

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: August 17, 2022

1. CWP-21665-2015 (O&M)

Subhash Chander and others

...Petitioners

Versus

State of Haryana and others

....Respondents

2. CWP-26646-2015 (O&M)

Ashok Kumar

...Petitioner

Versus

State of Haryana and others

....Respondents

3. CWP-13489-2015 (O&M)

Ashok Kumar and others

...Petitioners

Versus

State of Haryana and others

....Respondents

4. CWP-22225-2015 (O&M)

Ajay Rajan Yadav and another

...Petitioners

Versus

State of Haryana and others

....Respondents

5. CWP-22840-2015 (O&M)

Mukesh Kumar

...Petitioner

Versus

State of Haryana and others

....Respondents

6. CWP-22861-2015 (O&M)

Mubarik and others

...Petitioners

CWP-21665-2015 (O&M) and other connected cases

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate,
Mr. Shivam Malik, Advocate for
Mr. Jagbir Malik, Advocate for the petitioner(s).

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, bunch of above-mentioned six writ petitions is being disposed of, since not only the facts are similar but the law points and the issues raised therein are also common. For brevity, recitals are taken from CWP-21665-2015.

2. Petitioners are before this Court claiming that despite being successful in the selection process *qua* the post of Heavy Vehicle Drivers, they have not been accorded the benefit of their merit in accordance with the terms of the advertisement, as well as, settled position of law that in case candidates above in merit on the main list do not join on the post in question, then during the subsisting period of one year of waiting list, candidate next in merit list as per waiting list has to be offered the same job, and in case, he also declines, then the next thereafter, and so on and so forth.

3. Succinct factual background first. On 20.01.1988 (Annexure P-3), the Government of Haryana had decided to fill up the vacant advertised posts from the waiting list, and vide instructions dated 07.10.1998 (Annexure P-4), decision was taken that the appointment process should be completed within one year from the date of recommendation. Respondent No.3-Director

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General, Haryana State Transport Department issued an advertisement No.1/2012 on 26.10.2012 for appointment to 1513 posts of Driver (Heavy Vehicle) for Haryana Roadways. Petitioners applied for the same under General Category. After scrutinizing the applications, petitioners were called for Driving Proficiency Test and interviews. Result dated 16.01.2014 (Annexure P-2) was declared and petitioners were kept in waiting list. Petitioners approached the respondent-Department within one year of declaration of the result i.e., on 03.03.2014 for recommending their names for appointment against the vacant advertised post of Driver (Heavy Vehicle) meant for General category. Petitioners served advance notices of writ petition-cum-final demand notices. Petitioners thereafter, approached this Court by way of CWP-159-2015, which was disposed of vide order dated 07.01.2015 (Annexure P-5) directing respondent No.2 to take a final decision on the claim raised by the petitioners in view of latest instructions on the issue regarding appointment of candidates from the waiting list. On 28.08.2015 (Annexure P-10), respondent No.3 rejected the claim of the petitioners on the ground that after expiry of one year, no appointment can be offered to the petitioners.

4. Before advertizing to the rival contentions, it would be apposite to reproduce the relevant clause of the instructions dated 20.01.1988 (Annexure P-3), 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.”

5. 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 hereinafter, I am of the view that the petitioners' claim of seeking appointment deserves to be accepted.

6. Concededly the petitioners herein (three of them belonging to BCB category and the other three in the General category) are on the waiting list of their respective categories. Their eligibility/ merit is neither under cloud nor even otherwise there is any challenge to the same as per the respective returns filed to the writ petitions. The common defence taken to reject their claim is borne out from letter dated 23.06.2015 (Annexure R-1) written by the Chief Secretary being the head of the General Administration Department, which is reproduced in entirety as below:-

“The matter has been examined by the Chief Secretary (in General Services-1 Branch).

2. *The State Government instruction issued vide No.42/43/84-5 GSI, daed 20.01.1988 provides that the main list as well as 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 would be scrapped and if any further demand is received by the Board, it would process the matter afresh and make further recommendations. Further the Govt. instruction issued vide letter No.42/58/98-5 GSO dated 07.10.1988 framed in compliance of the judgements passed by Hon'ble Supreme Court in Prem Singh Vs. Haryana State Electricity Board reported in 1966 (4) SLR 661 provides that wherein the appointments have been restricted to the extent of advertised vacancies should be followed meticulously. Consequently the appointment from the waiting list will be made only if a candidate from the original list does not assume charge of his assignment or any vacancy from this list remains unfilled for any other reason.*

3. *As per provision of above the instructions, the waiting list cannot be used as a source of recruitment and that it cannot be used for a vacancy unless it is advertised and a selection held for it. The purpose of waiting list is to provide for contingency when selected candidate does not join within a period of one year. Further Hon'ble Supreme Court in a series of judgments titled as K. Thulaseedharan Vs. Kerala State Public*

Service Commission Trivandrum and others (2007) 6 SSC 190, Deepak Keyes Vs. Kerala State Electricity Board and anothers (2007) 6 SCC 194 and Girdhar Kumar Dadhich and another Vs. State of Rajasthan and others (2009) 2 SSC 706 has also held that waiting list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.

4. *Perusal of the A.D.s file shows that in the matter selection list was issued on 16.01.2014 along with the waiting list depicting the name of certain candidates. One year validity period of main list as well as waiting list has been prescribed in the aforesaid Govt. instructions for the operation of main list as well as waiting list and aforesaid instructions do not have any provision of relaxation for extension of period etc. It is, therefore, in view of above and the proposition of law laid by Hon'ble Supreme Court as stated above the relaxation/ permission in instructions cannot be granted to appoint the number of 15 drivers from waiting list.*

5. *AD's file is returned herewith.*

*Superintendent General Services-1
for Chief Secretary to Government Haryana.*

To

*The Additional Chief Secretary to Government Haryana.
Transport Department."*

7. A perusal of the above order reflects that it is rather intriguing, that on the one hand, ostensibly what is projected is that there is no quibble to the ratio laid down by the Supreme Court laid down in **K. Thulaseedharan Vs. Kerala State Public Service Commission Trivandrum and others¹**, **Deepak Keyes Vs. Kerala State Electricity Board and anothers²** and **Girdhar Kumar Dadhich and another Vs. State of Rajasthan and others³** that the waiting list must be acted upon having regard to the terms of the advertisement and cannot remain operative beyond the prescribed period, and yet, on the other hand, for some inexplicable reasons, the benefit of the said ratio has been denied to the petitioners on the ground that after the period of

¹ (2007) 6 SSC 190

² (2007) 6 SCC 194

³ (2009) 2 SSC 706

one year, appointment letters cannot be issued to them, notwithstanding that they had applied/ represented before expiry of waiting list *qua* the unfilled posts lying vacant.

8. What has been given a complete short-shrift and lost sight by the administrative authorities, is the fact that issuance of the appointment letters is entirely an administrative action/ duty on their part to be performed and delay, in any manner, cannot be attributed to the petitioners, who have been waiting endlessly in the cue hoping for favorable response despite having represented numerous times. Speaking illustratively, reference may be had to letter/ representation dated 03.03.2014 Annexure (P-5) when the petitioner (in CWP-21665-2015) represented to the authorities that the posts have since not filled up due to the non-joining of the candidates in the main merit list, benefit is to be given to the ones in the waiting list of-course in accordance with the merit of the candidates. Likewise, other petitioners also represented to the authorities within a period of one year during the validity of the waiting list and specific annexures thereof are not being referred for the sake of brevity.

9. In the aforesaid background, learned counsels for the petitioners would rely on the decisions rendered by the Supreme Court in **BSNL and others versus Abhishek Shukla and another**⁴, as well as Division Bench of this Court in **LPA-1767-2012** titled **Ritu d/o Sh. Nafe Singh versus State of Haryana and others**, then followed by Single Bench in **CWP-15415-2009** titled **Mohd. Rafeeq Ahmed versus State of Haryana and others**, in support of their arguments. I need not threadbare discuss those judgments 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 unnecessarily burdening 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 is a short-listed pool of meritorious candidates, the same must be exhausted within the reasonable period, one year in this case as per the advertisement. In totality of circumstances, I see no reason why the petitioners be not accorded the benefit of law as laid down vide different judgments already cited hereinabove by the learned counsel for the petitioners. Perusal of the same would reflect that the petitioners' cases are squarely covered by the same.

10. On a Court query with regard to the vacancies existing as on today, learned Senior counsel for the petitioners under instruction submits that as per RTI information dated 26.08.2021, 28.06.2021, 30.06.2021, 30.06.2021, 22.03.2021, 05.04.2021, 31.03.2021 and 08.04.2021, as many as 453 posts are still lying vacant, out of which 27 posts are lying vacant in Delhi Depot, 5 posts in Bhiwani Depot, 280 posts in Jind Depot, 4 posts in Sirsa Depot, 3 posts in Nuh Depot, 88 posts in Yamunanagar Depot, 27 posts in Palwal Depot and 19 posts in Kurukshetra Depot, are vacant.

11. In the premise, writ petitions are allowed. Accordingly, respondents are directed to process the cases of the petitioners and if found eligible and meritorious, they may be accorded the benefit of their performance in the selection carried out pursuant to the advertisement dated 26.10.2012 and appointment letters be issued within a period of 2 months

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from today, subject to availability of vacancy as on today. In case, required vacancy is not available then the concerned person/s shall be adjusted against the future vacancies as and when become/s available. It is however, made clear that the petitioners shall not be entitled to any monetary benefits for the period they remained out of service on the principle of 'No Work No Pay'. Petitioners shall be put on bottom of the seniority-list which is maintained pursuant to the selection process carried out *qua* advertisement in question.

(ARUN MONGA)
JUDGE

August 17, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No