, in the intervening period, discharged his duties, he would not be entitled for any monetary benefits. The intervening period has to be notionally fixed and the petitioner would be entitled for the monetary benefits only from the date he assumes his duties.
- 19.** The writ petition is allowed with the aforesaid directions to the respondents.

Sd/-
(P. Sam Koshy
Judge