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

-.-

**CWP-11963-2021(O&M)
Date of Decision: 11.11.2021**

Kawalpreet Kaur and Another

....Petitioners

VERSUS

Punjab State Power Corporation
Limited and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. D.S.Patwalia, Senior Advocate with
Mr. A.S.Chadha, Advocate for the petitioners.

Mr. B.S.Khehar, Advocate for the respondents.

ALKA SARIN, J. (Oral)

The present civil writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the decision dated 20.05.2021 (Annexure P-14) taken by the Committee of Whole Time Directors whereby the said committee, in complete derogation of the order passed by this Court in CWP-20582-2018, has rejected the case of the petitioners for appointment to the post of Assistant Manager (HR) advertised vide CRA No.285/2015 dated 17.06.2015.

The brief facts relevant to the present *lis* are that the respondent-Corporation vide advertisement dated 17.06.2015 (Annexure P-1), amongst other posts, invited applications for filling up of 14 posts of Assistant Manager (HR). The petitioners applied in the reserved category of ESM and SC category, respectively. The respondent-Corporation vide corrigendum dated 04.12.2015 (Annexure P-2) reduced the number of

advertised posts of Assistant Manager (HR) from 14 to 10. A written exam was held on 24.01.2016 and as per the result declared the petitioners obtained 59.025 and 60.15 marks, respectively. As per the merit list, petitioner No.1 was placed at Sr. No.3 in her category i.e. ESM whereas petitioner No.2 was placed at Sr. No.4 in her category i.e. SC. 10 candidates were short listed as per their merit and recommended for appointment. Out of the panel of 10 candidates only 07 candidates came and sought appointment whereas 03 candidates did not show up. Out of the said 03 candidates who did not show up, one belonged to ESM category and one to SC category. In view of the fact that one post each of ESM and SC category remained unfilled, the respondent-Corporation called the wait-listed candidates for verification of their documents. The petitioners appeared before the respondent-Corporation for verification of their documents. On 06.07.2017 the respondent-Corporation called upon petitioner No.1 to submit a clarification with regard to her MBA degree as also to submit a fresh resident certificate. Similarly, petitioner No.2 was also called upon to submit a clarification with regard to her MBA degree from the concerned University. Both the petitioners duly supplied the requisite documents within the stipulated time. It is pertinent to note that petitioner No.1 was at Sr. No.1 in the waiting list of the candidates of ESM category, whereas petitioner No.2 was at Sr. No.2 in the waiting list of the candidates of SC category. However, since the candidate at Sr. No.1 in the waiting list of the SC category did not come forward for scrutiny of the documents, petitioner No.2 was placed at Sr. No.1 in the waiting list of candidates of SC category.

It has further been stated in the writ petition that the petitioners learnt that since the panel of the recommended candidates in pursuance to CRA No.285 of 2015 was valid till 31.07.2017, the matter was put up before the Committee of Whole Time Directors for extension of the validity of the selection panel. On 17.10.2017 the Committee of Whole Time Directors rejected the proposal for extension of the panel of selection (Annexure P-10). However, on 05.01.2018 the Chief Engineer (HRD) again submitted Agenda No.1/2017 (Annexure P-11) for extension of the panel. On 25.01.2018 the Committee of Whole Time Directors once again rejected the agenda of the Chief Engineer (HRD) for extension of validity of the panel under CRA No.285 & 286 of 2015 (Annexure P-12).

The petitioners thereafter approached this Court by filing CWP-20582-2018 titled as "*Kawalpreet Kaur & Anr. Vs. Punjab State Power Corporation Limited & Ors.*" *inter alia* praying for quashing of the decision of the Committee of Whole Time Directors whereby it had rejected the proposals with respect to extension of the selection panel. A co-ordinate Bench of this Court, vide judgement dated 11.02.2021 (Annexure P-13), allowed the writ petition and set aside the decisions of the Committee of the Whole Time Directors dated 17.10.2017 and 25.01.2018 and directed the respondent-Corporation to reconsider the matter within a period of two months. On 20.05.2021 vide decision Annexure P-14 the Committee of Whole Time Directors once again rejected the proposal for extension of the selection panel of CRA No.285/2015. Aggrieved by the said decision dated 20.05.2021 the petitioners have approached this Court.

Learned Senior counsel for the petitioners would contend that the petitioners have been running from pillar to post since the posts were

advertised in the year 2015 and this is their second round of litigation before this Court. Learned Senior counsel has further referred to Agenda No.01/2017, CRA Nos.285 and 286 of 2015, dated 05.01.2018 (Annexure P-11) wherein the Chief Engineer/HR had opined that the validity of the panel should be extended up to 31.03.2018. While giving the said opinion a reference was made to a case filed by Jatinder Singh Kapur & Ors. Vs. State of Punjab & Ors. being CWP No.21748 of 2016 under CRA No.284/15 (GATE based). In the said petition, the petitioners had approached this Court being candidates on the waiting list in the General Category under CRA No.284 of 2015 and further prayed that the appointment letter for the post of Assistant Engineer (Electrical) be issued to them. This Court decided the matter in favour of the petitioners therein vide order dated 26.05.2017. the respondent-Corporation had thereafter challenged the said order dated 26.05.2017 by filing LPA No.1659 of 2017 titled as State Power Corporation Limited & Anr. Vs. Jatinder Singh Kapur & Ors. which was dismissed on 19.09.2017 and had since attained finality as no SLP was preferred against the same. Learned Senior counsel has also referred to the judgement passed by this Court in CWP-20582-2018 (Annexure P-13) wherein while disposing off the first writ petition filed by the present petitioners it was held as under:-

“It would be noted here that the respondents, while filing the written statement, have not furnished any justifiable reason for not offering the appointment to the petitioners. As per the stand taken, the respondents have pleaded that since the validity of the panel has expired and the Committee of the Whole Time Directors has rejected the request for extension of the period of validity of the waiting list, therefore, the appointment cannot be made. In the considered view of this

Court, both the reasons are not sustainable. The validity of the panel expired due to slackness on the part of the respondents. Once, after scrutiny of the documents as necessary information was supplied by the petitioners before the elapse of the period of validity, there was no reason not to offer appointment to the petitioners. Sill further, the decision of the Committee of the Whole Time Directors is wholly non-speaking. No reason, whatsoever has been given.”

According to the learned counsel for the petitioners the Committee of Whole Time Directors has once again rejected the proposal for extending the selection panel by passing an almost verbatim order as was passed by the said committee on 25.01.2018 (Annexure P-12) without giving any reasons.

A written statement dated 31.08.2021 has been filed on behalf of the respondents wherein there is no denial of the facts as canvassed by the counsel for the petitioners. Mr. B.S. Khehar, Advocate appearing on behalf of the respondent-Corporation has only echoed the contents of the impugned decision taken by the Committee of Whole Time Directors and stated that extending the validity of the selection panel would lead to vitiating its sanctity and would lead to multiple candidates demanding similar relief. However, he is not in a position to deny the fact that earlier the similarly situated petitioners had approached this Court by filing CWP No.21748 of 2016 (Jatinder Singh Kapur & Ors. Vs. State of Punjab & Ors.) which writ petition was allowed by this Court and the Letters Patent Appeal preferred by the respondent-Corporation being LPA No.1659 of 2017 (Punjab State Power Corporation Limited & Anr. Vs. Jatinder Singh Kapur & Ors.) was dismissed by the Division Bench vide order dated 19.09.2017. Learned

counsel for the respondent-Corporation is also not in position to deny that by a detailed judgement this Court in the earlier writ petition filed by the present petitioners had categorically held that the decision taken by the Committee of Whole Time Directors rejecting the request for extension of period of validity of the waiting list was non-speaking and that the stand taken by the respondent-Corporation was not sustainable

I have heard learned counsel for the parties.

In the present case the respondent-Corporation has not furnished any plausible reason for not extending the validity of the selection panel. On two earlier occasions - in CWP No.21748 of 2016 and in CWP No.20582 of 2018 - vide judgements dated 26.05.2017 and 11.02.2021, respectively, this Court has held that since the validity of the panel had expired due to the slackness on the part of the respondents, the petitioners could not be made to suffer for the same. The petitioners in the present case had approached this Court earlier by filing CWP No.20582 of 2018. Vide a detailed judgement dated 11.02.2021 (Annexure P-13) this Court inter-alia held that :

“As per the stand taken, the respondents have pleaded that since the validity of the panel has expired and the Committee of the Whole Time Directors has rejected the request for extension of the period of validity of the waiting list, therefore, the appointment cannot be made. In the considered view of this Court, both the reasons are not sustainable. The validity of the panel expired due to slackness on the part of the respondents. Once, after scrutiny of the documents as necessary information was supplied by the petitioners before the elapse of the period of validity, there was no reason not to offer appointment to the petitioners.”

In CWP No.21748 of 2016 (Jatinder Singh Kapoor & Ors. Vs. Punjab State Power Corporation Limited & Anr.) vide judgement dated 26.05.2017 it was inter-alia held that :

“Despite memo/instructions of the Department to act promptly in case a person does not join and offer appointment to the next available candidate, the same was not done. The only ground for not for offering appointment to the petitioners is that the wait list has expired, which in the opinion of the court cannot come to the rescue of the respondents, since the Department should have acted promptly once candidates offered appointment did not join. It is an inaction of the appointing authority which suffers from the vice of arbitrariness which cannot be sustained.”

When the decision in CWP No.21748 of 2016 was carried in appeal by the respondent-Corporation by filing LPA No.1659 of 2017 (Punjab State Power Corporation Limited & Anr. Vs. Jatinder Singh Kapur & Ors.), the Division Bench dismissed the same vide judgement dated 19.09.2017 holding inter-alia that :

“We find no reason to dis-agree with the aforesaid contentions particularly, when the appellants themselves were at fault in not offering consideration to the respondents when some of the selected candidates did not avail the assignment offered to them, leaving the post vacant. It was incumbent upon the appellants to extend the offer of employment to those who were next in the queue rather than defeat their claims on account of their inaction.”

It fails to reason as to why after it has conclusively been held that the Department should have acted promptly once candidates offered appointment did not join and that it is inaction of the appointing authority which suffers from the vice of arbitrariness, the Committee of Whole Time

Directors has again declined to extend the validity of the selection panel. The reason given in the impugned decision (Annexure P-14) for not extending the validity of the selection panel is “*that extending the selection panel will lead to vitiate its sanctity and other candidates may also come forward and claim posts on the basis of this...*”. It is thus clear that to cover-up its own inefficiency and slackness the validity of the selection panel has not been extended. The petitioners cannot be made scapegoats for inaction by the respondent-Corporation. The petitioners, who were on the waiting list, were asked to supply certain clarifications. This was done. However, the respondents did not offer appointment though there were still some time for the validity of the wait list to come to an end. For failing to take prompt action by the respondents the petitioners cannot be made to suffer.

The Supreme Court in the case of **R.S.Mittal Vs. Union of India, 1995(3) SCT 284**, has held as under :

“12. It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr.

Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

A Division Bench of this Court in the case of **Ritu d/o Sh. Nafe Singh Vs. State of Haryana & Ors., LPA No.1767 of 2012 decided on 04.03.2013**, held 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 Raghbir Chand Sharma v. State of Punjab, 1992 (1) RSJ 195.”

In the present case to there is no justifiable reason forthcoming for the inaction on the part of the respondent-Corporation. The petitioners were called for scrutiny of the documents before the expiry of the validity of the selection panel. Even in the written statement no cogent reason is forthcoming for the inaction on the part of the respondent-Corporation. It is not the stand of the respondent-Corporation in the written statement that the petitioners were not eligible or their documents were wanting in any manner.

In view of the discussion above and the law laid down in the judgements quoted above, the decision of the Committee of Whole Time Directors dated 20.05.2021 (Annexure P-14) is set aside and quashed. In the facts of the present case, this Court is inclined to issue similar directions as were passed by a Co-ordinate Bench in CWP No.21748 of 2016 (Jatinder Singh Kapoor & Ors. Vs. Punjab State Power Corporation Limited & Anr.) vide judgement dated 26.05.2017, which judgement stands affirmed by the Division Bench. As such, the present writ petition is allowed in the following terms :

- (i) the respondents will offer appointment to the petitioners
subject to their fulfilling all other eligibility criteria;

- (ii) the petitioners would be entitled to all notional benefits other than any remuneration for the period not worked;
- (iii) the seniority of the petitioners would be counted from the date candidates from the batch joined service;
- (iv) the respondents are also directed to complete the exercise and offer appointment within a period of 2 months from the date of receipt of certified copy of this judgement.

For the unjustifiable stand taken by the respondents despite the issue having being settled more than once by this Court, and forcing litigants to knock on the doors of this Court despite the issue being settled and accepted by the respondents, this Court is constrained to impose costs of Rs.25,000/- on the respondents. Costs to be deposited with the High Court Legal Aid Committee.

November 11, 2021
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO