

CWP-504-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-504-2021 (O&M)

Date of decision: August 17, 2022

Sumitra Devi

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajiv Joshi, Advocate for the petitioner(s).

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

CM-11483-84-CWP-2022

Applications are allowed as prayed for and replication is taken on record, subject to all just exceptions.

Main case

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of Mandamus commanding the official respondents to operate the waiting list (Annexure P-4) pursuant to selection process undertaken as per the advertisement No.1/ 2016 dated 04.02.2016 for filling up the post of Tehsil Welfare Officer in the Welfare of Scheduled Castes and Backward Classes Department, Haryana, and issue appointment letter to the petitioner forthwith, since both the candidates above the petitioner have failed to join the post despite issuance of appointment letters and reminder letters to them by the Department.

2. Succinct factual background first. Respondent No.3 vide advertisement No.1/ 2016 dated 04.02.2016 (Annexure P-1) invited applications for appointment to various posts, including 21 posts of Tehsil Welfare Officers. Petitioner applied for the said post under SC Category. She appeared in the written exam, upon which she qualified. Thereafter, she appeared in the interview process. Final result (Annexure P-4) was declared on 21.08.2019, when petitioner was kept in the waiting list at Sr. No.2. Last selected candidate, namely Lalit Kumar who was issued appointment letter for the post in question, did not join since he was already in service as Mandi Supervisor. Respondent-Department also issued reminder letter dated 17.01.2020 (Annexure P-5) to the said candidate. Thereafter, respondent-Department issued appointment letter to the first candidate in the SC waiting list, namely Suresh Kumar, on 25.08.2020. Petitioner came to know from reliable sources that said Suresh Kumar has also not joined the post in question as he is posted as Patwari in Bahadurgarh, and even a reminder was also issued to him, in this regard. Petitioner moved RTI information (Annexure P-6) regarding status of the candidate first in the waiting list of his issuing appointment letter and non-joining thereon, but to no avail. Through newspaper dated 21.11.2020 (Annexure P7), petitioner came to know that respondent No.3 stated that candidates not joining within 30 days of the appointment, shall have to face cancellation of the appointments issued to them. Petitioner made representations dated 19.10.2020 and 06.11.2020 (Annexures P-8 and P-9 respectively) to know the status of waiting list.

3. Before adverting to the rival contentions, it would be apposite to reproduce the relevant clause of the instructions dated 20.01.1988 (Annexure R-2), which is as below:-

“3. It has further been decided that the main list as well as the waiting list shall remain valid for a period of one year from the date of recommendations. The list of remaining candidates, if any, after one year these would be scrapped and if any further demand is received by the Board, it would process the matter afresh and make further recommendations.”

4. What thus emerges is that the waiting list was to be prepared and same was to be kept alive for a period of one year. I have heard the rival contentions. For the reasons stated herein, I am of the view that the petitioner's claim of seeking appointment deserves to be accepted.

5. Concededly the petitioner herein belonging to SC category is on the waiting list at Sr. No.2. Her eligibility/ merit is neither under cloud nor even otherwise there is any challenge to the same as per the return filed to the writ petition. The defence taken to reject her claim is borne out from Paras-4 and 5 of Preliminary Submissions of the return dated 21.07.2022, which is as below:-

- “4. That it is further submitted that the petitioner belongs to Scheduled Castes category and her name stands at second place in the waiting list and the candidate of the first place of the waiting list was issued appointment letter but he neither joined his duties nor intimated the answering respondent whether he would join or not. Since, the validity of the waiting list has ended on 25-08-2020 as per the terms and conditions of recommendation letter issued by respondent No.3 on 26.08.2019, therefore, the appointment letter could not be issued to the petitioner i.e. Sumitra Devi.*
- 5. That in view of the letter dated 26.08.2019 issued by respondent No.3 and instructions dated 20-01-1988 (Annexure P-5) issued by the Chief Secretary to Government of Haryana, providing for one year time period for the validity of selection and waiting list from the date of recommendation, the answering respondent was not*

in a position to issue appointment letter to the petitioner i.e. Sumitra Devi.”

6. A perusal of the above reflects that for some inexplicable reasons, the benefit of being in the waiting list has been denied to the petitioner on the ground that after the period of one year, appointment letter cannot be issued to her.

7. What has been given a complete short-shrift and lost sight by the administrative authorities, is the fact that issuance of the appointment letter is entirely an administrative action/ duty on their part to be performed and delay in any manner cannot be attributed to the petitioner who has been waiting endlessly in the cue hoping for favorable response. Reference may be had to representations dated 22.12.2020 (Annexure P-6), dated 19.10.2020 (Annexure P-8) and dated 06.11.2020 (Annexure P-9) whereby she sought information regarding status of waiting list. In the aforesaid background, learned counsel for the petitioner relies on the decision rendered by a Division Bench of this Court in **LPA-1767-2012** titled **Ritu d/o Sh. Nafe Singh versus State of Haryana and others**, to support his argument. I need not threadbare discuss the aforesaid judgment as it is trite to say that the very object of preparing the waiting list is that not only the Department should be saved from the administrative headache of all over again advertising the posts by putting unnecessary burden on the public exchequer and also undertaking fresh selection process within the short interregnum of having done so and on the other hand also to make sure that once there has been a short-listed pool of meritorious candidates, the same must be exhausted within the reasonable period, one year in this case as per the instructions. In totality of circumstances, I see no reason why the petitioner be not accorded the benefit

of law as laid down vide aforesaid judgment already cited hereinabove by the learned counsel for the petitioner. Perusal of the same would reflect that the petitioner's case is squarely covered by the same.

8. Writ petition is accordingly, allowed. Respondents are directed to process the case of the petitioner and if found eligible and meritorious, she may be accorded the benefit of her performance in the selection carried out pursuant to the advertisement dated 04.02.2016 (Annexure P-1) and appointment letter be issued within a period of 2 months from today, subject to availability of vacancy as on today. In case, vacancy is not available then she shall be adjusted against the future vacancy as and when becoming available. It is however, made clear that the petitioner shall not be entitled to any monetary benefits for the period she remained out of service on the principle of 'No Work No Pay'. Petitioner shall be put on bottom of the seniority-list maintained pursuant to the selection process carried out *qua* advertisement in question.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 17, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No