

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

LPA-296-2022 (O&M)
Date of decision:- 16.05.2022

Sukhdev and others

...Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vikram Sheoran, Advocate,
for the appellants.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

* * * *

RAVI SHANKER JHA, C.J. (ORAL)

CM-755-LPA-2022

For the reasons mentioned therein, the delay of 01 day in filing the appeal is condoned.

The application accordingly stands disposed of.

LPA-296-2022

This appeal is directed against the judgement and order dated 18.11.2020 passed by the learned Single Judge dismissing the writ petition i.e. CWP-12332-2020 filed by the petitioners (appellants herein).

The brief facts leading to the filing of the present appeal are that pursuant to an advertisement dated 15.06.2019, the appellants had applied for appointment to the posts of Assistant Block Resource Coordinator on contract basis. As the appellants' names did not reflect in the select list, but reflected in the waiting list and as clear-cut vacancies still remained available, they filed the aforesaid writ petition before the learned Single Judge seeking a direction to the respondent-authorities for considering their names for appointment on the said posts.

The learned Single Judge has dismissed the writ petition on the ground that the waiting list has lapsed and in such circumstances, no direction can be issued to the respondent-authorities as regards appointment of the appellants to the post of Assistant Block Resource Coordinator. The learned Single Judge has stated that it is settled law that a person whose name appears in the select list has only got a right of consideration for appointment and that no direction can be issued to the respondent-authorities to appoint a person even in a case where his name appears in the second select list, forget the

waiting list. The learned Single Judge has also relied upon his own decision rendered on 23.09.2020 in CWP-14794-2020 titled as *Asha Vs State of Haryana and others*, wherein all the issues raised by the petitioner therein including the issue of appointment of those persons whose names were subsequently mentioned and reflected in the revised result list that was issued by the respondent-authorities on 15.07.2020 were considered in detail.

The learned Single Judge, while taking into consideration the fact that the respondent-authorities in their return had specifically stated that the revised waiting list, being lapsed, had outlived its utility and, therefore, no appointments from the names mentioned therein could be made, dismissed the writ petition. Nothing has been placed before this Court to establish that the facts stated by the learned Single Judge and in the writ petition are incorrect or are not based on the documents on record.

Quite apart from the above, it is also evident that the revised waiting list on the basis of which the present claim for appointment has been made by the appellants has already lapsed in view of the stand taken by the respondent-authorities and taking into account the fact that the appointments are sought on the basis of an advertisement that was issued way-back on 15.06.2019, we do not find any ground to entertain the present appeal.

It is a settled principle of law that candidates in the waiting list are not entitled to be appointed against unfilled posts as of right. Especially, when the vacancy in question arises after the *lapse* of the waiting list, the same cannot operate for filling up such vacancy. In **Gujarat State Dy. Executive Engineers' Association v. State of Gujarat And Others 1994 Supp (2) Supreme Court Cases 591** the Hon'ble Apex Court observed: "*A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.*"

The Hon'ble Court further went on to explain that "*If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not*

holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.”

In **N. Mohanan v. State of Kerala And Others (1997) 2 Supreme Court Cases 556**, the Hon’ble Supreme Court, while denying the contention of the petitioner that existing vacancies should be filled from the select list, extensively summed up the principles on selection from the waiting list as follows:-

“The petitioner relied upon Union of India v. Ishwar Singh Khatri and contended that the existing vacancies should be filled up from the select list and that the omission therein is arbitrary and violative of his right. We find no force in the contention. In Shankarsan Dash v. Union of India, a Constitution Bench had held that mere inclusion of the name in the list of selected candidates does not confer any right upon any candidate to be selected unless the relevant rules so indicate. In Babita Prasad v. State of Bihar though the life of the panel was not prescribed, it was directed to be confined to a reasonable time. A long waiting-list cannot be kept in infinitum in view of the principle “infinitum in jure reprobatur”. A distinction has to be made for the purpose of appointment between those who have already been appointed and those who are in the waiting list or had undergone training and waiting for appointment. It cannot be treated as arbitrary. This Court has held that the panel was too long and was intended to last indefinitely barring the future generations for decades for being considered for the vacancies arising much later. In fact, the future generations would have been kept out for a very long period, if the panel would have been permitted to remain effective till it got exhausted. A panel of that type cannot be equated with a panel which is prepared having correlation to the existing vacancies or anticipated vacancies arising in the near future. In Union Territory of Chandigarh v. Dilbagh Singh it was held that a candidate whose name finds place in the select list for appointment to a civil post does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the administration does so either arbitrarily or

for no bonafide or valid reason. In Nagar Mahapalika v. Vinod Kumar Srivastava it was observed that the reason underlying the limitation of the period of life of waiting list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the posts in the succeeding years on being selected for appointment. In State of Haryana v. Subash Chander Marwaha this Court had held that though vacancies were existing selected candidates had no right to appointment. It would be open to the Government not to appoint the candidates from the list for valid reasons. In State of Bihar v. Secretariat Asstt. Successful Examinees' Union 1986 this Court had held that a person having been selected, does not, on account of being empanelled alone, acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for purposes of appointment and by itself does not amount to selection or creating right to be appointed unless relevant rules state to the contrary. In that case, select list was prepared on the basis of merit in the examination without any qualifying marks. All the persons who wrote the examination were ranked in the merit list. They claimed the right to get appointment contending that till the list was exhausted no fresh list could be prepared and that they were entitled to the appointment. The contention was negatived and it was held that there is no provision in the relevant rules giving indefeasible right to the persons whose names appeared in the list to get appointed. There is no provision under the Rules prohibiting authorities to fix the time-limit.”

A similar view has been taken in **State of Orissa and another v. Rajkishore Nanda And Others (2010) 6 Supreme Court Cases 777** wherein it was emphatically stated: *“Mere inclusion of the candidate’s name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage.”*

In **Secretary, Kerala Public Service Commission v. Sheeja P.R. And Another (2013) 2 Supreme Court Cases 56**, the Apex Court relying on the principles laid down in *Nair Service Society v. Kerala Public Service Commission* (N.S.S. case) ((2003) 12 SCC 10: 2004 SCC (L&S) 1037) has held: *“We are of the view that the situation would have been different, had the NJD vacancies were reported before the main list got exhausted i.e. on 28-9-2010. The Commission could advise candidates only on receiving intimation with regard to the non-joining duty vacancies before the main list got exhausted. So far as this case is concerned, NJD vacancy was reported and received by the Commission only on 12-9-2011, by that time, the main list got exhausted. In the absence of the main list, there is no independent existence of the supplementary list.”*

Thus, in view of the principles laid down by the Hon’ble Supreme Court in catena of cases, we do not find any perversity or arbitrariness in the impugned judgement and order dated 18.11.2020 passed by the learned Single Judge warranting our interference.

It is also an admitted and conceded fact that no person who has secured lesser marks or is lower in merit than the appellants has been appointed by the respondent-authorities on the post of Assistant Block Resources Coordinator from the list published by them.

In the circumstances, the appeal filed by the appellants being devoid of merit is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

16.05.2022
Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No