

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5296 of 2015

Date of Decision: 07.09.2018

Beer Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Yogesh Sheoran, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the letter dated January 19, 2015 conveyed by the Haryana Staff Selection Commission, Panchkula to the petitioner informing him that his name cannot be recommended for the post of Clerk (Physically Handicapped Category) category No.1 from advertisement No.1 of 2008. The reason given is that the report of non-joining of a selected candidate in the category of Deaf & Dumb, the category to which the petitioner belongs, has not been received by the Commission from the various departments/Boards/Corporations for whom the selection was made and meanwhile the one year life and validity of the selection list had expired from the date when the Commission made its recommendations on June 27, 2012 as per requisition. The name of the petitioner was at No.1 of the waiting list. Information supplied to him under the RTI Act, 2005 states that three candidates, namely, Satbir Singh, Mohd.

Idrish and Satish Kumar Batra whose names were in the original select list of Deaf & Dumb category have not joined. The second order which is impugned is dated February 05, 2015 also from the Haryana Staff Selection Commission addressed to the petitioner intimating him by repeating contents of its previous letter stating further that the Commission did not receive any demand from the departments for recommending name of candidate from the waiting list before the expiry of one year from the date of recommendation as per Government instructions dated October 07, 1998 and, therefore, his name could not be recommended to any Department/Board/Corporation.

2. The instructions dated October 07, 1998 have been placed on record as Annex P-8. Government decided therein that while making recruitment to various Class-III posts on the basis of recommendations made by the Haryana Staff Selection Commission, the rights would be governed by the directions of the Supreme Court in Prem Singh v. Haryana State Electricity Board, 1996 (4) SLR 661 that appointments have to be restricted to the number of advertised vacancies. Consequently, the appointment from the waiting list will be made only if a candidate from the original list does not assume charge of his assignment or any vacancy from this list remains unfilled for any other reason. The previous instructions dated January 20, 1988 were deemed to have been modified to the above extent.

3. Mr. Malik, learned Senior counsel appearing for the petitioner submits that it was the duty of the requisitioning Education Department to inform the Commission immediately when candidates have not accepted the

offers or are not found eligible, to recommend the names from the waiting list. If the department failed to perform its duties and had failed to take action within one year, the petitioner should not be made to suffer for no fault of his when admittedly more than three candidates of Deaf & Dumb category have either not accepted the offers or were not found eligible for appointment. In these circumstances, the petitioner who is at No.1 of the waiting list is entitled to be appointed. In this regard, the instructions dated October 07, 1998 have to be given effect.

4. Mr. Malik further submits that the controversy involved in the petition is squarely covered by the decision of the Division Bench of this Court rendered in LPA No.1767 of 2012 titled *Ritu v. State of Haryana and others* decided on March 04, 2013. In this case, the appointment had been denied on the ground that one year had passed and validity of the selection list had expired. The Division Bench held that if the department failed to take action within one year then the candidates of the waiting list should not suffer for the same and at least the actual advertised posts/vacancies should be filled up. The Court in paras.12 and 13 held:-

“12. Even otherwise, the very objective of preparing a waiting/panel list and for such list to be kept operative for a specific period is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period. A reference in this regard can usefully be made to the judgments of this Court in *Ajmer Singh v. State of Haryana and others*, 1997 (1) CLJ (Service) 86 and *Raghubir Chand Sharma v. State of Punjab*, 1992 (1) RSJ 195.

13. In the present case, the inaction on the part of the State Government in not having cancelled the offer of appointment made to Smt. Manju Rani within a period of 15

days as per stipulation contained in the offer of appointment itself has clearly defeated the very objective for which the waiting/panel list had been prepared in which the name of the appellate duly figured.”

5. Mr. Malik also relies on the Single Bench decision of this Court in *Suman Rani v. State of Haryana and others*, CWP No.16988 of 2014, decided on September 22, 2016.

6. In the short reply filed by the Commission it is averred that the petitioner was selected but his name was put in the waiting list. The Commission maintained the waiting list as mentioned in the recommendation letter i.e. Annex R-3/1 attached with the reply. However, the name of the petitioner was not recommended by the Commission as no report of non-joining of any recommended candidate was received from the concerned department during the life of the waiting list. The petition has been filed on March 16, 2015 i.e. almost after two years and nine months which delay estops the petitioner at this stage to challenge the selection which has already taken place in the year 2012 and the validity period of the waiting list expired in July 2013.

7. I have heard Mr. Malik and Mr. Rathee on the basis of record.

8. The first reason for declining the claim of the petitioner on the ground that no report of non-joining of recommended candidate was received from the department concerned is not tenable in view of the judgment in *Ritu* and in the light of breach of the instructions of 1998. As far as the second reason is concerned, that is, the petitioner has not challenged the selection is neither here nor there. He has only staked his legitimate claim to an unfilled vacancy in the same selection process by drawing names from the waiting list. No fault can be attributed to the

petitioner for the gross inaction of the respondent-Department and the Commission to move timely and, therefore, the State must make amends by calling the name of the petitioner from Commission for consideration for appointment in his category of Deaf & Dumb persons. There is no dispute that the Haryana Staff Selection Commission in its recommendations included names of 18 candidates for the 18 posts advertised and four names at the tail end on the main list were placed in the waiting list in which the petitioner's name figured at No.1. The Commission itself has appended the confidential letter dated June 27, 2012 addressed by the Secretary to Director School Education, Haryana, Panchkula on the subject matter involving the same selection of Clerks with reference to advertisement No.1 of 2008 advising in para.2 as follows:-

“2. The waiting list will be maintained by the Haryana Staff Selection Commission and in the event of non joining of any candidate out of the recommended candidates, the name of the next candidate out of waiting list higher in merit could be got from the Haryana Staff Selection Commission for making appointment in accordance with the instructions issued by the Chief Secretary to Govt., Haryana. However, the candidates selected in the waiting list should not be considered against the fresh vacancies and the validity period of the list shall be one year from the date of issuance of this letter.”

9. In addition, an affidavit of Sushil Kumar, Joint Director Administration dated March 09, 2018 has been filed. It has been stated in the affidavit that Satish Kumar Batra Roll No.46809 joined service later on, on submission of character verification certificate etc. It is clarified in the affidavit that only Satbir Singh and Mohd. Idrish did not submit their character certificates due to which appointment letters to them were not issued. There is also a candid admission in para.(3) (c) of the affidavit that

information was required to be sent to the Commission of non-joining of candidates at that time which was not sent. For this lapse, disciplinary action has been initiated against the erring official who was then the dealing Assistant. The statement in the affidavit that Commission did not send waiting list to the department is belied by the fact that in the recommendation list attached with the reply of the Commission a wait list was prepared and forwarded to the Government.

10. In view of the above facts and circumstances, there can hardly be any doubt that the petitioner has been wronged and unfairly dealt with. He had a right of consideration for being offered appointment from the wait list since at least two candidates did not join from the main list.

11. Therefore, the writ petition is allowed. The impugned letters dated January 19, 2015 and February 05, 2015 (Annex P-6 and P-7) are quashed. A direction is issued to the respondents to consider the name of the petitioner for appointment as Clerk in the Deaf & Dumb category as per merit in the waiting list pushed up in the main list of successful candidates.

12. In the event of appointment, the seniority of the petitioner will relate back to his batch and be fitted below the last candidate appointed.

13. The consequential benefits will be notional and the actual monetary benefits will accrue from the date of passing of this order.

07.09.2018

manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No