

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

1. LPA-2435-2017 (O&M)

Haryana School Teachers Selection Board ...Appellant

Versus

Arun Singh and others ...Respondents

2. LPA-475-2018 (O&M)

Haryana School Teachers Selection Board ...Appellant

Versus

Sudha and others ...Respondents

3. LPA-476-2018 (O&M)

Haryana School Teachers Selection Board ...Appellant

Versus

Ritu Rani and others ...Respondents

4. LPA-696-2018 (O&M)

Haryana School Teachers Selection Board ...Appellant

Versus

Geetu and others ...Respondents

Date of decision: - 23.08.2018

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

**Present: Mr. Samarath Sagar, Additional Advocate General, Haryana,
for the appellant.**

Mr. R.K. Malik, Senior Advocate
with Mr. Sunil Hooda, Advocate
for respondents No.1 to 3 (in LPA-2435-2017).

Mr. Jagbir Malik, Advocate
for respondent No.1 (in LPA-475-2018).

Mr. Ajit Kumar Sharma, Advocate
for respondent No.1 (in LPA-476-2018).

MAHESH GROVER, J. (ORAL)

CM-5418-LPA-2017 in LPA-2435-2017

CM-1316-LPA-2018 in LPA-475-2018

CM-1319-LPA-2018 in LPA-476-2018

CM-1919-LPA-2018 in LPA-696-2018

Applications are allowed, as prayed for. Delay in filing the present Letters Patent Appeals is condoned.

Main cases

By this common order, we will dispose of above-mentioned four Letters Patent Appeals.

Present Letters Patent Appeals are directed against the judgment of learned Single Judge dated 13.11.2017 whereby the writ petitions filed by the respondents were allowed with the directions to the appellant to offer appointment letters to them. We propose to reproduce the operative part of the said order of learned Single Judge:-

“Resultantly, this Court is of the opinion that the petitioners would be entitled for appointment against the vacant seats which were never consumed being in the zone of consideration and accordingly, the writ petitions are allowed. The petitioners shall be

offered appointment letters and the State should operate the merit list in the respective categories in the subjects of English, Hindi, and Biology. In case there are persons senior in merit than the petitioners, they will firstly be offered the said posts and in case the vacancies still exist, the petitioners will be accommodated. The necessary exercise be concluded within a period of two months from the date of receipt of certified copy of the judgment.”

The issue in question is that the private respondents, who faced the selection process and were placed in what they term as 'waiting list' after the candidates who were placed in merit were appointed to posts the number of which conformed to the vacancy position advertised. The respondents dispute this to say that some of the people did not join and some were held ineligible, which would entitle them to appointment considering that they were next in merit list.

The appellant stated that there is no concept of waiting list in the absence of any rule to that effect. We thus, issue a direction that the respondents be appointed. However, it is not disputed that the vacancies are there. The appellant has relied upon judgment of Hon'ble the Supreme Court in Bihar State Electricity Board Vs. Suresh Prasad (2004) 2 SCC 681 and the relevant portion of which is extracted below: -

“We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash v. Union of India it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire

any right to the post. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. Moreover, there is no merit in the contention advanced on behalf of Respondents 1 to 7 that the appellant had violated the order of the High Court dated 23-3-1994 by preparing a list of only 22 candidates instead of filling up 50% of the alleged 161 vacancies. In this connection, the impugned judgment of the High Court has recorded a finding of fact that the Board has rightly reduced the number of vacancies to 50 and to that extent claim of the writ petitioners was rejected. In the impugned judgment, the High Court found that 50 vacancies were required to be filled up, 25 against the advertisement dated 15-12-1986 and 25 against advertisement dated 15-11-1992. However, according to the impugned judgment, the appellant ought to have made appointments by preparing a further panel for 18 vacant posts which became vacant when the earlier 18 selected candidates opted out. It is this part of the reasoning of the High Court, which is fallacious.”

There is indeed no doubt that even if the respondents had been selected on merit and were within the zone of the advertised vacancies, it would not confer a right upon them to claim appointment. As an extension of that logic they being next in merit list to those selected would also have no right to claim appointment. The only direction that the Writ Court could have given considering the vacancy positions and the respondents being next up in merit after the selected candidates, was that they ought to be considered by the State for appointment.

Learned Single Judge committed a wrong in saying that the respondents are entitled for appointment which binds the appellant to a mandate. Therefore, we only clarify the order of learned Single Judge to

mean that the private respondents be considered for appointments in view of the existing vacancies.

All appeals stand disposed of in above terms.

**(MAHESH GROVER)
JUDGE**

August 23, 2018
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**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reportable?	No
Whether reasoned/speaking?	Yes