

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 355 OF 2016**

Shivshankar Prasad Pandey S/o Shri Sharda Prasad Pandey, Aged About 34 Years R/o Jorapara Gali No. 3 Sarkanda Bilaspur Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary, Department of Higher Education Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG).
2. Chairman, Public Service Commission Raipur, District Raipur Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent-State	:	Shri Shashank Thakur, Govt. Advocate.
For Respondent No.2	:	Shri Sudip Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16.07.2018

1. The present writ petition has been filed seeking for a direction to the respondents to consider the case of the petitioner for appointment on the post Assistant Professor (Physics).
2. The facts of the case is that an advertisement was published on 15.05.2009 for filling up of the various posts of Assistant Professors in different subjects. One such post was Assistant Professor in Physics subject. The petitioner had applied for the said post of Assistant Professor (Physics). Initially there was some litigation to the recruitment process and some interim order was passed by the High Court, pursuant to which, the provisional list could be published only on 28.07.2018 and subsequently the final list was published on 07.08.2014 (after the writ petitions were disposed of) along with list of candidates who have come in the waiting list. The petitioner stood

placed at serial No.1 in the wait list. The normal period of waiting list was for 1 and ½ years i.e. 18 months starting from 07.08.2014 and as such the validity period of waiting list would have been till 07.02.2016.

3. On the basis of the final select list published on 07.08.2014, appointment orders were issued to selected candidates of which four candidates were from the unreserved category against which the petitioner had applied. Out of four unreserved candidates, two candidates namely Dinesh Chitre (Roll No.105883) and Akhilesh Ranjan (Roll No.105985) did not turn up for appointment inspite of call letters being issued to them, as such, two posts could not be filled up. Immediately thereafter the petitioner raised a claim for appointment from among the wait list candidates as his name stood at serial No.1 in the wait list.
4. On 23.09.2015 the State Govt. sought a clarification from the Public Service Commission (In short, PSC) with regard to extension of joining period who have not turned up for joining on the post of Assistant Professors (Physics) to which the PSC replied promptly on 03.11.2015 intimating the State that the provision does not provide for grant of extension of time and that the extension of time given to those candidates stands expired on lapse of one month provided in the order of appointment and as such the PSC expressed their inability in granting extension of time to those candidates.
5. The contention of the petitioner is that now that the PSC also having refused to grant extension of time to the persons who were offered appointment and who did not report for joining, it has to be

presumed that the said posts having fallen vacant and those posts ought to have been filled up from among the wait list candidates in which the name of the petitioner was reflected at serial No.1. If the respondents would have acted upon the said wait list, the petitioner would have easily got an appointment.

6. Counsel for the petitioner relied upon the judgment of Supreme Court in case of State of UP Vs. Ram Swarup Saroj, 2000(3) SCC 699.
7. The counsel appearing for the respective respondents opposing the petition submit that the claim of the petitioner may not be sustainable at this juncture for the simple reason that by efflux of time the validity period of wait list has expired on 07.02.2016 and therefore the relief which the petitioner has sought for cannot be granted. It is a case where the petitioner's name was admittedly found in the wait list. Merely because his name appears in the wait list would not by itself create an indefeasible right in favour of the petitioner for claiming appointment. Even otherwise, the respondents have subsequently also issued a fresh advertisement for filling up of the vacant posts in which the petitioner could participate. Thus, prayed for rejection of the petition.
8. Having considered the contentions on either side and on perusal of records, the undisputed facts is that the petitioner stood reflected at serial No.1 in the waiting list of selected candidates. Two persons who were in the merit list from the unreserved category did not report for duty inspite of offer being issued to them whose names are reflected in the preceding paragraph. Though the State Govt.

had sought instructions from the PSC for extension of 30 days further time to these selected candidates who did not turn up for the duty, but the PSC outrightly rejected the request made by the State Govt. Both, the request made by the State Govt. vide Annexure P/12, dated 23.09.2015, and refusal of PSC dated 03.11.2015 were at the time when the validity of wait list was in operation. Therefore, there was no reason why the State Govt. have not proceeded further with the recruitment by calling upon the candidates whose names were appearing in the waiting list for filling up the said vacancy.

9. The very purpose of publication of the waiting list is for filling up of unfilled posts to which the selected candidates, for some reason, do not accept the order of appointment. If the analogy which has been proposed by the respondents counsel are acted upon, the very purpose of publication of waiting list would get frustrated and the object behind the publication of waiting list would also get defeated. It would be relevant to refer the judgment of Supreme Court in case of Ram Swarup (Supra) wherein in paragraph 10 it has been held as under :

“10. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November 1996 and the writ petition was filed by the respondent in the month of October 1997, i.e, before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled by the High Court. We may place on record that during the course of hearing of the SLP before this Court, on 29-9-1999 we had directed the learned Additional Advocate General for the State of U.P to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the

affidavit of the Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4-11-1999 and filed before this Court it is stated that as on 14-10-1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.”

- 10.** To further buttress the opinion of this court, it would also be relevant to refer the Division Bench judgment of this High Court in case of *Uttam Kumar Bareth Vs. State of Chhattisgarh & Ors* (Writ Appeal No.490 of 2015, decided on 14.07.2016) wherein this court in paragraphs 6 to 9 has held as under :

“6. It is true that selection does not give right for being appointed but in case the State or any other employer issues an advertisement stating that because number of posts are advertised, if it fills less than the number of posts, some reason has to be given as to why those posts have been left vacant. It may happen that after review it is found that the number of post advertised is more than what is the requirement of the State and then the State for reasons to be given can definitely take a stand that for this reason all the posts are not filled up. This is however not the case at present. It is nobody's case that Peons are not required. The only contention of the State is that since the period of validity of the waiting list is over, therefore, the Petitioner's claim is belated and mandamus cannot be issued.

7. We are not at all in agreement with this submission. The case of the State itself as propounded in its reply filed in the writ appeal also shows that the State did not give effect to the waiting list only because of the pendency of the Writ Petition (S) No. 2751 of 2014. Once that writ petition was dismissed, the only consequence should have been that the first two persons in the waiting list should have been offered appointment. The State cannot blow hot and cold at the same time. No stay order was passed in Writ Petition (S) No. 2751 of 2014. The State itself decided not to give effect to the waiting list because it felt and rightly so that if the writ petition filed by those two daily wagers is allowed, then there would be no post left to be filled up. However, if the State has chosen that course of action, then the waiting list was inoperative for this period not for the fault of the Petitioner and it remained inoperative for all interests and purposes. In such a situation, the waiting list, in our opinion, cannot be said to have outlived its validity only on the expiry of one year after the date when the first appointment was made. The reason we are holding so is that the purpose of the waiting list is to ensure that if any post of the category fall vacant during that one year they should be filled up from amongst the persons

on the waiting list and fresh selection process is not required. The State in its wisdom chose not to give effect to the waiting list because of the pendency of the petitions. The net result was that the State itself stayed the operation of the said waiting list. If the State had not taken this decision, the Appellant would have been appointed. Merely because the State did not chose to give effect to the waiting list for this period of one year does not mean that the waiting list should not be given effect to even after Writ Petition (S) No.2751 of 2014 was dismissed.

8. With regard to pendency of the waiting list, it would be appropriate to refer the decision of the Apex Court in *State of Jammu & Kashmir & Others v. SatPal* {(2013) 11 SCC 737} wherein the Apex Court held as follows:

"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...."

9. It is urged that this writ petition is barred because the Petitioner has not come within one year of the issuance of the first letter of appointment. We cannot agree with this submission. The cause of action arises only after the period of one year expired. The State has given no other reason why it did not fill up the posts. Therefore we cannot agree with the submission that the writ petition is hit by the principles of delay and laches."

11. The Supreme Court in *Manoj Manu and Another Vs. Union of India & Others*, 2013 (12) SCC 171, in paragraphs 11 and 12 has observed as under:

"11.The Court after making reference to the decision of the Supreme Court in the case of *State of Haryana vs. Subhash Chander Marwah* reported in 1974 (3) SCC 220 further observed as under : (*Neelima Shangla case*, SCC p.272, para 2)

"2.....However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the Govt., and the High Court before the number of persons selected

for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless.” (Emphasis supplied)

12. It is, thus, manifest that though a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once, it is found that the decision of the Government is based on some valid reason, the Court would not issue any Mandamus to Government to fill up the vacancies.”

- 12.** Given the aforesaid facts and circumstances of the case and the legal proposition laid down by the Supreme Court as well as by the Division Bench of High Court, this court has no hesitation in reaching to the conclusion that the action on the part of the respondents in not offering appointment to the petitioner on the post of Assistant Professor (Physics) pursuant to his name being placed at serial No.1 in the waiting list is totally uncalled for and bad in law.
- 13.** Accordingly, the respondent No.1 is directed to forthwith consider the case of the petitioner for grant of appointment on the post of Assistant Professor (Physics) by offering an order of appointment at the earliest. Let this exercise be concluded within a period of 90 days from the date of receipt of certified copy of this order.
- 14.** The petition is accordingly allowed.

Sd/-
(P. Sam Koshy)
Judge