

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 20582 of 2018 (O&M)

Date of Decision: 11.02.2021

Kawalpreet Kaur and Another

... Petitioner(s)

Versus

Punjab State Power Corporation Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Babbar Bhan, Advocate
for the petitioner(s).

Mr. Sahil Sharma, Advocate
for the respondents.

Anil Kshetarpal, J.

Through this writ petition, filed under Article 226/227 of the Constitution of India, the petitioners call in question the correctness of the orders passed by a Committee of the Whole Time Directors on 17.10.2017 and 25.01.2018, respectively. The petitioners have made the following substantive prayers:-

“i. Issuance of an appropriate writ, order or direction in the nature of certiorari/mandamus for quashing/setting aside the decision dated 25.01.18 (P-16) read with decision dated 17.10.17 (P-14) of the Whole Time Directors of the respondent Corporation whereby the claim of the petitioners for appointment to the post of Assistant Manager/HR advertised vide CRA-285/15 (P-3), has been illegally and arbitrarily rejected, despite the

- petitioners being the eligible candidates from waiting list (P-9) and despite subjecting them to the scrutiny of documents owing to the posts remaining unfilled, in clear derogation of the law laid down by this Hon'ble Court vide order dt. 26.05.17 (P-17) in CWP No. 21748/16, without assigning any reason or justification and in complete violation of principle of natural justice; and/or*
- ii. Further issuance of an appropriate writ, order or direction in the nature of mandamus directing the respondents to accept the well founded claim of the petitioners for appointment to the post of Assistant Manager/HR pursuant to CRA-285/15 and to offer them appointment w.e.f. its due date with all consequential benefits with interest @ 18% per annum; and/or*
- iii. Further issuance of an appropriate writ, order or direction in the nature of mandamus directing the respondents to decide the claim of the petitioners as espoused in the legal notice dated 07.04.2018 (Annexure P-19) which is pending with the respondent Corporation”.*

Some facts are required to be noticed. Respondent No.2, vide recruitment notice dated 17.06.2015, invited applications for various posts including 14 posts of Assistant Manager/HR. Subsequently, a corrigendum was issued reducing the posts to 10. Out of 10 posts, 4 posts were to be filled up from amongst the candidates of the general category, 2 from the

Scheduled Caste, 1 from the Backward Class, 2 from the Ex-servicemen and 1 from the sports quota. The written examination was held and the petitioners were placed in the waiting list. Petitioner No.1 was at serial No.1 in the Ex-Servicemen category, whereas petitioner No.2 was at serial No.2 in the scheduled caste category. It is undisputed that 7 candidates out of 10 selected, did join and, therefore, there was one post each in the categories of scheduled caste, backward class and ex-servicemen remained. On 29.06.2017, the petitioners along with other candidates were called for scrutiny of the documents. On careful reading of the e-mail, it is apparent that pursuant to a decision of a Committee of Whole Time Directors of the Corporation, additional 25% candidates in addition to the vacant posts were called for scrutiny of documents. Thereafter, vide letter dated 06.07.2017, petitioner No.1 was directed to give certain clarifications. Petitioner No.1 immediately supplied the clarification after getting the same from the University. The same was submitted in the second week of July, 2017. Thereafter, the petitioners were not appointed. It is the case of the petitioners that since 31.07.2017, the validity of the wait list elapsed, therefore, the Committee of the Whole Time Directors was requested to extend the validity of the panel, which was rejected in 199th meeting held on 17.10.2017. The decision of the Committee reads as under:-

“Resolved that the agenda be and is hereby rejected”.

Thereafter, once again, the Chief Engineer/HRD (Recruitment), Patiala, made a request to the Committee of the Whole Time Directors for extension with a plea that due to elections of Punjab Vidhan Sabha, the Code of Conduct was imposed for a period of more than two months and the

recruitment process could not proceed ahead. It was further pointed out that the posts are vacant and, therefore, extension should be granted. However, once again the Committee, in its 203rd meeting held on 25.01.2018, rejected the request by an order, which is not only bereft of any reason but also non-speaking.

Thereafter, the petitioners filed this writ petition.

Pursuant to notice of motion, the respondents have filed their reply. It has been pleaded that since the period of validity of the panel has elapsed, therefore, the petitioners could not be offered appointment.

This Court has heard learned counsel for the parties at length and with their able assistance, perused the paper-book.

Learned counsel for the petitioners, while drawing attention of the Court to the judgment passed in *Jatinder Singh Kapur and Others v. State of Punjab and Others (Civil Writ Petition No. 21748 of 2016, decided on 26.05.2017)*, which has been upheld by the Division Bench in *Punjab State Power Corporation Limited and Another v. Jatinder Singh Kapur and Others (Latters Patent Appeal No. 1659 of 2017, decided on 19.09.2017)*, contends that the petitioners were required to be given appointment.

Per contra, learned counsel appearing for the respondents, contends that mere selection does not confer any right and, therefore, the petitioners cannot seek a writ of mandamus. He further contends that the validity of panel has already elapsed, therefore, the respondent-Corporation cannot be compelled to make an appointment.

This Court has carefully analyzed the arguments of the learned

counsel for the parties. There is no doubt that mere selection does not confer right on the candidate to seek a writ of mandamus to compel the employer to give him appointment. However, when the respondent is the State or its instrumentality, then it is not expected to act arbitrarily. In the present case, it is apparent that due to non-joining of three candidates, equal number of vacancies did exist. The wait list is prepared in order to fill up the posts, which become available on account of the non-joining of the candidates. It is not in dispute that the factum of the non-joining of the candidates came to the knowledge of the respondents quite early when the selected candidates did not join. Still further, the candidates from the waiting list were called for scrutiny before the validity of the wait list elapsed. The petitioners did appear. It would be noted here that petitioner No. 2 was at serial No.2 in the waiting list of the scheduled caste category, but the candidate at serial No.1 i.e. Amarjit Kaur did not attend and come forward for scrutiny of documents and, therefore, the name of petitioner No.1 is practically at serial No.1. Further, it has come on record that petitioner No.1 was called upon to supply certain clarifications, which were duly supplied within the validity period of the wait list. However, the respondents did not offer appointment, although still a few days were left before validity of the wait list was to come to an end. Thus, the respondents failed to take prompt action. Still further, the respondents did make a request to the Committee for extension of the validity of the panel (wait list), which, as noticed above, has been rejected by a wholly non-speaknig order on two different occasions. From the reading of the judgment passed by the Division Bench in *Punjab State Power Corporation Limited (supra)*, it is apparent that the Division Bench,

while relying upon the judgment of the Supreme Court in ***R.S.Mittal v. Union of India (1995)(suppl.) 2 SCC 230***, held that the judgment passed by the learned Single Judge does not require any interference.

It would be noted here that recently, once again, this issue came up for consideration before a three Judges' Bench of the Supreme Court in ***Dinesh Kumar Kashyap and Others v. South East Central Railway and Others (2019) 12 SCC 798***. By a majority judgment, the Court has approved the judgment in the case of ***R.S.Mittal (supra)*** and held that the candidates in the waiting list have right of consideration, particularly when the vacancies are available.

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. Still further, the decision of the Committee of the Whole Time Directors is wholly non-speaking. No reason, whatsoever, has been given.

Keeping in view the aforesaid facts, this Court is of the

considered view that the decisions of the Committee of the Whole Time Directors dated 17.10.2017 (Annexure P14) and 25.01.2018 (Annexure P16) are liable to be set aside.

Hence, the writ petition is allowed and the decisions of the Committee of the Whole Time Directors dated 17.10.2017 (Annexure P14) and 25.01.2018 (Annexure P16) are set aside. The respondent-Corporation is directed to reconsider the matter within a period of two months from the date of receipt of a certified copy of this order. Needless to observe that the respondents shall be at liberty to take considered decision in accordance with the fact situation.

The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 11, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No