

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

**LPA-548-2019 (O&M)
Reserved on : 13.12.2022
Pronounced on : 22.12.2022**

State of Haryana and others

....Appellant(s)

Versus

Joginder and others

.... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Anant Kataria, DAG, Haryana
for the appellants.

Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate for the respondents
in LPA Nos.548, 586, 671, 679, 684, 691, 747, and 754 of
2019.

Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh, Advocate and
Mr. Chanderhas Yadav, Advocate for the respondent
in LPA No.691 of 2019.

Mr. Sunil K. Nehra, Advocate for the respondent No.7 to 12
in LPA No.548 of 2019.

Mr. Vijay Pal, Advocate and
Mr. Aashish Kumar, Advocate
for respondent Nos.17, 28, 29, 34, 35, 36, 37, 38, 42, 43, 47,
48, 50, 51, 54 and 55 in LPA No.548 of 2019,
for respondent No.1 in LPA No.684 of 2019,
for respondent Nos.1, 2 and 4 to 6 in LPA No.747 of 2019,
for respondent Nos.1 to 4 in LPA No.754 of 2019.

Mr. Jasbir Mor, Advocate for respondent No.7
in LPA No.548 of 2019.

G.S. Sandhawalia, J.

This order shall dispose of 11 appeals i.e. LPA Nos.548, 563,
564, 671, 674, 679, 684, 691, 747, 586 and 754 of 2019, which have been
filed by the State objecting to the consideration directed by the learned

Single Judge for appointment of the writ petitioners as Conductors notionally from the date when similarly situated persons in **CWP No.18044 of 2014 ‘Sunil Kumar and others Vs. State of Haryana and others’** decided on 19.05.2016 (Annexure P-13) had been appointed, as per merit in the wait list. Resultantly, the order dated 15.07.2014 (Annexure P-12) passed by the Director General State Transport, Haryana was quashed wherein claim for appointment of the General Category candidates against the posts meant for Ex-Servicemen (ESM) had been rejected.

2. The reasoning given by the learned Single Judge to allow the 11 writ petitions, lead case of which was **CWP No.14326 of 2017 ‘Sombir and others Vs. State of Haryana and others’** was that the said persons were on the wait list of the General Category candidates and similarly situated persons had approached this Court in **Sunil Kumar’s case (supra)** wherein directions had been issued to the department to appoint the said writ petitioners on 174 posts which had been remained vacant out of the ESM General Category candidates. It was, accordingly, noticed that the issue was covered by **CWP No.13384 of 2011 ‘Garima Jindal Vs. HVPNL and another’** decided on 06.08.2012, which had been upheld in LPA No.1775 of 2012 and SLP had also been dismissed. It was, accordingly, noticed that the State had not considered the claim of the writ petitioners, who were senior to the petitioners in **Sunil Kumar’s case (supra)** and implemented the order dated 19.05.2016 only qua the writ petitioners.

3. The objection of the State was that the rejection order was passed on 15.07.2014, but the writ petitions were filed in the year 2017

and, therefore, there was delay and laches, was rejected while noticing that

directions earlier had been given to appoint the writ petitioners as per their merit in the wait list after replacing conductors who were appointed on contract basis on the principle of 'last come first go'. No such direction was given to give appointments over and above the merit list and it was directed that the official respondents were not to ignore the seniors while giving appointments to the junior persons. It was further noticed that instructions had been issued on 02.07.2010 and 23.05.2014 regarding filling up of vacant posts for ESM and the legal notice had been rejected by passing a speaking order, in view of the fact that **CWP No.6492 of 2013 'Subhash and others Vs. State of Haryana and others'** decided on 25.03.2013 wherein directions had been issued to the Director General, State Transport, Haryana to pass a speaking order, once the same was against their own instructions. Resultantly, the writ petitions were allowed.

4. Counsel for the State has vehemently argued that there was a delay in filing the writ petitions and, therefore, the selection process having come to an end as the fresh advertisement had been issued on 25.05.2017 (Annexure P-15) and directions could not have been issued by the learned Single Judge as the shelf life of the wait list had expired. Reliance was placed upon the judgment of a Coordinate Bench passed in **LPA No.811 of 2022 'Ravinder Yadav Vs. Haryana Vidyut Parsaran Nigam Limited and others'**, wherein the order of a learned Single Judge rejecting the claim for appointment to the post of Assistant Lineman for the Advertisement dated 08.07.2008 on the ground that there were vacant seats which should be filled up from the wait list of the same category had been dismissed, which order was being upheld in appeal.

5. Counsels for the respondents/writ petitioners on the other hand have pointed out that there was no delay as such in as much as the directions were issued firstly in the case of **Subhash and others (supra)** to pass a speaking order on 25.05.2013. There was initial rejection on 05.08.2013 and even reconsideration had taken place on 15.07.2014 wherein it was justified that there were 644 Conductors in excess and, therefore, recruiting more Conductors would not be in public interest. It was submitted that in pursuance of the directions issued in **Sunil Kumar's case (supra)** wherein an order dated 11.07.2014 which was on the same reasoning had been set aside by the learned Single Judge. The waiting list had been operated as on 29.05.2017 (Annexure P-14) wherein in as much as 25 persons had been granted belonging to General Category against the posts of ESM General Category. It was submitted that thus it would not lie in the mouth of the State Counsel to say that there was a delay in filing the writ petitions as in the present set, the writ petitions were filed on the strength of cause of action which had accrued once the State itself had started operating the waiting list. The claim as such was on account of the persons lower in merit having been granted the benefit who had been arrayed as respondent Nos.4 to 28.

6. After hearing counsels for the parties, we are of the considered opinion that the order of the learned Single Judge is not liable to be disturbed in any manner and it is based on peculiar facts and circumstances and it was on account of the wrong action of the State in implementing the wait list which had led to the said situation. The advertisement in question dated 28.02.2009 was issued wherein initially 2480 posts had been advertised which were further increased to 3837

posts. There were 267 posts reserved for ESM General Category out of

which 174 remained vacant, which would be clear from the result which was declared on 01.02.2012 (Annexure P-2).

7. In **Garima Jindal's case (supra)** the issue was decided by a learned Single Judge after examining the instructions of the Government regarding such unfilled posts of ESM which were reserved on the basis of horizontal reservations and posts were to be filled up from the General Category candidates due to non-availability of candidates belonging to reserve category. Therefore, the benefit was granted to the writ petitioner who was at Serial No.1 in the wait list in the said case. The legal notice was accordingly served on 23.01.2013 (Annexure P-10) in the present case that there were 174 posts vacant of the ESM General Category and, therefore, the candidates from the wait list of General Category as such be considered for appointment.

8. **Sunil Kumar's case (supra)** came to be filed alongwith another connected case in the year 2014, wherein for the same advertisement a learned Single Judge had set aside the order dated 11.07.2014 wherein the justification was that 644 Conductors were in excess. It was, accordingly noticed that excess conductors were on contract basis and the writ petitioners were liable to be adjusted against the vacant posts as per their merit in the wait list. The same was to be done after replacing the conductors who were appointed on contract basis on the principle of 'last come first go' and the Chief Secretary had taken a conscious decision to extend the validity of the selection list. Relevant portion of the judgment passed in the said case reads as under:-

“In the present case, the Instructions dated 23.6.2015 (Annexure R-1) would not be relevant for the simple reason that as per the judgment passed in Garima Jindal's case (Supra) which has been upheld and implemented by the

Department, the benefit of appointment has been given to all candidates of waiting list on the seats which fell vacant on account of non-availability of candidates belonging to the ESM Category (General, SC/BCA). The Chief Secretary has taken a conscious decision to extend the validity of selection list of Haryana Staff Selection Commission issued on 13.1.2012 for one month to give appointment to the candidates of the waiting list. Once the decision had been taken to extend the validity of the list, the Chief Secretary cannot take a stand as per Annexure R-1 that the validity of the selection list was to expire on 16.1.2015 and thereafter no relaxation can be given for appointment to the Drivers on the waiting list. Once the Chief Secretary has extended the validity of waiting list on 8.5.2014, the candidates who were on the waiting list had a right to be considered for appointment as per their merit and if appointment has not been given then they have a right to be appointed as per the waiting list. In the present case, the petitioners are in the waiting list of General Category for the post of Conductors. Their names have been rejected on the ground that 644 posts of conductors in excess than the required strength as per the norms. Out of these 644 Conductors who have been appointed they will have to make way for the present petitioners against the candidates whose appointment is on contract basis. The petitioners will be adjusted on the vacant posts which were not filled up from the Ex-servicemen candidates in view of the judgment passed in ***Garima Jindal's case (supra)***.

The writ petition is allowed. Order dated 11.7.2014 (Annexure P-8) is set aside and a direction is given to the respondent no.2 to appoint the petitioners as Conductors as per their merit in the waiting list after replacing the conductors who were appointed on contract basis on the principle of '*last come first go*'."

9. Apparently instead of operating the said list merit-wise, the respondents only granted the benefit to the writ petitioners who were arrayed as respondent Nos.4 to 28 which would be clear from the

pleadings made in CWP No.14326 of 2017, relevant paragraphs of which read as under:-

“10. That many others similarly situated persons including the respondent No. 4 to 28, who are lower in merit than the petitioners and in their case i.e. CWP No. 18044 of 2014 and 25564 of 2014 the Hon'ble High Court give a direction to consider the case in light of Garima Jindal (supra) as well as after removing the contractual employees on the principle of last come first go, a copy of said judgment is annexed herewith as **ANNEXURE P-14**.

11. That without considering the facts and circumstances of the present case and without considering the merit of the waiting list, the respondent with a reason best known to them vide order dated 29.05.2017 had given joining to the respondent No. 4 to 28, a copy of said order is annexed herewith as **ANNEXURE P-15**, which is highly illegal and arbitrary order, therefore, deserve to be set aside.”

10. The State in its written statement filed by Shri N.K. Garg, Deputy Transport Controller, Haryana admitted the said fact, relevant paragraphs of the written statement read as under:-

“10. That the contents of para No.10 of the writ petition are admitted being matter of record.

11. That in reply to the contents of para No.11 of the writ petition, it is submitted that appointment of respondent No.4 to 28 is based upon the merits and not arbitrary. However, preliminary submissions are reiterated.”

11. It is, thus, apparent that the case of the writ petitioners was specific to the extent that the persons who were below in the merit list had been granted the benefit. The material was also placed before the learned Single Judge by filing **CM-3876-CWP-2018 in CWP-14326-2017** to show that the merit list had been operated till Serial No.99 whereas the names of the writ petitioners stood higher than that.

12. In view of the categorical admission as such of the State to the facts pleaded and which were on strength of the fact that the merit list

was to be operated as per the judgment passed in **Sunil Kumar's case (supra)** it does not lie in the mouth of the State to say that there was a delay in filing the writ petitions as shelf life has expired. The writ petitioners were better placed and higher in merit than 25 candidates who were appointed in the year 2017. Therefore, the writ petitions were filed expeditiously at the same point of time in the year 2017 on the fresh cause of action on the strength that the persons lower in merit had been granted the benefit.

13. In such circumstances, the order of the learned Single Judge is well justified and the judgment passed in **Virender Singh Hooda Vs. State of Haryana and another, 2004 (4) SCT 793** can be relied upon, wherein it has been held that it would be iniquitous to deny relief to the writ petitioners when it has been granted to other candidates who are lower in merit and resultantly the directions contained in the judgment of the High Court were not interfered with. In **Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47** the Apex Court though held that the candidates do not acquire indefeasible right to be appointed but added a caveat to the aspect that the State did not have a license to act in an arbitrary manner. Relevant portion of the judgment passed in **Shankarsan Dash (supra)** reads as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no

legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in **State of Haryana v. Subhash Chander Marwaha and Others**, [1974] 1 SCR 165; **Miss Neelima Shangla v. State of Haryana and Others**, [1986] 4 SCC 268 and **Jitendra Kumar and Others v. State of Punjab and Others**, [1985] 1 SCR 899.”

14. Reliance can also be placed upon the judgment of a Coordinate Bench passed in **Ritu Vs. State of Haryana and others**, 2013 (3) SCT 281 wherein the appeal was allowed while setting aside the order of the learned Single Judge and directions were issued to the respondent-department to issue appointment letter to the appellant who was next in the waiting list and had not been offered appointment.

15. Reliance placed upon the judgment passed in **Ravinder Yadav’s case (supra)** would not take the State to a long way, since it was a claim wherein the result had been declared on 20.04.2010 and the writ petition had been filed in the year 2018 and in such circumstances it was held that there is a shelf life of the waiting list and no directions can be issued to operate it after more than 7 years.

16. In the present case as noticed above the State itself was operating the wait list in pursuance of the directions issued by this Court, which was to be done as per the merit. Having failed to do so the writ petitioners who were higher in merit are entitled for appointment which

was rightly directed by the learned Single Judge and, thus, the order of the learned Single Judge does not suffer from any infirmity.

17. Resultantly, there is no merit in the present appeals and the same are dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

22.12.2022
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes