

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

CWP No. 17459 of 2014

Date of Decision:-20.09.2018

Krishan Kumar

...Petitioner

Versus

Haryana Staff Selection Commission and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. Jagbir Malik, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Sandeep Moudgil, Advocate
for respondent No.2.

Mr. R.D. Bawa, Advocate
for respondent No.3.

RAJIV NARAIN RAINA J.(Oral)

The Haryana Staff Selection Commission (hereinafter called 'the Commission') was requisitioned by the State Government and various Boards and Corporations to select Light Transport Drivers as per demands of the various participating organizations. The petitioner applied in the ESM BCA category. The result was declared on 23.4.2013. The name of the petitioner was placed second in the waiting list. The person above him was one Joginder Singh but he has not come to Court claiming any relief as he is serving as a Clerk in the Education Department, Haryana which is a

higher post. The last candidate in the category who was offered appointment was Labh Singh. The names of Labh Singh etc. were recommended for appointments on 06.06.2013. Labh Singh was called by the Haryana Urban Development Authority (HUDA) vide memo dated 05.7.2013 (Annexure R-3/2). He was to appear on 15.7.2013 in the office of the Chief Administrator, HUDA, Plot No.C-3, Sector-6, Panchkula for production and verification of original documents. Labh Singh failed to turn up on 15.7.2013 and did not, thereafter, take up the offer. Accordingly, HUDA wrote to the Commission to send a name in place of Labh Singh vide letter dated 16.4.2014 (Annexure P-5). The petitioner coming to know of vacancy, made a representation on 22.4.2014 praying that he may be offered appointment from the waiting list (Annexure P-9). On 12.8.2014 HUDA received a letter dated 12.8.2014 from the Commission informing that the period of waiting list had expired and therefore the name of the candidate could not be recommended as the validity of selection list for the post of Drivers (Light Transport Vehicle) against Advertisement No.1/2008 Category No.11 had expired. It may be noted that the petitioner's name was recommended to the Haryana Agriculture Marketing Board but his name could not be considered as he did not have the requisite five years experience as driver for appointment which fact the petitioner does not dispute since the recruitment rules of the Board prescribed 'five years' to be eligible for appointment. According to Mr. Malik, Advocate, the HUDA Rules requires three years experience which the petitioner admittedly possessed and this is how he claimed appointment in HUDA. Affidavit of

Joginder Singh produced by Mr. Malik, learned counsel for the petitioner is taken on record as 'Mark-A'.

The Commission and the HUDA have filed replies. The only reason given by the Commission in support of its refusal to recommend the name of petitioner to HUDA is that HUDA cancelled the candidature of Labh Singh-respondent No.6 after the expiry of the life of the selection list of one year and as such the name of the petitioner cannot be recommended even in the said Department. It is not disputed that Labh Singh and the petitioner belong to the same category of ESM (BCA).

It is the case of the Commission that the one year period of the waiting list started running from 06.06.2013 as per letter dated 06.06.2013 (Annexure R-3/1) as per the written statement of HUDA relying on the instructions of the Chief Secretary to the Government of Haryana dated 07.10.1988. If the waiting list expired on 06.06.2013 then HUDA had asked the Commission to send a name in place of Labh Singh well before the expiry of the period of one year i.e. on 16.4.2014 (Annexure P-5) while the period ended on 06.06.2014. The petitioner's representation was also within one year of the life of the waiting list and, therefore, it was incumbent upon the Commission to send the name of the petitioner to HUDA for consideration.

Mr. Malik, learned counsel for the petitioner has relied upon a Division Bench judgment passed by this Court in **Ritu vs. State of Haryana and others 2013 (3) SCT 281** to argue that it was obligatory on the parties to have acted promptly as also within a reasonable time-frame

when a selected candidate in the original select list not having accepted the offer of appointment.

The Court observed that even though there would be no quarrel as regards the proposition that mere empanelment of the name of the candidate in the waiting/panel list did not vest an indefeasible right to be appointed, but equally it will not give the State Government or the Commission a license to act arbitrarily.

Labh Singh failed to appear before the Commission for production of his documents for verification on 15.7.2013 as directed vide letter dated 05.7.2013. Labh Singh did not accept the offer. A clear vacancy would arise on 15.7.2013 and it was then incumbent on HUDA itself to have disclosed this fact to the Commission and asked for names, even before they did so in April, 2014 i.e. within a period of one year of the life of the waiting list.

In the considered view of this Court the Commission fell in error in declining to send the name of the petitioner on the pretext that the life of the waiting list had expired. In these facts and circumstances, the official respondents would have to make amends by recommending the name of the petitioner to HUDA for consideration for appointment.

Accordingly, this petition is allowed. The letter of HUDA dated 12.8.2014 (Annexure R-3/3) is quashed, although it has not been specifically challenged in this petition but without quashing the same, the result cannot be achieved to do substantial justice in the light of right arising out of operation of the waiting list. The petitioner will appear

before Secretary, HUDA on 15.10.2018 for production of his educational and other documents for verification. The petitioner will be offered appointment if otherwise eligible as per Recruitment Rules of HUDA. In the event of appointment, the seniority of the petitioner would relate back from the due date of appointment of the last candidate in the selection process. Consequential benefits will be notional. Actual salary and allowances would be paid from the date of joining. Case be processed within six weeks from the date of receipt of a certified copy of the order.

September 20, 2018
Vijay Asija

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No