

CWP No.5058 of 2022

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

CWP No.5058 of 2022

Date of decision : 30.09.2022

Bikramjit Aroura alias Bikramjit Arora

.....Petitioner

VERSUS

Punjab and Haryana High Court, Chandigarh and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Mukul Aggarwal, Advocate,
for the petitioner.

Ms. Divya Sharma, Advocate
for respondent No.1 – High Court.

Mr. Deepak Bhadwaj, Deputy Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J.

This writ petition has been preferred by a practising advocate of this Court, who, in pursuance to an advertisement issued by the High Court of Punjab and Haryana (hereinafter referred to as 'High Court'), dated 29.04.2013 (Annexure P-3) inviting applications for selection of 17 candidates (8 for General category, 6 for Scheduled Castes category and 3 for Backward Class category), for appointment to the Haryana Superior Judicial Service (hereinafter referred to as 'HSJS') by way of direct recruitment, applied for the post of Additional District Judge. Another advertisement was issued by the High Court for filling up 14 posts for appointment to the Punjab Superior Judicial Service by way of direct

recruitment. Since both these selections i.e. Haryana Superior Judicial Service as also in Punjab Superior Judicial Service proceeded simultaneously, the result came out by and large together. The result of examination was declared on 13.02.2014. Some of the candidates, who had participated in both the selections and had been selected at both places, exercised their option of joining either Superior Judicial Service in the State of Haryana or Punjab. Petitioner was placed in the General category for the State of Haryana at Sr. No.13. Since candidates at Sr. No.3, 6, 8, 10 and 11, who were selected in Haryana, opted for the State of Punjab, petitioner would stand at Sr. No.9 as one of the Backward Class candidates scored higher marks than him and respondent No.4. Since eight posts were advertised for the General category, petitioner did not fall in the select list of candidates.

2. As per the pleadings, two writ petitions i.e. CWP No.23899 of 2013 and CWP No.24195 of 2013 were preferred by certain unsuccessful candidates in the preliminary examination, wherein they were permitted provisionally to participate in the main examination. CWP No.23899 of 2013 was dismissed by this Court vide order dated 31.03.2014, whereas CWP No.24195 of 2013 was dismissed on 19.03.2018. SLP(C) No.11602 of 2018 preferred by the petitioner in CWP No.24195 of 2013 was dismissed by the Hon'ble Supreme Court vide order dated 11.05.2018. Since CWP No.24195 of 2013 was pending in this Court, a decision was taken by the High Court on the administrative side before declaration of result to keep one post vacant i.e. at Sr.No.8, whereas other seven candidates as per merit list were offered appointment to the post of

Additional District Judge, where they joined service in the year 2014.

3. Candidate at Sr. No.8, namely, Hardeep Kaur was not granted the appointment because of the said administrative decision. The said candidate had been communicating with the High Court putting forth her claim against the said post. In the meanwhile, selection was made for the Delhi Higher Judicial Service, where Hardeep Kaur – respondent No.4 stood selected and joined as such on 24.09.2015. Since she had joined as a Judicial Officer in the Delhi Higher Judicial Service on the post of Additional District Judge, Delhi, she was no more eligible for appointment to the said post in the light of the ratio of the judgment of the Hon'ble Supreme Court in **Dheeraj Mor Vs. Hon'ble High Court of Delhi** 2020 (7) SCC 401. In these circumstances, with the SLP having been dismissed and the reason for which the post was kept vacant by the High Court having ceased with Hardeep Kaur – respondent No.4, who was at Sr. No.8 in the General category in the select list, having been rendered ineligible, petitioner put forth his claim on the said post and thus, representation was submitted by him on 23.05.2018 (Annexure P-9) for being appointed to HSJS. Petitioner has asserted that the said representation is still pending.

4. The aspect with regard to the claim having put forth by Hardeep Kaur for appointment to the post through representations was considered by the High Court but since no clear option was given by the said respondent No.4 with regard to joining of the post, the said representation was rejected leading to the filing of CWP No.8817 of 2019 by Hardeep Kaur. Petitioner, in these circumstances, had filed the present writ petition claiming appointment to the 8th posts which was lying vacant

when respondent No.4 was not eligible for being appointed for now in the light of the ratio of the judgment referred to above in *Dheeraj Mor's* case (supra).

5. Both these writ petitions were heard by us together i.e. CWP No.8817 of 2019, titled as 'Hardeep Kaur Vs. Punjab and Haryana High Cour, Chandigarh and another' and the present writ petition as preferred by the petitioner. Vide separate order of even date, we have dismissed the writ petition preferred by Hardeep Kaur i.e. CWP No.8817 of 2019 and it was a conceded position that in case the writ petition preferred by Hardeep Kaur is accepted, the present writ petition would be rendered infructuous but since the said writ petition has been dismissed, we proceed to decide the present writ petition.

6. The facts as has been narrated above make it amply clear that the petitioner was not in the select list as he was placed in the merit list at Sr. No.13, whereas respondent No.4 was placed at Sr. No.12 of the merit list. With five candidates being higher in merit in the General category than these two candidates having opted for joining service in the Punjab Superior Judicial Service on they being selected in the State of Punjab, respondent No.4 – Hardeep Kaur came at merit No.8, whereas the petitioner came at Sr. No.9. Since there was only eight General category posts, petitioner was not entitled to consideration for appointment to the 8th post and he could at the most be said to be at Sr. No.1 after the selected candidates. Petitioner, therefore, is not even a selected candidate.

7. It is a settled proposition of law that even a selected candidate has no right for appointment. Mere inclusion of the name of a candidate in

the select list does not confer any right to be appointed even if some of the vacancies remained unfilled. Similarly, even a candidate who is in the waiting list would not have any right for being appointed against an unfilled post. The best claim as far as the petitioner is concerned would be that his name was at Sr. No.1 in the waiting list. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in **Raj Rishi Mehra & others Vs. State of Punjab & another** (2013) 2 SCC 243, where, in para 15, it has been stated as follows:-

“15. The question whether the candidates whose names are included in the waiting list are entitled to be appointed against the unfilled posts as of right is no longer res integra and must be answered in negative in view of the judgments of this Court in Union of India v. Ishwar Singh Khatri 1992 Supp (3) SCC 84, Gujarat State Dy. Executive Engineers' Association v. State of Gujarat and others 1994 Supp (2) SCC 591, State of Bihar v. Secretariat Assistant Successful Examinees Union and others (1994) 1 SCC 126, Prem Singh and others v. Haryana SEB and others 1996) 4 SCC 319, Ashok Kumar and others v. Chairman, Banking Service Recruitment Board and others (1996) 1 SCC 283, Surinder Singh and others v. State of Punjab and another (1997) 8 SCC 488, Madan Lal and others v. State of J&K and others (1995) 3 SCC 486, Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and others (1998) 3 SCC 45, State

of J&K and others v. Sanjeev Kumar and others (2005) 4 SCC 148, State of U.P. and others v. Rajkumar Sharma and others (2006) 3 SCC 330, Ram Avtar Patwari and others v. State of Haryana and others (2007) 10 SCC 94 and Rakhi Ray and others v. High Court of Delhi and others (2010) 2 SCC 637.”

8. In the judgment of the Constitution Bench of the Apex Court in Shankarsan Dash Vs. Union of India 1991 (3) SCC 47, it has been held that the candidate, whose name appears in the merit list cannot have indefeasible right of appointment and the State is under no legal duty to fill up all the vacancies.

9. In the light of the above, it cannot be said that the petitioner has an indefeasible right for appointment to the 8th post which remained unfilled because of the fact that Hardeep Kaur has become ineligible for appointment against the post against which she was selected, although at the time of her selection, she was duly qualified. Another aspect which disentitles the petitioner for putting forth his claim against the said post which has been left vacant because of the dismissal of the writ petition filed by Hardeep Kaur is that there is an unexplained inordinate delay on the part of the petitioner in approaching this Court firstly by way of representation dated 23.05.2018 (Annexure P-9) i.e. after a period of almost four years from the date of selection and in any case, the writ petition has been filed in the month of March, 2022 which is after a period of almost eight years from the date of selection.

10. Further, as per the claim which has been projected by the petitioner in the writ petition, his submission is that Hardeep Kaur who was

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placed at Sr. No.8 in the merit list became ineligible for appointment to the post of Additional District Judge on her joining of the Delhi Higher Judicial Service on 24.09.2015 as she was no more an advocate. Had the petitioner been cautious and serious about joining the service, he should have immediately approached the High Court for redressal of his grievance.

11. In any case, after the dismissal of the writ petition as preferred by one of the candidates i.e. CWP No.24195 of 2015 on 19.03.2018, merely because he has submitted a representation would not be enough as there is nothing which would indicate he having pursued the same. Submission of repeated representations also does not explain the delay since the petitioner approached this Court in December, 2021 when he had filed an application for being impleaded as a party in CWP No.8817 of 2019 preferred by Hardeep Kaur i.e. after a period of about three years and nine months from the date of dismissal of CWP No.24195 of 2015.

12. Both on the ground of delay and laches as well as on the aspect that the petitioner has no vested right for appointment against the 8th post which remained unfilled, the present writ petition deserves dismissal. Ordered accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

30.09.2022

Harish

(LALIT BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No