

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

CWP-8704 of 2020 (O&M)

Date of decision: 09.09.2021

Dr. Pooja Rani

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner.

Mr. Sharad Aggarwal, AAG, Haryana.

Mr. Rajesh K. Sheoran, Advocate
for respondents No.3 and 4.

Mr. Digvijay Singh, Advocate for respondents No.5 and 6.

H.S. MADAAN, J.

Case taken up through video conferencing.

Briefly stated facts of the case, which are not much in dispute by either of the parties are that, Maharana Partap National College, Mullana, District Ambala, Haryana, a Government Aided Private College had advertised one post of Assistant Professor (Hindi); a duly constituted Selection Committee having nominee of the University and Government after conducting interview had selected following candidates in order of merit; (i) Dr. Manoj Kumar (ii) Dr. Pooja Rani (present petitioner) and (iii) Dr. Nirmala; requisite approval was obtained from University and Government and Dr. Manoj Kumar, who was on the top in the merit was offered appointment and he joined as Assistant

Professor (Hindi) on 15.02.2020; unfortunately, Dr. Manoj Kumar expired on 10.05.2020; according to the petitioner, she being second in order of merit should have been offered appointment on account of arising of vacancy due to untimely death of Dr. Manoj Kumar because in terms of Haryana Govt. instructions issued on 03.03.1999 (Annexure P-3) and 25.06.2019 (Annexure P-4) if during the validity of the select list, post fall vacant due to resignation or death, then the post be filled up from the next candidate in order of merit.

Respondents No.5 and 6 had requested respondents No.1 to 4 to grant approval for appointment of petitioner as Assistant Professor (Hindi) in order of merit as validity of the list would expire on 28.06.2020; however, respondent No.1 in the written statement filed on behalf of respondents No.1 and 2 had taken up a stand that in order to be appointed to the post of Lecturers (now Assistant Professors), the recommendations of the Selection Committee are first approved by the affiliating University and then by the Director i.e. the office of answering respondent No.2; the University has defended its decision dated 30.06.2020 and 18.06.2020.

Short reply has been filed by Sh. S.P. Sukhija, Joint Director Colleges, Director General Higher Education, Haryana, Panchkula on behalf of respondent No.2; inter alia, the assertions in the writ petition have been controverted; it has been contended that the selection to the post of Assistant Professor in Govt., Aided Private Colleges are made in accordance with the provisions contained in the Haryana Affiliated Colleges (Security of Service) Act, 1979 and rules framed therein called

the Haryana Affiliated Colleges (Security of Service) Act, 2006 (for short 'the Act'); that appointment to any post in aided institution is made by the Managing Committee of the concerned institute in the manner provided in Rule 7 of the Act; in that way, for appointment of Lecturer (now Assistant Professor), the recommendations of the Selection Committee are first approved by the affiliating University and then by the Director i.e. the office of answering respondent No.2; in the instant case, in pursuance of the interview held for the appointment to the post of Assistant Professor (Hindi), one Dr. Manoj Kumar was placed at Sr. No.1 and he joined his duties on 15.02.2020; unfortunately, he expired on 10.05.2020; according to the answering respondents, any appointment to the post of Assistant Professor against vacant post can be made out of the panel of selected candidates only during the validity period of 06 months from the date of interview as has been specifically provided in Clause 2 of letter No.8/12-98 C-IV (1) dated 03.03.1999, which provided that the validity period of the panel will be 06 months only from the date of interview and the appointment can be made during the validity period only; the interview for appointment to the post in question was held on 28.12.2019 and the panel of selected candidates was prepared on that day; in the end, such respondents prayed for dismissal of the writ petition.

In the written reply filed on behalf of respondents No.3 and 4, they have taken up various legal objections to wit that the writ petition is not maintainable as petitioner has not approached the Court with clean hands and has concealed material facts; that the present writ petition has been filed by the petitioner with the prayer for issuance of writ in the

nature of certiorari to quash order dated 30.06.2020 along with proceedings dated 18.06.2020 further asking for issuance of direction to respondents No.1 to 4 to grant approval of the appointment of the petitioner as Assistant Professor (Hindi) as sought by respondents No.5 and 6 and petitioner be granted all consequential benefits; that after death of Dr. Manoj Kumar, who figured at Sr. No.1 in the selection list and who had joined against the vacancy, respondents No.5 and 6 had requested respondents No.1 to 4 for grant of approval for appointment of petitioner, vide letter dated 21.05.2020 (Annexure P-1) to consider the request; Vice Chancellor had constituted a committee of three members comprising Dean Academic Affairs, Dean, Arts & Languages and Professor In-charge, Selection (Department of Physics), who after due deliberations found that there is no provision in the Act to appoint a candidate from the waiting list; although, there is a reference of validity period of panel list for 06 months in letter dated 03.03.2009 (Annexure P-3) issued by Director Higher Education and procedure has been given in the case candidates appointed from the panel resigns subsequently and the post fall vacant during the validity period of 06 months but there is no procedure/provision in Annexure P-3 with regard to post falling vacant on account of death of a candidate, therefore, the University has taken decision after considering the rules and all relevant instructions and there is no illegality in decision dated 30.06.2020 and 18.06.2020; that writ petition is liable to be dismissed since instruction dated 25.06.2019 (Annexure P-4) are not applicable to Assistant Professor College (Group-B) and same is applicable to Group-C post; even this fact was observed

by this Court while issuing notice of motion, vide order dated 29.06.2020; on merits, pleas in the preliminary objections have been reiterated while asking for dismissal of the writ petition.

I have heard learned counsel for the parties besides going through the record.

Learned senior counsel for the petitioner, during the course of arguments, has reiterated the averments in the writ petition. In support of such contentions, he has pressed into service various judgments; first being **BSNL & Ors. Vs. Abhishek Shukla & Anr**, 2009(3) RCR (Civil) 700, in that judgment, it was observed that though validity of selection list ordinarily is for one year, however, in that case, where respondents had made representations for appointment within one year of such approval of select list, the requirement stood fulfilled.

The next judgment was **Susama Roy Pramanik & Ors. Vs. State of West Bengal & Ors.**, 2014 (7) RCR (Civil) 1818, wherein it was observed that expiry of life of panel during pendency of legal proceeding is no ground to deny right of the selected candidates for appointment, which occurred during validity period of panel in question. While judgment of the single Judge was set aside, the appeal was accepted and the respondents were directed to consider the claim of the petitioner for appointment.

In another judgment by Division Bench of this Court **Ritu Vs. State of Haryana & Ors.** in LPA No.1767-2012 decided on 04.03.2013, it was observed as under:-

“11. Adverting back to the facts of the present case, it was obligatory upon the Appointing Authority to have acted promptly

as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere impanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt.Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations i.e. 27.1.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.

*12. Even otherwise, the very objective of preparing a waiting/panel list and for such list to be kept operative for a specific period is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period. A reference in this regard can usefully be made to the judgments of this Court in *Ajmer Singh v. State of Haryana and others*, 1997(1) CLJ (Service) 86 and *Raghubir Chand Sharma v. State of Punjab*, 1992 (1) RSJ 195.*

13. In the present case, the inaction on the part of the State Government in not having cancelled the offer of appointment

made to Smt.Manju Rani within a period of 15 days as per stipulation contained in the offer of appointment itself has clearly defeated the very objective for which the waiting/panel list had been prepared in which the name of the appellant duly figured.

14. For the reasons recorded above, we allow the instant appeal and set aside the impugned judgment dated 6.10.2012 passed by the learned Single Judge in Civil Writ Petition No.5980 of 2011. We further direct that the respondent-Department shall issue appointment letter to the appellant for the post of Hindi Teacher within a period of 30 days from the date of passing of this judgment. There shall, however, be no order as to costs.”

Learned counsel appearing on behalf of the respondents have also come up with the same stand as taken in the replies, submitting that as per the instructions applicable, the petitioner cannot be appointed against the vacancy.

However, after giving a thoughtful consideration to the rival contentions, going through the record and judgments referred to by learned senior counsel for the petitioner, I find that the petition has merit and calls for acceptance. Whenever a vacancy occurs and selection process is initiated for filling up of vacancy, that involves a lot of effort involving spending of time, energy of various persons involved in the process and it has got financial implication also. The vacancies keep occurring on account of promotion, resignation, disciplinary proceedings, death etc. Since for filling up of vacancy, the entire process has to be repeated, therefore, to avoid wastage of time, energy and money, a waiting list of the successful candidates is prepared, which remains in

operation for a limited period. In this case also, instructions by the Government are there, copy of which being Annexure P-3, which provides for preparation of panel of the candidates selected by the Selection Committee, which is to remain alive for a period of 06 months, specifying that number of persons in the waiting list should not exceed the number of posts advertised. The procedure for filling up the post which falls vacant during the validity period of 06 months of the panel has also been mentioned in such instructions. Annexure P-4 are similar instructions issued by the Government with regard to filling up the vacancies falling vacant due to resignation or death of newly appointed candidates during currency of the waiting list.

Although, respondents No.1 and 2 have tried to come up with a plea that since interview for appointment to the post in question was held on 18.12.2019 and panel of selected candidates was prepared on that day, the validity of the panel has expired on 27.06.2020 and no recommendations from the respondent college has been received in the office of answering respondents before expiry of validity period of the panel, therefore, no appointment can be given to the petitioner. Another plea taken is that the instructions, copy Annexure P-4 are applicable to Government employees of Group C & D, whereas, instructions Annexure P-3 are applicable to aided post in Government aided private colleges. Such pleas taken are obviously not plausible and convincing.

Respondents No.3 and 4 have also taken a stand that committee appointed by Vice Chancellor of the University observed that as per instructions Annexure P-3, procedure is given in case of

resignation by a selected candidate but not in case of death of a candidate. Again, a very unconvincing reasoning. It is difficult to understand as to why the respondents are so keen to start the recruitment process afresh instead of considering the petitioner, who had been cleared by the Selection Committee with her name figuring at Sr. No.2. It has to be taken note of that the candidate Dr. Manoj Kumar, who was on the top in the list of selected candidates had joined on 15.02.2020 but expired on 10.05.2020. That means, the selection list was valid upto 28.06.2020 and vacancy occurred prior to the expiry of the validity of the list. The petitioner had approached this Court by way of filing the instant writ petition on 22.06.2020, when the selection list was still alive. Her claim cannot be rejected for the reason that the validity of the selection list has expired on account of time consumed in decision of the writ petition. The name of the petitioner deserves to be considered for appointment. The vacancy having taken place, it is not proper to say that name of petitioner could have been considered only if the previous incumbent had resigned and not on account of his death. If a vacancy is there, it is there and the petitioner being next in merit deserves to be considered for appointment as Assistant Professor (Hindi) against that post. The respondents instead of having a liberal and practical approach are getting bogged down in technicalities.

Therefore, I find that it is a fit case to exercise powers under Article 226 of the Constitution of India and issue a writ in the nature of mandamus directing the respondents to consider the petitioner for appointment as Assistant Professor (Hindi) in Maharana Partap National

College, Mullana, District Ambala, Haryana by taking the necessary action at the earliest.

The writ petition is, accordingly, allowed.

09.09.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No