

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.22860 of 2017(O&M)

Reserved on:29.11.2022

Date of Decision.16.12.2022

Rajandeep Singh

...Petitioner

Vs

State of Punjab and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. G.S. Bal, Senior Advocate with
Mr. J.S. Randhawa, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. ADS Jattana, Advocate
for respondents No.2 and 3.

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JAISHREE THAKUR J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari, quashing the impugned order dated 04.08.2017 (P-10) whereby the appointment of the petitioner as Deputy District Manager (Fields) has been declined. Further prayer was made for issuance of a writ in the nature of mandamus, directing the respondents to appoint the petitioner as such.

2. In brief, the facts are that the petitioner applied online for the posts of Deputy District Manager (Fields), total 5 in number, out of which 2 posts were meant for General Category, pursuant to advertisement issued in the year 2014 by the Punjab State Civil Supplies Corporation Ltd. (for short PUNSUP). The petitioner having the necessary qualification applied online under General Category within the stipulated period. A written examination was held by the Panjab University on 07.02.2015, result of which was

declared on 21.03.2015 and petitioner's name was reflected in merit list at Sr. No.3 since he had obtained 82 marks. Counselling was held on 06.08.2015 and documents of two candidates namely Mukul Sharma and Manmeet Puri, whose name found place at Sr. No.1 and 2 respectively in the merit list, were checked and appointment letters were issued to them. Mukul Sharma, who was at Sr. No.1 in the merit list, did not join and gave in writing that he was not interested to join on the post and since the vacancy had not been filled up, the petitioner submitted representation dated 19.07.2016 requesting the authorities to issue him appointment letter, being next in merit list. As there was no response to his representation, petitioner filed civil writ petition bearing No.23936 of 2016, which was disposed of on 21.11.2016 by issuing a direction to the respondent-Corporation to look into his representation and in case, the petitioner is found entitled to the relief, necessary order be issued. Since there was a vigilance probe pending on account of paper leakage of the examinations conducted by the Panjab University, the respondent-State had issued direction not to complete the process of selection. The paper leakage in respect to examinations held was looked into by the Vigilance Department, which had constituted a High-Powered Committee to probe into the matter. The High-Powered Committee found that question papers in respect of examinations held for the post of Inspector Grade I, Inspector Grade II, Senior Assistant and Senior Assistant (Accounts) had been leaked and recommended for cancellation of the selection process. PUNSUP addressed letters dated 29.03.2017 and 03.04.2017 to the Government to grant approval to make appointments to vacant posts regarding which no illegality/irregularity had been found by the High-Powered Committee. Having not been offered

appointment, despite clean chit given to the selection process for the post of Deputy District Manager (Fields), the petitioner filed a contempt petition bearing No.1550 of 2017 in which notice of motion was issued. During the pendency of contempt proceedings, impugned order was passed stating that the petitioner could not be offered appointment since the period of 2 ½ years had already expired from holding of the examination and appointment from the waiting list would not be justified. Aggrieved against the said order, instant writ petition has been filed.

3. Mr. G.S. Bal, learned Senior Advocate assisted by Mr. J.S. Randhawa, Advocate appearing for the petitioner would contend that there was a merit list prepared in which the petitioner was placed at Sr. No.3. Mukul Sharma, who had been offered appointment never joined and therefore, out of two posts meant for General Category, the petitioner, who was placed at Sr. No.3, ought to have been offered appointment. It is contended that the impugned order vide which the decision has been taken not to offer appointment to the petitioner on account of the fact that period of 2 ½ years has since elapsed from the date of examination conducted, is wholly unjustified, considering the fact that the matter was kept pending on account of Vigilance Department being seized of the matter pertaining to the examinations conducted by the Panjab University and the leakage of the examination paper. It is submitted that in fact, there was no leakage pertaining to the examinations held for the post of Deputy District Manager (Fields) and in this regard, PUNSUP itself had sought directions to fill up the posts, as would be evident from letters dated 20.03.2017 and 03.04.2017 i.e. Annexures P-8 and P-9 respectively.

4. Per contra, learned counsel appearing for the respondents would submit that the petitioner herein was not on the select list but was in the waiting list, validity of which has since long expired, therefore, petitioner could not be offered appointment. It was argued that two posts of Deputy District Manager (Fields) had been advertised for filling up from General Category, which had been offered to Mukul Sharma, who was at Sr. No.1 and Manmeet Puri, who was at Sr. No.2 in the merit list. It was submitted that once appointments had been offered to said candidates, posts stand consumed and therefore, there is no vacant post to be offered for appointment to the petitioner. It was also argued that merely being in the waiting list would not create vested right in the candidate to be appointed.

5. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case and the case laws cited by them. It is an admitted fact that the petitioner herein applied online for being appointed against two posts of Deputy District Manager (Fields) allocated to the General Category, out of total 7 posts. A merit list was prepared in which petitioner herein has been shown at Sr. No.3 with 82 marks. Mukul Sharma was placed at Sr. No.1 with 87 marks and Manmeet Puri at Sr. No.2 with 84 marks. Mukul Sharma, who was at Sr. No.1, did not join, even though appointment letter was issued to him and his candidature was cancelled on 11.09.2015. The petitioner submitted a representation for being considered as Mukul Sharma had not joined, however, his representation could not be considered on account of proceedings pending before the Vigilance Department. As the Vigilance Department, Punjab had received complaints regarding examination conducted by the Panjab University, the respondent-State vide memo dated 05.02.2016 had stayed the recruitment

process, due to which work of counselling could not be completed. It is only when the Vigilance Department gave clearance to the examinations held by the Panjab University other than for posts of Inspector Grade I, Inspector Grade II, Senior Assistant and Senior Assistant (Accounts), a communication was made to administrative departments to act at their own level. A letter dated 20.03.2017 was addressed by the General Manager (Administration & Estt.) to the Deputy Secretary, Punjab Govt., Food, Civil Supplies and Consumer Affairs Department seeking approval to be granted for filling up the vacant posts of different categories, which approval was not received. The impugned order takes note of the fact that the petitioner's name was in the waiting list and validity of the waiting list was six months, which is factually incorrect. There is nothing on record to show that a waiting list had been prepared. In fact, name of the petitioner was reflected in the select list as prepared. Admittedly, the ground for rejection of claim of the petitioner for appointment despite existence of vacancy primarily is that 2 ½ years have elapsed and the waiting list has expired, which delay cannot be attributed to the petitioner herein. The petitioner on coming to know that Mukul Sharma had not joined, immediately preferred a representation which was kept pending for the duration the Vigilance Department was seized of the matter and there was a stay on the recruitment process by the State Government itself. Therefore, argument raised by counsel for the respondent-State that the waiting list has since expired, would not be tenable. A Division Bench of this Court in LPA No.716 of 2011 titled as *State of Haryana and others Vs. Gajraj Singh* decided on 20.04.2011 has held 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. A similar view has been expressed in the judgment rendered by a Coordinate Bench in CWP No.20393 of 2015 titled as *Shilpa Gupta Vs. State of Punjab and others* decided on 02.03.2016. Admittedly, there is no vested right of a candidate in the merit list to be appointed, however, the State is bound to act according to Article 14 of the Constitution of India and it cannot without any reason decide not to fill up the post (see *Dinesh Kumar Kashyap and others vs. South East Central Railway & ors etc.* 2019 (1) SCT 194). The argument raised by counsel for the respondents that the petitioner does not have indefeasible right to appointment especially when the validity of select panel has come to end with efflux of time, would have no merit. The petitioner was on the select list and not on the waiting list as claimed by the respondent-State and the question that appointment cannot be offered on account of the fact that 2 ½ years have lapsed since the examination took place, would be of no benefit since that delay cannot be attributed to the petitioner. The entire selection process for filling up posts as advertised was stayed by the Government itself with direction not to complete the recruitment process on account of leakage of the examination papers pertaining to certain posts that had been advertised. The petitioner had been representing right from the time when Mukul Sharma did not take up on the offer of appointment. The post would not be said to be consumed since Mukul Sharma did not accept appointment. The post would have been consumed only in case he had accepted the offer of appointment and submitted his joining report, which was not done in the instant case.

6. The judgment rendered by the Hon'ble Supreme Court in *Kulwinder Pal Singh and another Vs. State of Punjab and others* (2016) 6

SCC 532I, upon which reliance has been placed by counsel appearing for the respondent-State to contend that merely because candidate's name finds mention in the selection list it would not give him an indefeasible right, would not be applicable to the present case, since the very judgment further holds that it is always open to the Government to not to fill up vacancies, however, such decision should not be arbitrary or unreasonable. The decision not to fill up vacancies is to be based on a valid reason and once the reasoning is sound, mandamus cannot be issued. However, in the instant case, claim of the petitioner has been rejected only on account of the fact that 2 ½ years have elapsed since the examination took place and by efflux of time, select panel has come to an end, which delay, as stated above, cannot be attributed to the petitioner.

7. In view of the aforesaid findings, the instant petition stands allowed and the impugned order dated 04.08.2017 is set aside. The respondent-PUNSUP is directed to issue appointment letter to the petitioner within a period of two weeks from the date of receipt of certified copy of this order, if all other eligibility conditions are fulfilled by the petitioner. Needless to say that petitioner would be entitled to all consequential benefits.

(JAISHREE THAKUR)
JUDGE

December 16, 2022

Pankaj*

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