

0In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 14794 of 2020

Date of Decision: 23.09.2020

Asha

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanchit Punia, Advocate
for the petitioner.

Mr. Hitesh Pandit, Additional Advocate
General, Haryana for the respondents.

Anil Kshetarpal, J.

This writ petition has been filed under Article 226/227 of the
Constitution of India for the following substantive reliefs:

- “i) *Issue a writ in the nature of Certiorari quashing the impugned order dated 10.09.2020 (Annexure P10) being illegal, arbitrary and irrational, in the interest of justice;*
- ii) *Issue a writ in the nature of Certiorari quashing the impugned revised result list dated 15.07.2020 (Annexure P7) for post of Assistant Block Resource Coordinators (ABRCs) being perverse to the factual position supplied under the RTI Act, 2005 vide letter dated 19.06.2020 (Annexure P6);*
- iii) *Further a writ in the nature of Mandamus directing the*

respondents to fill up all available Assistant Block Resource Coordinators (ABRCs) post under EWS category including vacancies falling vacant for any reason including due to resignation or death of newly selected/appointed incumbents and also against the future vacancies arises within one year from the date of result/selection in terms of the Govt instructions dated 25.6.2019 (Annexure P11) against the advertisement dated 15.6.2019 (Annexure Pl) and consider the candidature of petitioner against the vacant Assistant Block Resource Coordinators (ABRCs) post under EWS category is lying vacant as per the information supplied under the RTI Act, 2005 vide letter dated 19.06.2020 (Annexure P6)”.

Some facts are required to be noticed. The Haryana School Shiksha Pariyojna Pairshad (respondent No.3 herein) issued a recruitment notice intending to fill up 1207 posts of Assistant Block Resource Coordinators (hereinafter referred to as “ABRC”) purely on contract basis initially for a period of one year, which on performance basis could be extended. The writ petitioner scored 58.7228 marks in the competitive examination held. The appointments were made, however, the writ petitioner could not secure a place amongst those who are given appointments in September 2019.

The writ petitioner filed ***Civil Writ Petition No.11449 of 2020***

(“Asha v. Sate of Haryana and Others”) seeking quashing of the revised

result list issued on 15.07.2020, which was disposed of on 07.08.2020 directing the respondent No.3 to pass a speaking order after affording an opportunity of hearing to the petitioner. The order, as directed by this Court, has been passed by Deputy Director (Admin.) on 10.09.2020, operative part whereof reads as under:-

As per revised waiting list, the last selected candidate of EWS category (sr. no. 9) i.e. Sh. Anil Kumar S/o Sh. Dalel Singh has scored 59.4867 marks (Roll no. 18440) Also 3 seats of EWS category have been kept vacant due to the reason mentioned in revised waiting list dated 15.07.2020.

The petitioner Ms. Asha has scored 58.7228 marks and the name of the petitioner has been shown at Sr. No. 32 in the waiting list. In view of the Govt. instructions, only upto 10% candidates can be selected from waiting list in which she does not lie. In view of the same she cannot be given appointment as per her place in merit list”.

The writ petitioner has now filed the present writ petition seeking writ in the nature of certiorari to quash the order dated 15.07.2020, by which the impugned revised result list was published and the order dated 10.09.2020 passed by the respondent No.3 pursuant to the directions of this Court. At this stage, it is important to note that the writ petitioner does not claim that any candidate in her category, who has scored lesser marks than her, has been appointed. The entire case of the writ petitioner is that certain posts are lying vacant but the respondent No.3 is failing to make the appointments to those vacant posts. It is further claim of the writ petitioner

that the waiting list has not been prepared in accordance with the instructions issued.

This Court has heard learned counsel for the petitioner at length and with his able assistance, has gone through the paper-book.

Learned counsel for the writ petitioner has also forwarded a copy of the written arguments.

It is, by now, well settled that no one is entitled to ask for a writ of mandamus without a legal right. The writ petitioner is required to establish a judicially enforceable right before a writ of mandamus can be issued. Similarly, the writ petitioner is also required to show that the person of authority, who has denied his legal right, has a legal duty to do something or to abstain from doing something. A reference, in this regard, can be made to a judgment passed by the Supreme Court in *Mani Subrat Jain and Others v. State of Haryana and Others (1977) 1 SCC 486*.

It is also well settled that the writ of mandamus cannot be issued to force the employer to fill up the vacant posts. Mere selection to a post does not confer any right on the selectee to get a writ of mandamus issued forcing the employer to appoint him.

This Court finds that the writ petitioner is not entitled to the relief as prayed for. It is apparent from the reading of an order dated 10.09.2020 that the revised waiting list has been prepared in view of the government instructions dated 20.01.1988, 07.10.1998 and 25.06.1999. The revised waiting list was displayed on the website on 15.07.2020. The life/validity of the waiting list is for a period of one year which is going to elapse in September, 2020. Still further, as noticed above, the writ petitioner

does not even assert that any candidate, who has obtained lesser marks than her, in her category, has been appointed.

Learned counsel for the writ petitioner, in the end, while contending that a similar writ petition is pending, has relied upon an order passed in *Civil Writ Petition No. 8067 of 2020 (“Pramila Devi and Others v. State of Haryana and Others”)*. This Court has examined the interim order passed in the aforesaid case. The aforesaid writ petition was filed by the candidates belonging to the scheduled caste category. It is not the case of the writ petitioner that she also belongs to the scheduled caste category. The writ petitioner claims that she applied for the post under the Economically Weaker Section category. Hence, the pendency of the aforesaid writ petition does not help the writ petitioner.

Learned counsel for the writ petitioner has further relied upon an order passed by the Chief Secretary to the Government of Haryana extending the validity of the original selection list for Group “B” Posts in respect of Advertisement No. 4 of 2018. The aforesaid advertisement is for some other posts and the appointments being made, in the present case, is with respect to a different advertisement.

Learned counsel for the writ petitioner has further relied upon an order passed by the High Court in the case of the Uttar Haryana Bijli Vitran Nigam Limited, wherein the appointments to the candidates have been issued beyond 10% of the advertised posts from the waiting list. He further relies upon an order passed by the Uttar Pradesh High Court.

This Court has examined the aforesaid orders passed in the case of Uttar Haryana Bijli Vitran Nigam Limited. Annexure P-21 is an order

dated 09.01.2018 passed by this Court while disposing of a bunch of writ petitions which had become infructuous. Similarly, the order passed by the Division Bench of the Uttar Pradesh High Court is in the facts of that case.

Keeping in view the aforesaid discussion, there is no merit in the present writ petition, however, the writ petitioner would be at liberty to file a fresh writ petition if any candidate from her category, who has obtained lesser marks than her, is appointed.

With these observations, the present writ petition is disposed of.

(Anil Kshetarpal)
Judge

September 23, 2020

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No