

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.384 of 2012

1. Dr. Amarnath Shukla, S/o Shri Rangnath Shukla, Aged about 30 years, R/o Professor Colony, Kawardha, District Kabirdham (C.G.)
  2. Dr. Shahwar Alam, S/o Shri Anwar Alam, Aged about 34 years, R/o Wazir Villa, Baijnath Para, Raipur (C.G.)
  3. Dr. Satendra Dubey, S/o Shri L.P. Dubey, Aged about 30 years, R/o 645, Sindhiya Nagar, Durg, District Durg (C.G.)
  4. Dr. Iqbal Hussain, S/o Shri M.A. Haque, Aged about 33 years, R/o HDD-1, Phase-3/274, Kabir Nagar, Raipur, District Raipur (C.G.)
  5. Dr. Mahendra Singh, S/o Shri Chhatrapati Singh, Aged about 30 years, R/o 1048/599, Dariyabad Thana, Atarsuiya, Allahabad (U.P.)
  6. Dr. Vinay Kumar Dubey, S/o Shri Harishankar Dubey, Aged about 30 years, R/o Nai Basti, Baruasagar, Jhansi (U.P.)
  7. Dr. Namrata Tiwari, W/o Shri Satish Tiwari, Aged about 32 years, R/o Government Ayurved Dispensary, Dharashiv (Khokhra), District Janjgir-Champa (C.G.)
  8. Dr. Chandrashwar Sinha, S/o Shri Udhau Singh Sinha, Aged about 29 years, R/o Village Thakurdiya Khurd, Post Pithora, District Mahasamund (C.G.)
  9. Dr. Sant Kumar Nirala, S/o Shri Sachidanand Tiwari, Aged about 37 years, R/o Vikramshila Colony, Tilkamanjhi, District Bhagalpur (Bihar)
- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Health and Family Welfare, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
  2. Chhattisgarh Public Service Commission through the Secretary, Raipur (C.G.)
- Respondents

ANDWrit Petition (S) No.2283 of 2013

Dr. Sunil Kumar Bhoi, S/o Late Shri Surendra Bhoi, Aged about 35 years, R/o Mahal Para, Ward No.3, P.S. Saraipali, District Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Health and Family Welfare, Zero Point, New Mantralaya, P.S. Mandir Hasaud, Raipur (C.G.)
2. Chhattisgarh Public Service Commission through the Secretary, Raipur (C.G.)

---- Respondents

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For Petitioners: Mr. Shantam Awasthi, Advocate.

For Respondent No.1 / State: -

Mr. Sunil Otwani, Additional Advocate General.

For Respondent No.2 / PSC: -

Mr. Ashish Shrivastava, Senior Advocate with Mr. Aman Pandey, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/09/2021

1. Since common question of law and fact is involved in both the writ petitions, they have been clubbed together and heard together and are being disposed of by this common order.
2. The petitioners herein call in question the order dated 3-6-2011 (Annexure P-1) by which the Public Service Commission (PSC) has declined to send the names of 17 candidates for appointment on the post of Ayurved Medical Officer.
3. Mr. Shantam Awasthi, learned counsel appearing for the petitioners, would submit that in the recruitment already held, six candidates have not joined and 11 candidates have resigned after joining, therefore, names of the petitioners should have to be considered, but the PSC by memo dated 3-6-2011 (Annexure P-1) has declined to send their names on the ground that the validity of select list has already expired on 15-2-2011 and new recruitment for 351 posts has already been initiated and processed. Therefore, the memo dated 03.06.2011 is unsustainable and bad in law.

4. Mr. Sunil Otwani, learned State counsel, would submit that the life of select list stood expired on 15-2-2011 and six candidates have not joined and 11 candidates have resigned after joining, the petitioners were not selected candidates and even if they were in waiting list, in light of the select list having expired on 15-2-2011 and new process of recruitment for 351 posts having been initiated, the PSC is absolutely justified in declining to accept the proposal of the State Government to send the names of 17 candidates for recruitment on the ground that six candidates have not joined and 11 candidates have resigned after joining. As such, the order dated 3-6-2011 passed by the PSC is in accordance with law. Mr. Otwani, learned State counsel, would rely upon the decision of the Supreme Court in the matter of Secretary, Kerala Public Service Commission v. Sheeja P.R. and another<sup>1</sup> in support of his contention.
  
5. Mr. Ashish Shrivastava, learned Senior Counsel appearing for the Chhattisgarh PSC / respondent No.2, would submit that since the extended life of the select list stood expired on 15-2-2011 and new recruitment process has been initiated, the PSC is absolutely justified in declining to accept the proposal of the State Government for sending the names of 17 Ayurved Medical Officers, as six candidates have not joined and 11 candidates have resigned after joining. He would rely upon the decisions of the Supreme Court in the matters of Manoj Manu and another v. Union of India and others<sup>2</sup> and Dinesh Kumar Kashyap and others v. South East Central Railway and others<sup>3</sup> to buttress his submission.
  
6. I have heard learned counsel for the parties and considered their rival

1 (2013) 2 SCC 56

2 (2013) 12 SCC 171

3 (2019) 12 SCC 798

submissions made herein-above and also went through the record with utmost circumspection.

7. Recruitment process for the post of Ayurved Medical Officer was initiated on 28-5-2008 and final select list was published on 4-12-2009 in which the names of the petitioners did not find place, however, the life of select list expired on 15-2-2011 as per Annexure P-1. It appears that thereafter, six candidates did not join and 11 candidates have resigned after joining and thus, 17 posts have fallen vacant and the State Government made a request to the PSC to send the names of 17 candidates for appointment as Ayurved Medical Officer which the PSC by the impugned order declined on the ground that life of select list has expired on 15-2-2011 and new recruitment process for 351 posts of Ayurved Medical Officer is initiated therefore, there is no justification in sending the names of earlier selected candidates and accordingly closed the departmental proposal which has been called in question in these two writ petitions by the petitioners herein. The recruitment was held in accordance with the Chhattisgarh Public Health (Indian Systems of Medicine and Homeopathy) (Gazetted) Service Recruitment Rules, 1987, but there is no provision of waiting list, if any.
8. The question would be, whether a person on the basis of his name in the merit list / select list, does get any indefeasible right of appointment?
9. The Supreme Court in the matter of State of Orissa and another v. Rajkishore Nanda and others<sup>4</sup>, held that select listed candidate has no right for appointment by observing as under: -

“13. A person whose name appears in the select list does

not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

14. A Constitution Bench of this Court in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612 : (1991 AIR SCW 1583), held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (See also *Asha Kaul & Anr. v. State of J & K & Ors.*, (1993) 2 SCC 573 : (1993 AIR SCW 2314); *Union of India v. S.S. Uppal*, AIR 1996 SC 2340 : (1996 AIR SCW 848); *Bihar Public Service Commission v. State of Bihar*, AIR 1997 SC 2280 : (1997 AIR SCW 2154); *Simanchal Panda v. State of Orissa & Ors.*, (2002) 2 SCC 669 : (AIR 2002 SC 2444 : 2002 AIR SCW 2689); *Punjab State Electricity Board & Ors. v. Malkiat Singh*, (2005) 9 SCC 22 : (AIR 2004 SC 5061 : 2004 AIR SCW 5768); *Union of India & Ors. v. Kali Dass Batish & Anr.*, AIR 2006 SC 789 : (2006 AIR SCW 227); *Divisional Forest Officers & Ors. v. M. Ramalinga Reddy*, AIR 2007 SC 2226 : (2007 AIR SCW 3896); *Subha B. Nair & Ors. v. State of Kerala & Ors.*, (2008) 7 SCC 210 : (AIR 2008 SC 2760 : 2008 AIR SCW 4591); *Mukul Saikia & Ors. v. State of Assam & Ors.*, (2009) 1 SCC 386 : (AIR 2009 SC 747 : 2008 AIR SCW 7971); and *S.S. Balu & Anr. v. State of Kerala & Ors.*, (2009) 2 SCC 479 : (AIR 2009 SC 1994 : 2009 AIR SCW 1644).

15. Select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required.

It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage. (Vide *J. Ashok Kumar v. State of Andhra Pradesh & Ors.*, 1996 3 JT (SC) 225; *State of Bihar & Ors. v. Md. Kalimuddin & Ors.*, AIR 1996 SC 1145 : (1996 AIR SCW 691); *State of U.P. & Ors. v. Harish Chandra & Ors.*, AIR

1996 SC 2173 : (1996 AIR SCW 2785); Sushma Suri v. Government of National Capital Territory of Delhi & Anr., (1999) 1 SCC 330; State of U.P. & Ors. v. Ram Swarup Saroj, (2000) 3 SCC 699 : (AIR 2000 SC 1097 : 2000 AIR SCW 779); K. Thulaseedharan v. Kerala State Public Service Commission, Trivendrum & Ors., (2007) 6 SCC 190 : (AIR 2007 SC (Supp) 253 : 2007 AIR SCW 3211); Deepa Keyes v. Kerala State Electricity Board & Anr., (2007) 6 SCC 194 : (2007 AIR SCW 7311); and Subha B. Nair & Ors. (AIR 2008 SC 2760 : 2008 AIR SCW 4591) (supra).”

10. In the matter of Uttar Pradesh Public Service Commission v. Surendra Kumar and others<sup>5</sup> in a case where the High Court had quashed the communication of the U.P. Public Service Commission rejecting the request to recommend seven more names of the candidates, the Supreme Court has set aside the order of the High Court on the ground that validity of wait list had expired and further held that the order directing names of requisite number of candidates to be recommended, unsustainable, as the validity of wait list had expired.
11. Similarly, in Rajkishore Nanda's case (supra), the Supreme Court has set aside the direction given to the State Government to appoint select listed candidates who have approached the Court after expiry of lists.
12. Similarly, in Secretary, Kerala Public Service Commission (supra), it has been held by the Supreme Court that once the main list is exhausted, the supplementary list has no existence on its own.
13. In the matter of State of U.P. and others v. Harish Chandra and others<sup>6</sup>, in the case where panel / select list has expired, their Lordships of the Supreme Court have held that no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law and the rights, if any, of persons included in the list did not subsist by

<sup>5</sup> (2019) 2 SCC 195

<sup>6</sup> (1996) 9 SCC 309

observing as under: -

“10. Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the writ petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provision of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4-4-1987 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist. In the course of hearing the learned counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuant to the direction of the Court some appointments have been made but in some other cases it might have been done by the appointing authority. Even though we are persuaded to accept the submission of the learned counsel for the respondents that on some occasion appointments have been made by the appointing authority from a select list even after the expiry of one year from the date of selection but such an illegal action of the appointing authority does not confer a right on an applicant to be enforced by a Court under Article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the appointing authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the appointing authority in making such appointments contrary to the Statutory Rules. But at the same time it is difficult for us to sustain the direction given

by the High Court since, admittedly, the life of the select list prepared on 4-4-1987 had expired long since and the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not.”

14. Reverting to the facts of the present case, in the instant case, as noticed herein-above, life of the select list, as per own showing of the petitioners (as per the impugned order Annexure P-1) had expired on 15-2-2011 and W.P.(S)No.384/2012 was filed on 23-1-2012 after expiry of one year of the period of select list, whereas W.P.(S) No.2283/2013 was filed on 29-7-2013 after more than two years of the expiry of select list.
15. In the considered opinion of this Court, in view of the principle of law laid down by the Supreme Court noticed herein-above, the PSC is absolutely justified in not processing the appointment on the said posts in view of the fact that life of the select list had already expired and new recruitment process for selection and appointment of Ayurved Medical Officer has already commenced.
16. For the foregoing reasons, the writ petitions are liable to be and are hereby dismissed leaving the parties to bear their own cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge