

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

Letters Patent Appeal No. 1294 of 2019 (O&M)

Date of Decision: 5th August, 2019

Naveen Chaudhary

.....Appellant

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Pawan Kumar Mutneja, Advocate, for the appellant.

KRISHNA MURARI, CHIEF JUSTICE

This intra-court appeal filed by the petitioner-appellant is directed against the judgment and order dated 20.02.2019 passed by the learned Single Judge dismissing the writ petition.

2. Facts required to be noticed for effective adjudication of the controversy at hands are limited and can be summarized as under:-

Haryana Staff Selection Commission (for short 'the Commission') advertised 38 vacancies for the posts of Taxation Inspector vide advertisement No. 15 of 2007 dated 07.12.2007. Breakup of general category and reserved category was as under:-

“General 14, SC 13, BCA 3, BCB 3, ESM General-2,
ESM BCA 1, ESM BCB 1, OPS SC 1.”

A written test was held by the Commission on 24.05.2009. On the basis of the result of the written examination 115 candidates were short listed for interview. Appellant-petitioner was also an applicant under the Scheduled Caste category and after qualifying the written test was called for interview. Admittedly, he secured total 280 marks as against 281 marks

obtained by the last selected candidate in the main select list of SC category. He was placed at Sr. No.2 in the waiting list of the Scheduled Caste category. The Commission recommended the names of 38 candidates alongwith the names of 16 candidates in the waiting list. It is not disputed that all the selected candidates were appointed in the year 2010 itself.

3. After about two years the appellant-petitioner challenged the selection process in the year 2012 on multiple grounds such as Selection Committee deliberately did not award more marks in the interview to the candidates in reserve categories in order to select the general category candidates and that the vacancies which have arisen after the advertisement ought to have been filled up from the waiting list. The allegations of procedural irregularities and favoritism in the selection process were also made. During the pendency of the writ petition it was sought to be amended in the year 2013. By the proposed amendment, all the grounds of challenge in the unamended petition were given up and a completely new ground was introduced that as against 16 available posts in the Scheduled Caste category only 13 have been selected by the respondents and since he has been placed at Sr. No. 15 in the select list he comes within the zone of selection if all the 16 posts of Scheduled caste category are filled up.

4. The writ proceedings were contested by the respondent-department by filing the written statement. It was stated therein that when the requisition was sent to the Commission on 08.10.2007 for making direct recruitment to the post of Taxation Inspectors, 38 posts were available and requisition for the same was sent. It was also stated that the Department had duly taken into consideration the backlog of the Scheduled caste category as pointed out by the Welfare Department in their Audit Note dated 05.05.2005. There were 10 backlog vacancies of the Scheduled Caste

category which included the backlog of promotional share which is in the ratio of 50:50. Thus out of total 10 backlog vacancies as per Rules as well as the roster point only 5 backlog vacancies of scheduled caste category came in the share of direct recruits. Out of 38 vacancies advertised by the Commission, 13 vacancies were for scheduled caste category which included 5 backlog vacancies.

5. The moot issue for consideration is whether an appointment could be made out of the candidates placed in the waiting list on the vacancies which were not advertised. The issue is no longer res-integra and stands answered by number of pronouncements of the Hon'ble Apex Court. Reference may be made to the pronouncement of the Hon'ble Apex Court in the ***State of Bihar v. Madan Mohan Singh 1994 (Suppl.) (3) SCC 308*** wherein it was held that since the advertisement and the whole selection process were meant only for 32 vacancies and the process came to an end as soon as these vacancies were filled up. If the same list has to be kept alive for the purpose of filling up of other vacancies, it would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and the selection process. The Court observed in no uncertain terms that if the advertisement and the consequent selection process were meant to fill up certain number of vacancies then the merit list will hold good for the purpose of filling up those notified vacancies and no further. In the said case though 32 vacancies were advertised but a select list of 129 candidates was prepared. The question arose whether more candidates could be appointed on the basis of the said select list. The Hon'ble Apex Court held that once 32 vacancies were filled up the process of selection for those 32 vacancies got exhausted and came to an end.

6. Again in the case of ***Madan Lal and others v. State of J & K, 1995(3) SCC 486*** one of the questions which arose for consideration was whether preparation of merit list of 20 candidates was bad as the vacancies for which the advertisement was issued by the Commission were only 11 and the requisition that was sent by the Government for selection was also for those 11 vacancies. The Hon'ble Apex Court held that the said action of the Commission by itself was not bad but at the time of giving actual appointments the merit list had to be so operated that only 11 vacancies were filled up. The Court observed as under:-

“It is easy to visualize that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once the 11 Vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose.”

7. Reference can also be made to another judgment of the Hon'ble Apex Court in case of ***Hoshiar Singh v. State of Haryana AIR 1993 SC 2606***, relied upon by the learned Single Judge in the impugned judgment, wherein it has been held as under:-

10. The learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.

8. From the ratio of above decisions of the Hon'ble Apex Court, it is clear that if the requisition and advertisement are for certain number of posts only, the Government cannot make more appointments and number of posts advertised even though the select list of more candidates including the waiting list might have been prepared.

9. In the case at hands it is undisputed that only 38 vacancies were advertised by the Commission and the process was initiated for making the selection of only 38 clear vacancies. Therefore, in view of the settled law on this subject by the judicial pronouncements discussed hereinabove, more than 38 appointments could not have been made muchless from the waiting list when all the 38 candidates from the main list accepted the offer of appointment and joined the posts.

10. Once all the posts were filled up from the main select list, the waiting list wherein the name of the appellant-petitioner finds place cease to operate and no appointments could have been made of the candidates placed in the waiting list.

11. The issue of making appointments out of the waiting list was subject matter of consideration before the Apex Court in the case of ***Gujarat State Dy. Executive Engineers' Association v. State of Gujarat 1994 Suppl. (2) SCC 591***. The Apex Court after considering the issue of “*what is a waiting list? can it be treated as a source of recruitment from which candidates may be drawn as and when necessary*” and “*how long can it make operative*” observed as under:-

“How a waiting list should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. Therefore, once the selected candidates join and no vacancy arises due to resignation etc. or for any other

reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.”

The following observations made therein are also relevant:-

“Appointment in future vacancies from waiting list prepared by the Commission should be exception rather than the rule. It has many ramifications.....There was no contingency nor the State Government had taken any decision to fill the vacancies from the waiting list as it was not possible for it to hold the examination nor any emergent situation had arisen except the claim of some of the candidates from the waiting list that they should be given appointment for vacancies which arose between 1980 and 1983 and between 1983 and 1993. The direction of the High Court, therefore, to appoint the candidates from the waiting list in the vacancies which, according to its calculation, arose between the years 1980 to 1983 and between 1983 to 1993 cannot be upheld.”

12. Thus even if the name of the appellant-petitioner finds place in the waiting list it does not give him indefeasible right to seek an appointment on a vacancy which has not been advertised and for which no selection process has been undertaken.

13. In view of the above facts and discussion, we see no good reason to take a view different from the one taken by the learned Single Judge. The appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

5th August, 2019
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No