

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

LPA-811-2022 (O&M)
Date of decision : 19.09.2022

Ravinder Yadav

.....Appellant

Versus

Haryana Vidyut Parsaran Nigam Limited and others

....Respondents

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

Present: Mr. Vijay Kumar Sheoran, Advocate, for the appellant.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This appeal has been filed by the appellant being aggrieved by an order dated 23.08.2022 passed by the learned Single Bench in CWP-8706-2018, whereby his claim for appointment to the post of Assistant Lineman on the strength of declaration of result on 20.04.2010 has been rejected.

Learned counsel for the appellant submits that the appellant had participated in the selection process initiated by advertisement dated 08.07.2008 for appointment on the post of Assistant Lineman and in the result, which was declared on 20.04.2010, the appellant was shown at serial No. 11 in the waiting list in BC-B category. It is alleged that 52 posts reserved for ESM category remained vacant and, therefore, in view of the instructions issued in the year 2010 and 2014 by the State to the effect that in case no candidate is found suitable for appointment in the Ex-Serviceman category, the vacant seats would be filled up from the

waiting list of the same category candidates, the petitioner/appellant is entitled to and should be appointed against the posts that still remain vacant. The appellant has also claimed parity and equal treatment on the ground that certain other persons who had approached this Court in time were granted relief by this Court. It is stated that the petitioner/appellant had filed a representation before the authorities on 03.03.2018, however as it did not yield any result, he has filed this case before this Court.

We have heard learned counsel for the appellant.

Learned counsel for the appellant, relying on the decisions of this Court rendered in **Mukesh Kumar and others Vs. State of Haryana and others, CWP No. 14823 of 2011, decided on 26.05.2014,** and **Kailash Chand Vs. Haryana Vidyut Parsaran Nigam Ltd. & others, CWP No. 16214 of 2015, decided on 11.07.2016** (Annexure P-12), which has been followed in **Pardeep Kumar and another Vs. Haryana Vidyut Parsaran Nigam Limited and others, CWP No. 11056 of 2015, decided on 02.12.2016** (Annexure P-13), and **Amit Kumar Vs. Haryana Vidyut Parsaran Nigam Limited and others, CWP No.11065 of 2015, decided on 02.12.2016** (Annexure P-14), submits that the persons, who had been selected in the same selection process but had not been granted appointment on account of non-conversion of ESM category posts, have been granted appointment pursuant to directions by this Court for consideration of their claim and, therefore, the appellant invoking the concept of parity has claimed similar treatment and direction in the present case.

As far as the aforesaid contention of learned counsel for the appellant is concerned, it is evident that the petitioners in the cases of Mukesh Kumar, Kailash Chand, Pardeep Kumar and Amit Kumar, had

approached this Court by filing the aforesaid writ petitions in the year 2011 and 2015, which were allowed by this Court vide separate orders passed in the year 2014 and 2016. It is further evident from the order dated 05.12.2017 (Annexure P-15) passed by the authorities that the HVPN Limited, while complying with the direction issued by this Court in the aforesaid cases, found that the petitioners therein were lower in merit than several persons and, therefore, to avoid any heart burning and injustice to those who were above the petitioners in the aforesaid petitions in the merit list, granted appointment to as many as 68 persons. From a perusal of the aforesaid order, it is further evident that while doing so, the authorities specifically segregated the names of 17 persons, including the appellant and the petitioners in CWP Nos. 20254 of 2015 and 17324 of 2017, in the waiting list, who were denied appointment on the ground that none of their juniors in the waiting list was offered appointment.

The learned Single Judge, taking note of the aforesaid order dated 05.12.2017 passed by the authorities, which has been annexed by the respondents alongwith their return, has rightly rejected the claim of the appellant by affirming the reason for denial of appointment.

It is pertinent to note that order dated 05.12.2017 denying appointment to the appellant has not been challenged by the appellant even though it was placed on record by the respondents alongwith their return filed in the writ petition and had been issued prior to the filing of the petition by the appellant in the year 2018.

Quite apart from the findings recorded by the learned Single Bench in this regard, with which we are in respectful agreement and accordingly uphold and affirm, it is also observed that the result was

declared on 20.04.2010 alongwith the waiting list, whereas the petition has been filed by the appellant in the year 2018 after a lapse of more than 7 years. It is undisputed that the select list or waiting list was valid for a period of one year in view of the Government instructions dated 20.01.1988 i.e. upto 20.04.2011. Once the life of the waiting list has lapsed, no appointments on the basis of such a waiting list can be made or ordered to be made by this Court by issuing a writ of mandamus, moreso after a long lapse of time. 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.

As held above, the waiting list published by the authorities on 20.04.2010 had a life of one year in accordance with the instructions dated 20.01.1988 issued by the State of Haryana and was, therefore, valid only upto April, 2011. Evidently, no appointments from the said waiting list could have been made or directed to be made after the said date.

The law that no appointments from a select list or waiting list that had lapsed can be made or directed to be made has been laid down by the Supreme Court in **State of Orissa and another v. Rajkishore Nanda And Others (2010) 6 Supreme Court Cases 777** wherein it has been 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.” The same view has also been taken by the Supreme Court in the cases of **State of Bihar and others Vs. Md. Kalimuddin and others, (1996) 2 Supreme Court Cases 7; State of U.P. and others Vs. Harish Chandra and others, (1996) 9 Supreme Court Cases 309; Subha B. Nair and others Vs. State of Kerala and others, (2008) 7 Supreme Court Cases 210; and Aneesh Kumar V.S. and others Vs. State of Kerala and others, (2020) 7 Supreme Court Cases 301.** In the case of **Harish Chandra (supra)**, the Supreme Court in a some-what similar situation has held that :

“Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provision of law or to do something which is contrary to law. This being the position

and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.1987 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist. In the course of hearing the learned counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuance to the direction of the Court some appointments have been made but in some other cases it might have been done by the Appointing Authority. Even though we are persuaded to accept the submission of the learned counsel for the respondents that on some occasion appointments have been made by the Appointing Authority from a select list even after the expiry of one year from the date of selection but such illegal action of the Appointing Authority does not confer a right on an applicant to be enforced by a Court under Article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the Appointing Authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the Appointing Authority in making such appointments contrary to the Statutory Rules. But at the same time it is difficult for us to sustain the direction given by the High Court since, admittedly, the life of the select list prepared on 4.4.1987 had expired long since

and the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not.”

The claim for parity also deserves to be rejected as the petitioners in the previous petitions had immediately filed representation before the authorities and had, thereafter, filed objections in the year 2011 and 2015, whereas in the instant case, the appellant for the first time raised claim by filing a representation on 03.03.2018 and, thereafter, filed a petition in the year 2018, and therefore cannot claim parity and equal treatment with those who had approached this Court diligently within time. In the instant case, the result was declared in 2010, the waiting list lapsed in 2011, the petition was filed in 2018 and we are now in 2022.

The petitioners who do not approach the Court diligently and acquiesce or accept the decision of the authorities and ultimately approach the Court after long delay, only because other candidates who were vigilant and had approached the Court promptly succeeded in their effort, cannot claim that the benefit of the judgment rendered in the case of such vigilant though similarly situated persons be extended to them. In such cases, the Supreme Court has held that such fence-sitters can be denied parity and equal treatment on the ground of delay and laches. The law in this regard has been laid down by the Supreme Court in **Jagdish**

Lal and others Vs. State of Haryana and others, (1997) 6 Supreme Court Cases 538; Government of W.B. Tarun K. Roy and others, (2004) 1 Supreme Court Cases 347; Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and another Vs. K. Thangappan and another, (2006) 4 Supreme Court Cases 322; U.P. Jal Nigam and another Vs. Jaswant Singh and another, (2006) 11 Supreme Court Cases 464; and New Delhi Municipal Council Vs. Pan Singh and others, (2007) 9 Supreme Court Cases 278.

Similar view has been taken by this Court in **Karanjeet Singh and others Vs. State of Haryana and others, LPA-1006-2021, decided on 16.05.2022** and **Sukhdev and others Vs. State of Haryana and others, LPA-296-2022, decided on 16.05.2022.**

In view of the aforesaid law laid down by the Supreme Court and taking into consideration the fact that the select list dated 20.04.2010 has lapsed after a period of one year in terms of the instructions issued by the State of Haryana, the Single Bench decisions of this Court relied upon by the appellant in the cases of **Mukesh Kumar** (supra), **Kailash Chand** (supra), **Pardeep Kumar and another** (supra) and **Amit Kumar** (supra) are held to be confined to the facts of those cases and as they have been decided without taking into consideration the law laid down by the Supreme Court in this regard, therefore, cannot be relied upon by the appellant as precedents for claiming parity. As far as the decision in the case of **Garima Jindal Vs. Haryana Vidyut Prasaran Nigam and another, CWP No. 13384 of 2011 decided on 06.08.2012** (Annexure P-8) which has been affirmed by the Supreme Court, is concerned, the said decision is distinguishable on facts and does not help the petitioner in any way. In the case of **Garima Jindal**, the petitioner had

approached the Court during the life time of the waiting list and not after its expiry after long delay as in the present case. Secondly, the appointment in that case related to the post of Junior Accountant and not Assistant Lineman as is the present case. Therefore, the claim of parity and equal treatment with Garima Jindal made by the petitioner being misconceived is hereby rejected.

In view of the aforesaid, we do not find any merit in the appeal.

Dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

September 19, 2022
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes