

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

**CWP-15962-2020 (O&M)
Date of decision: 08.03.2022**

ANSHUL	V/S	...Petitioner
STATE OF HARYANA AND ANOTHER		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. D.S.Patwalia, Senior Advocate with
Mr. A.S.Chadha, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Aditya Gautam, Advocate,
for respondent No.2-HPSC.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of mandamus directing the respondent-department to fill up all vacancies/posts of Naib Tehsildar as per merit list of the candidates and consider/appoint him as per his position in merit against one of the posts which is vacant on account of non-joining of a new appointee.

2. Lis herein, *inter alia*, is with respect to the interpretation of the words “waiting list” as defined in Section 2 (ix) of the Haryana Civil Services (Executive Branch) & Allied Services and other Services Common/combined Examination Act, 2002. For ready reference, Section 2 (ix) of the Act, *ibid* is reproduced hereinbelow:

2(ix) “waiting list” means recommendation(s) of additional name(s) by the Commission for appointment to a service/post over and above the advertised post.”

Further Section 4(3) of the Act provides as under:-

*“4(3) The State government shall not be competent to offer appointment to a candidate, who is placed in the **waiting list** or who claims himself to be in the waiting list on the basis of Common/Combined Examination, for a post for which his name was not recommended by the Commission:*

*Provided that if a candidate has been appointed or offered appointment **over and over advertised post** for any reason, the services of such candidates shall be dispensed with. However, he shall be entitled to be appointed to a service/post, if any, for which his name was originally recommended by the Commission.”*

3. Petitioner seeks appointment to the post of Naib Tehsildar contending that he is next candidate in the merit list as prepared by the Haryana Public Service Commission (for short ‘HPSC’) based on the performance of the candidates in the General Category. Out of 70 vacancies, there were 38 posts of Naib Tehsildar advertised in the General Category as per the advertisement dated 23.07.2015 (Annexure P-1.). Pursuant thereto, HPSC recommended seventy names (including 38 in General Category) to be appointed by the State Government. However, two of the candidates from the recommended list under General Category were though offered appointment but they never accepted the same. Consequently, said two seats remained unfilled and are lying vacant qua which the petitioner claims one.

4. Performance of the petitioner is not in dispute as per para 4 of the preliminary objection contained in the written statement filed by the Commission, which is reproduced as below:-

“4. That the petitioner has secured total 78.41 marks under General Category. Whereas, the last selected candidate under General Category has secured 78.46 marks. Thus, the petitioner is not entitled for selection being less meritorious candidate.”

5. Perusal of the above would, therefore, reflect that petitioner has not been non-suited on the ground of being ineligible but on the ground of his being less meritorious. The last candidate i.e. 38th candidate in the General Category has since secured 78.46 as against petitioner having secured 78.41, he was thus termed as less meritorious and not considered for being recommended by the Commission. To be noted, though in the passing reference, that even on merit, his marks when rounded off, (Rules do not permit

any rounding off, therefore, no credit thereof can be given) are almost same as those of last selected candidate. Be that as it may, controversy to be adjudicated herein, in any case, is entirely different and is *de hors* the rounding off of the marks, as would be borne out from succeeding paragraphs of the instant judgment. In defense of non-recommendation of the petitioner, it has been pleaded and also argued on the same lines that there is no provision to prepare a waiting list in the light of the Act, *ibid*. Therefore, HPSC cannot recommend the name of the petitioner for being appointed on the post in question.

6. Having heard rival contentions, I am of the view that stand taken by the Commission is no more *res integra*. In this context, reliance may be had on the Apex Court's judgment rendered in case titled as "***State of U.P. and others Vs. Dr. Rajiv Kumar Srivastava***" in SLP No.10604/2013 dated 26.07.2013. The relevant extract thereof is reproduced here in below:-

"In our view, the policy decision taken by the State Government does not have any bearing on the case of respondent o.1 because he acquired a vested right to be appointed against the advertised post which remained unfilled due to non-joining of the candidate who was more meritorious than him. It is neither the pleaded case of the petitioners nor it has been argued before us that Dr. Vinod Kumar Lavania had joined the service and then resigned. Rather, it is the admitted case of the parties that one of the advertised post remained unfilled due to non-joining of the selected candidate. This being the position, the concept of waiting list cannot be brought in picture for defeating the legitimate right of respondent No.1 appointed against the unfilled post."

Similar sentiments have also been expressed by a Division Bench of Delhi High Court in a judgment rendered in case titled as "***Union Public Service Commission Vs. Grishma Goyal and another***" in WP (C) 1231/2021 dated 16.02.2021 in paras 17 and 18 thereof which are as below:-

"17. In the present case, as in the case of Manoj Manu (supra), when the Department of Economic Affairs had written to the UPSC that the case of Ms. Grishma Goyal be examined in the light of the refusal to join by another successful candidate, the UPSC ought to have, without hesitation, recommended the name of the respondent No.1. Instead, by taking shelter in the phrase "

as per the relevant rules by the Commission” and claiming that because they do not have a wait-list, the rules do not permit the appointment of the respondent, they unjustly rejected her claim. This stand of the UPSC is unacceptable, particularly when a candidate with the same marks had been appointed on the basis of their own rule of “tie-breaking” and the notified vacancies would not have been exceeded by appointment of the respondent as a vacancy had arisen due to non-joining of another successful candidate, and there was no-one else over whom the respondent would have stolen a march as admittedly, she is as meritorious as the last person selected.

18. We find no cause to interfere with decision of the learned Tribunal directing the UPSC to forward the profile of the applicant to the Ministry. The appeal is accordingly dismissed with further direction to the petitioner/UPSC to ensure that all formalities for the appointment of the respondent No.1 are completed within two weeks from the date of this judgment.”

7. The facts of the case in hand are *pari materia* with the ones in the aforesaid two judgments rendered by the Apex Court and by Delhi High Court. Therefore, I see no reason why the ratio rendered therein be not applied to the case in hand. I am of the view that the concept of waiting list as defined under the Act cannot be interpreted so as to mean that it is to be confused and/or misconstrued as not maintaining list of the candidates as per their merit. To that extent, merit list is not a waiting list. Merit list is not to be treated as waiting list for defeating the legitimate rights of a candidate next in merit against the unfilled post as has been unequivocally held by the Apex Court in judgment dated 26.07.2013 *ibid*.

8. That apart, even if one is to carefully read the definition of the merit list, the intent of the same is that HPSC cannot recommend candidates beyond the number of advertised posts to be filled, in case the same have all been already filled so as to go beyond the requisition sent by the State Government.

9. In the course of hearing, learned counsel for the HPSC has also tendered a requisition letter dated 02.07.2015 which is the very genesis of the advertisement as per the requisition sent by the State Government in the

prescribed proforma. For ready reference, the said letter is reproduced herein below:

“Confidential
To

*The Secretary,
Haryana Public Service Commission,
Sector-4, Panchkula.*

Chandigarh, dated the 02.07.2015

Subject: Recruitment to the post of ‘A’ Class Naib Tehsildar in Revenue and Disaster Management Department.

Sir,

I am directed to invite your kind attention on the subject noted above and to say that Seventy (70) posts of ‘A’ Class Naib Tehsildar are lying vacant in this department.

Category wise break up of the posts is as under:-

<i>General</i>	<i>S.Cs</i>	<i>BCs(A)</i>	<i>BCs(B)</i>	<i>SBCs</i>	<i>EB(GC)</i>	<i>ESM</i>
<i>34 +1 PHC (Gen) (Point No.1)</i>	<i>12 +1 PHC (SC) (Point No.34)</i>	<i>7</i>	<i>3</i>	<i>4</i>	<i>4</i>	<i>4</i>

You are, therefore, requested to recommend the names of eligible candidates immediately. Requisition in the prescribed performa duly filled in, is enclosed herewith. A copy of Haryana Revenue Department, Naib Tehsildars (Group-C) Service Rules, 1988 and Haryana Revenue (Group-B) Service (Amendment) Rules, 200 and (Amendment) Rules, 2012 is also enclosed herewith for further necessary action.

*Under Secretary Revenue (E),
for Additional Chief Secretary & Financial Commissioner
to Govt. Haryana, Revenue & Disaster Management
Department.”*

10. From the perusal of the above, it is borne out that the State Government had requested the HPSC to recommend the names of eligible candidates to be appointed on the posts to be advertised. It does not state that regardless of the performance in the merit list, the HPSC is precluded from sending the merit list of the eligible candidates. Had it been a case of ineligible candidates being recommended by the HPSC in that case even if he were in the merit list and having more marks than the last selected candidate in the

General Category then too, the said candidate will have no case simply because of not fulfilling the criteria of eligibility. The eligibility criteria as per the advertisement is as below:

“Essential qualifications (for the post of Naib Tehsildar-Cat. No.1):-

a) Graduate of a recognized University.

b) Knowledge of Hindi/Sanskrit up to Matric standard or higher.”

11. Concededly, it is not the case of either the State Government or the HPSC that the petitioner does not fulfil the eligibility criteria. It was only when he was found eligible that he was allowed to participate in the selection process and his result was declared.

12. The eligibility criteria, by no stretch of imagination, is to be interpreted to mean that even if the last selected candidate opts not to join a post, the next in merit is to be non-suited even if he is eligible. Had it been a case that from the list recommended, all the candidates had joined and then later on any of them opted not to continue, the said seat would have been assumed to be consumed and State Government and/or HPSC was well within their rights not to resort to the merit list for filling up a post which fell vacant due to non-continuance of an appointee.

13. Further more, reliance may be had on a Division Bench Judgement rendered by this Court in case titled as “***State of Haryana and others Vs. Gajraj Singh***” passed in LPA No.716 of 2011 decided on 20.04.2011 wherein a similar view as expressed by me hereinabove, were upheld by another coordinate Bench in the following terms:-

“It is well settled that once a post has not been consumed and a meritorious candidate in the merit list is available then the vacancy could be filled in by inviting next person in merit. The direction issued by the learned Single Judge are consistent with the principles of equality laid down in Articles 14 and 16(1) of the Constitution.”

14. The case in hand is also similar in as much as it is not disputed that merit list of the eligible candidates has indeed been maintained. It has

already observed above that the petitioner was/is eligible for the post. He ought to have been, therefore, considered for appointment to the post in question as per merit list.

15. Accordingly, the writ petition is partly allowed with a direction to the respondents to ascertain and determine the claim of the petitioner that he is actually the candidate next in merit after the last selected candidate in the General Category and if found so, thereafter proceed to consider his claim to be appointed on the post of Naib Tehsildar in accordance with law.

16. Needless to say that in case, the petitioner's claim that he is next in merit list after the last selected candidate in the General Category finds favour with the respondent-HPSC, it would then proceed as per prescribed procedure to send the requisite recommendation to the State Government. The exercise be carried out within a period of 2 months from the date the petitioner approaches the Commission with a copy of this order.

17. The petitioner shall be entitled to all the consequential benefits as per merit inter se as his other batch mates who have been appointed except for the monetary benefits on the principle of 'no work no pay'.

08.03.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No