

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 6351 of 2018**

Ameen Ahmad Khan S/o Late Aleem Ahmad Khan Aged About 30 Years R/o Near Ravidas Mandir, Beside Salman Manzil, Faiz Nagar, Talapara, Bilaspur, P.S. Civil Line, District- Bilaspur, Chhattisgarh.

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Law And Legislative Affair, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh.
2. Chhattisgarh Public Service Commission Through Secretary, Shanker Nagar, Raipur, Chhattisgarh.

**----Respondents**

|                |   |                            |
|----------------|---|----------------------------|
| For Petitioner | : | Mr. Rohit Sharma, Advocate |
| For State      | : | Mr. R.K. Gupta, Dy. A.G.   |

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****27/09/2018**

1. Considering the nature of dispute, with the consent of parties, the matter is finally heard and is being disposed off at the motion stage.
2. The sole grievance of the petitioner was that he had participated in the recruitment process for the post of Civil Judge (Entry Level) Entry Level, 2016. The advertisement was published on 07.09.2016. The petitioner applied and had also participated in the selection process. The results were declared on 23.09.2017. The name of the petitioner appeared at serial No. 1 in the waiting list.
3. The orders of appointment which were issued in favour of all the selected candidates, two of the candidates namely Robinjeet Singh (roll No. 1608100225 and Arjinder Kaur (roll No. 1608100226) have not joined the services in the State of Chhattisgarh, as meanwhile these two candidates got selection into the Delhi State Judicial

Services, hence two posts fell vacant from among the selected candidates.

4. According to the petitioner, since he was the candidate placed at serial No.1 in the waiting list, the respondent authorities should have considered the case of the petitioner for filling up of the post from the wait list. The petitioner prays for a suitable direction to the respondents to take an appropriate decision at the earliest.
5. The counsel for the State submits that let the petition itself be disposed off with a direction to the respondent No.1 to consider the claim of the petitioner so far as granting appointment on the availability of vacancy from the select list considering the fact that the petitioner was placed at serial No.1 in the waiting list. He further submits that subject to verification of facts so far as his entitlement is concerned, an appropriate decision shall be taken at the earliest.
6. In case of Vijay Pandey Vs. State of Chhattisgarh, WPS 2800 of 2017, decided on 02.07.2018, this court while dealing with the same issue referring to the decisions of the Supreme Court rendered in the recent past on the subject matter held as under:

“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 Kerala 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.”

7. In the said judgment in case of State of Jammu & Kashmir (Supra), the Supreme Court in paragraph 17 reprimanding the action of the State held as under-

“17.It gives us no pleasure to record that the State is not an adversary, and ought not have behaved in the manner it has chosen in the facts and circumstances of this case.....”

8. Given the facts and circumstances of the case, this court is of the opinion that ends of justice would be served in the aforesaid factual legal position as it stands to direct the respondent No.1 to immediately process the claim of the petitioner for grant of appointment in accordance with the rules and regulations applicable taking into consideration the entire factual matrix of the case and also as suggested by the State counsel. Let a decision be taken within a period of 45 days from today.

Sd/-  
**(P. Sam Koshy)**  
**Judge**