

CWP No.24171 of 2018

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

**CWP No.24171 of 2018
Date of decision:09.07.2019**

Minakshi Sharma

... Petitioner

Vs.

State of Haryana and others

... Respondents

CWP No.27517 of 2018

Sukhjeet Kaur

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rose Gupta, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana.

AMIT RAWAL J. (Oral)

Notice of motion.

On asking of Court, Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana, who is present in Court, accepts notice on behalf of respondents-State.

This order of mine shall dispose of two writ petitions bearing Nos.24171 and 27517 of 2018.

Prayer in present writ petitions is for issuance of a writ in the nature of certiorari for considering the case of petitioner for appointment as PGT (Hindi) and PGT (English) which remained vacant due to non-joining

of the candidates.

As per the averments, Haryana School Teachers Selection Board, caused an advertisement no.1/2012 for filling up 1700 posts of PGT (Hindi). The petitioners stated to have applied in terms of aforementioned advertisement and petitioner no.1 obtained 52.16 marks whereas petitioner no.2, 43.1 but cut off marks in PGT (English) is 55.31 marks and in PGT (Hindi) is 56.01.

Mr.Rose Gupta, learned counsel appearing on behalf of the petitioners submitted that in the aforementioned selection process, respondents could not fill-up all the posts and similarly situated candidates who obtained less marks than cut off, approached this Court and learned Single Bench of this Court vide order dated 13.11.2017 in various writ petitions directed State of Haryana to prepare waiting list for considering them with a further direction to issue appointment letters.

No doubt, State of Haryana has challenged the aforementioned order in Intra Court Appeal and relied upon judgment of the Hon'ble Supreme Court in **Bihar State Electricity Board Vs. Suresh Prasad 2004 (2) SCC 681** to contend that in the absence of statutory rules, there cannot be any direction for keeping candidates in the waiting list and considering them to be selected on merit and issuance of appointment letter. It is in these circumstances, petitioners are also claiming identical relief.

Ms.Shruti Jain Goyal, learned Deputy Advocate General, Haryana informed the Court that after selection process of 2012, Board had also caused advertisement in 2015 whereas present writ petitions have been

filed in 2018. The law on point of seeking preparation of waiting list in the absence of statutory rules, is no longer res integra in view of judgment referred to above and thus, urged this Court for dismissal of writ petitions.

I have heard learned counsel for the parties, appraised the paper book and of view that there is no force and merit in submissions of Mr. Rose Gupta. Relevant portion of finding rendered in **Bihar Electricity Board's case (supra)** reads thus:-

“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.”

It has been brought to the notice of this Court that Board has now amended the instructions dated 01.07.2008 and incorporated clause of waiting list for Group B posts. Even Latter Patent Bench did not agree with the findings of Single Bench with regard to direction qua issuance of appointment letter under the contemplation that petitioners were next in the merit list owing to non-filling up of the vacancies.

It is not comprehensible that once the petitioners have not been able to get cut off marks and have not competed with selected candidates that vacancies if remained un-filled can be filled up or they have right of consideration in the absence of statutory rules.

Writ petitions are bereft of any averment seeking reliance upon rules, if any, mandatorily requiring the department to prepare the waiting list. It would be apt to reproduce the relevant findings of Latter Patent Bench rendered in LPA No.2435 of 2017 where the directions of Single Bench were held to be not good. The same reads thus:-

“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.”

In view of aforementioned, I am of the view that petitioners cannot claim the relief at par with petitioners in writ petition bearing No.25682 of 2014. No ground for interference is made out.

Writ petitions stand dismissed.

(AMIT RAWAL)
JUDGE

July 09, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No