

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

LPA-1006-2021 (O&M)
Date of decision:- 16.05.2022

Karanjeet Singh 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. Ashok Bhardwaj, Advocate,
for the appellants.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

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RAVI SHANKER JHA, C.J. (ORAL)

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-13503-2020 filed by the petitioners (appellants herein) seeking a direction to the respondent-authorities to grant them appointment on the post of Assistant Block Resource Coordinator in the Schedule Caste category pursuant to an advertisement issued on 15.06.2019.

The claim of the appellants is based on the fact that they appeared in the written examination conducted by the respondent-authorities and their names figured in the waiting list. However, after completion of the process of appointment to the said posts in the Schedule Caste category, 39 posts remained vacant. The appellants filed the aforesaid writ petition before this Court seeking appointment on the said posts.

Learned counsel for the appellants submits that the learned Single Judge has wrongly dismissed the writ petition on the ground that the waiting list has lapsed without taking into account the fact that the respondent-authorities had in fact issued a revised waiting list on 15.07.2020 and as the validity of the list has to be counted from the date of publication of the revised waiting list, therefore, the same being alive, the appellants were entitled to appointment to the said posts by the respondent-authorities. He further submits that the learned Single Judge has failed to appreciate these aspects and in such circumstances, the impugned order passed by the learned Single Judge suffers

We have heard learned counsel for the parties at length.

It is observed that some of the petitioners, who are the appellants before this Court, had filed CWP-8067-2020 taking up a similar issue before the learned Single Judge. It was contended by the respondents before the learned Single Judge that the petitioners-appellants had no claim to the said posts as their names did not figure in the revised waiting list and this fact was even admitted by learned counsel for the petitioners-appellants before the learned Single Judge. The learned Single Judge taking this aspect into consideration disposed of the writ petition by making the following observations:-

“Heard.

Learned counsel for the petitioners is unable to deny that petitioners No. 1, 3, 4, 6 and 8 do not fall in the revised waiting list, therefore, there is no question of issuance of direction to the respondents for offering appointment to the said petitioners. It is further very fairly brought to my notice by learned counsel for the petitioners that CWP Nos. 12332 and 13503 of 2020, filed by some of the candidates challenging the revised waiting list, have been dismissed on 18.11.2020. Learned counsel for the petitioners, however, submits that the respondent-authorities are not entitled to keep rest of the posts vacant having advertised 226 posts.

Admittedly, present writ petition has been filed with the petitioners contending that as 39 posts were lying vacant and their names figured in the waiting list, therefore, they are entitled to appointment. Petitioners No. 1, 3, 4, 6 and 8 admittedly do not fall in the revised merit list. In my considered opinion, question of candidates who do not fall in the waiting list, raising the issue whether the State is bound to fill all the vacancies, is not a matter for adjudication in the present writ petition. There is no challenge to instructions dated 25.06.2019 in the present writ petition, which is confined to the relief for candidates in the waiting list seeking appointment.”

On a specific query being made, it is stated by learned counsel for the appellants that the judgement and order dated 08.02.2021 passed by the learned Single Judge in CWP-8067-2020 has not been assailed and has attained

The appellants before us sought the validity of the list to be counted from the date of publication of the revised waiting list. However, the principle of negative equality does not find place in our Constitution as has been held in **R. Muthukumar and Others v. Chairman and Managing Director TANGEDCO And Others 2022 SCC OnLiNE SC 151**: *“A principle, axiomatic in this country’s constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In Basawaraj v. Special Land Acquisition Officer, this court ruled that:*

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.”

Similarly, in **The State of Odisha and another v. Anup Kumar Senapati and another 2019 SCC OnLine SC 1207** it was observed that a wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.

The Apex Court in **State of West Bengal and others v. Debashish Mukherjee and others (2011) 14 SCC 187** observed that the guarantee of law being a positive concept cannot be enforced in a negative manner. An illegality or irregularity committed in favour of any individual or group of individuals cannot be used by others to invoke the jurisdiction of Courts and Tribunals to require the state to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others. The same reasoning was followed in subsequent decision in **Rajesh Pravinchandra Rajyaguru v. Gujarat Water Supply & Sewerage Board and Others 2021 SCC OnLine SC 1282**.

Moreover, the candidates before us in the waiting list cannot claim any indefeasible right to be appointed against an unfilled post especially when the vacancy in question arises after the said waiting list having *lapsed*. 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 that *"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 Court emphatically stated: *"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."*

A similar view was taken in a more recent judgment in **State of Orissa and another v. Rajkishore Nanda And Others (2010) 6 Supreme Court Cases 777** that *"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."*

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 and the aforesaid facts and circumstances, we are of the considered opinion that no fault can be found with the impugned judgment and order dated 18.11.2020 passed by the learned Single Judge dismissing the writ petition, moreso as the similar writ petition i.e. CWP-8067-2020 claiming the same relief has been disposed of by the learned Single Judge of this Court vide judgement and order dated 08.02.2021 by considering the issue as has been raised by the appellants in the present appeal.

The aforesaid judgement and order dated 08.02.2021 passed by the learned Single Judge in CWP-8067-2020 having attained finality, the present appeal being meritless accordingly stands dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

16.05.2022
Amodh Sharma

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