

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

**LPA No. 1366 of 2017
Date of Decision: 16.03.2022**

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NirmeshAppellant(s)
vs.
Punjab National Bank and anotherRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Anil Kumar, Advocate,
for Mr. Harkesh Manuja, Advocate, for the appellant.

Mr. Saurav Verma, Advocate,
and Mr. Akash Soni, Advocate, for the respondents

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present appeal filed by the unsuccessful petitioner is to the order of the learned Single Judge passed in CWP No. 9559 of 2017, Nirmesh vs. Punjab National Bank and another, decided on 18.05.2017. The learned Single Judge has dismissed the writ petition on the settled principle that the petitioner cannot claim appointment from the reserve list as a matter of right enforceable by mandamus. Thus, it was held that the decision of the bank in refusing to touch the reserve list or in advertising the fresh process by sending requisition to the IBPS for subsequent financial years to fill up the pool of vacancies of clerks could not be interfered with.

Counsel for the appellant, as such, has submitted that once there was intimation that 124 posts of clerks for the OBC category were being notified and filled up, the bank was under an obligation to fill up the said posts.

In the considered opinion of this Court, the position of law is that the applicant has got no vested right as such and has only a right of consideration. It is upto the employer as such to see what are the number of vacancies which had to be filled up.

In the present case, it is to be noticed that as per the advertisement (Annexure P-9), it was mentioned that various banks were the participating organizations in the advertisement process carried out by the Institute of Banking Personnel Selection (in short 'the IBPS'). The posts were not specified as such which had to be filled up pertaining to the respondent-bank. As per Annexure P-4, the number of posts for the OBC category of Clerks as such were 124. It is the case of the writ petitioner that only 97 candidates were employed and the other posts were not filled up and, therefore, claims a right of consideration as being on the reserve list having obtained 64.38 marks in the recruitment process.

The learned Single Judge has relied upon a document dated 14.02.2017 (Annexure P-8) given in response to the application dated 26.01.2017 filed under the Right to Information Act, 2005 to dismiss the writ petition in limine whereby one candidate had been informed that there was no requirement of Clerks in the State of Haryana for the financial years 2016-17 and, therefore, the respondent-Bank had not participated in the second round through the reserve list. Resultantly, while placing reliance upon the judgment of the Apex Court in *Mrs. Asha Kaul and another vs. State of Jammu & Kashmir and others, (1993) 2 SCC 573*, it was held that there is no reason as such to call upon the bank to reply upon the letter dated 14.02.2017 (Annexure P-8).

Since the writ petition had been dismissed in limine, response was sought in the present appeal, which has been filed. It has been specifically mentioned in the reply that the reserve list was to automatically expire on 31.03.2017 without any notice. In the absence of any requirement for clerks in the State of Haryana for financial year 2016-17, the bank had not participated in

the second round.

The law is settled on the said issue and reliance can be placed upon the judgment of the Apex Court in *Shankarsan Dash vs. UOI, (1991) 3 SCC 47*, wherein, it has been held that no discrimination can be permitted at the time of recruitment but the candidates do not have any indefeasible right to be appointed. The notification, thus, amounted to an invitation to the qualified candidates to apply for recruitment but they do not acquire any right to the posts in question. In the absence of any relevant Rules, it was thus held that there is no legal duty as such to fill up all other available vacancies. The said view has been followed in *S.S. Balu and another vs. State of Kerala and others, 2009 (2) SCT 73*.

It is not the case of the petitioner that persons lower in merit as such have been appointed due to which there has been any discrimination. The writ petition was filed on 28.04.2017 after the reserve list had expired on 31.03.2017. In the absence of such factual matrix having been made out, this Court is of the opinion that the order of the learned Single Judge does not suffer from any legal lacuna which would warrant interference.

Accordingly, finding no merit, the present appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

16.03.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No