

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

**LPA-450-2017 (O&M)
Decided on: 15.12.2022**

Balwinder SinghAppellant(s)

Versus

State of Haryana & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Hariender Singh, Advocate, for
Mr.Jasbir Mor, Advocate, for the appellant.

Mr.Hitesh Pandit, Addl.A.G., Haryana.

G.S. Sandhawalia, J. (Oral)

The present Letters Patent Appeal is directed against the order of the learned Single Judge dated 24.01.2017 passed in CWP-1168-2017 titled *Balwinder Singh Vs. State of Haryana & others*, whereby the writ petition was dismissed primarily on the ground of delay as the writ petitioner/appellant had sought to seek the operation of the wait-list for the post of Social Studies Master (BCA Category).

The learned Single Judge did not accept the explanation of the writ petitioner that he has firstly approached this Court in 2015 and filed the writ in the year 2015 vide diary No.1385737 wherein an objection had been raised on 30.05.2015 and the petition had been misplaced. It was thus held that the writ petitioner did not refile the petition and no effort was made to search the misplaced file and he had failed to inform the Registry regarding the misplaced file and thus, the petition had been dismissed.

A perusal of the writ petition thus would go on to show that it

the Clerk of the counsel had collected the paperbook and put it in the bundle of admitted cases and on account of the shifting of the office, the paperbook had got misplaced and could only be traced out during the vacation in December, 2016. It was in such circumstances, the case was refiled in January, 2017 and renumbered. We have also confirmed and checked up from the website regarding the fact that the case was filed vide the above-said diary number on 29.05.2015.

Accordingly, we are of the considered opinion that on account of the fault of the counsel the client cannot be prejudiced and therefore, the learned Single Judge, while dismissing the writ petition, nullified the claim for consideration on merits.

Another reason for which we wish to interfere is that in similar circumstances, we have dismissed LPA-1165-2017 titled *State of Haryana & others Vs. Naresh Kumar* along with other appeals and allowed the connected writ petition wherein the claim was for appointment against advertisement dated 13.08.2019 for the post of 373 posts of Social Studies Masters. The reasoning given in the said order is that 35 candidates had been given the latitude to join after the statutory period and the State was operating the wait-list and have been giving appointments on 17.11.2016 against the said advertisement. It was noticed that the writ petitioners had filed the writ petition in the year 2015 and on account of inaction of the State, they have been compelled to approach this Court. The stand of the State regarding the surplus posts was also rejected and a finding was recorded that it was the arbitrary action of the State not to operate the wait list which had led to the wait-list candidates being neglected for no valid reason. Relevant portion of the said order read as under:

“11. Another defence which was taken and which has also been argued by the State counsel is regarding the fact that similarly situated Maths Masters writ petition bearing **CWP No.19064 of 2013 ‘Karambir Singh and another Vs. State of Haryana and another’** had been allowed on 04.02.2014 and the State Government was successful in LPA No.**2024 of 2014** on the same grounds that there was surplus manpower. The said stance as noticed regarding the surplus of manpower had been put forth by the Director General Elementary Education vide order dated 01.05.2015 in pursuance of directions issued wherein Pushpa Devi and other had approached this Court in CWP No.24963 of 2013 seeking right of consideration on account of being on the wait list and posts remaining vacant due to non-joining of candidates. Resultantly, directions were issued to take a decision on the said issue and the said officer came to the conclusion that since two existing departments i.e. Primary Education Department (Class 1st to 5th) and Secondary Education Department (Class 6th to 10+2) were converted into the Elementary Education Department (Class 1st to 8th) and the Secondary Education Department (Class 9th to 10+2) vide notification dated 22.09.2011. Therefore, there was a decrease in the requirement of Social Studies Masters as on 10.03.2015 and there were 7245 surplus masters, which was one of the reasons apart from the fact that the validity list had elapsed.

12. Interestingly the same officer six months earlier vide order dated 14.11.2014 (Annexure P-9) which has been appended in **CWP No.24685 of 2014 ‘Phool Kumar Vs. State of Haryana and others’** while complying the order passed in **CWP No.11414 of 2013 ‘Phool Kumar Vs. State of Haryana and another’ dated 24.05.2013** which was also in the same terms to take a decision on the representations regarding the filling up of the posts came to the conclusion that on account of Chief Secretary’s communication dated 13.11.2014 and the wait list being valid for one year had rejected the claim for appointment of Phool Kumar who was at Sr. No.1 in the wait list. It is, thus, apparent that in the said order passed no defence was ever taken that the posts had become surplus, which was done in the subsequent order dated 01.05.2015 and which is also in reference to data of the year 2015,

whereas the right of the writ petitioners had crystallized in November, 2012.

13. Thus, we are of the considered opinion that the reasons which have now been given do not seem to be germane to the controversy and if that was so at the first instance while passing the speaking order on 14.11.2014 the same officer would have reasoning as mentioned earlier. The reasoning is for the mere purpose that the State Government had to get over its lack of inaction and deny appointments to the candidates who were higher in the wait list. It is to be noticed no justifiable reasons were given in the written statement as to why on account of the non-joining within the prescribed period of 15 days as noticed by the learned Single Judge when conditional appointment orders were issued on 12.11.2012 the wait list was not operated, as the candidates did not join. It is on account of the negligence and inaction of the State Government/appellants which has led to the expiry of the wait list. Though the person on the wait list had been agitating and clamoring for their rights in as much as they filed representations and served legal notices which would be clear from communication dated 07.06.2012 (Annexure P-7) wherein Naresh Kumar had put forth his case that he is at Sr. No.1 in the wait list and if candidates do not join he should be given a chance. Thus, the observations made in **Shankarsan Dash (supra)** as reproduced above go on to show the arbitrary action of the State has come forth.

14. Another aspect which is to be noticed that one fails to understand why 35 candidates were being given the latitude to join after the stipulated period as per the appointment orders and show cause notice had been issued to them as noticed on 12.08.2014 even after the validity has expired on 05.06.2013. The said letter mentioned that appointment can be offered to the other candidates who were standing in the waiting list and there was a proposal to cancel their appointment. Relevant portion of the letter dated 12.-08.2014 reads as under:-

“Now, it has been decided by competent Authority to cancel your candidature or appointment letter immediately so that appointment can be offered to other candidates who were

standing in waiting list according to their merit. Now office is in the process of cancellation/termination of your candidature /appointment letter.

But before cancellation of candidature, an opportunity of being heard is being provided to you all to show cause why appointment letter/candidature should not be cancelled. Hence, you are required to appear before Additional Director Administration Elementary at 10:30AM on 25.08.2014 in person and submit your version in writing if any failing which it will be presumed that you are not interested to say anything and your candidature/appointment order will be cancelled accordingly.”

Sd/-

Superintendent HRM-I

O/o Director Elementary Education

Haryana, Panchkula

Dated, Panchkula the 12.08.2014”

15. It is also to be noticed that for the same advertisement in question appointment order have been issued on 17.11.2016 to one Geeta Devi on account of the fact that order passed in **LPA No.1563 of 2012 ‘Geeta Devi Vs. State of Haryana and others’** arising out of CWP No.16710 of 2012 had to be complied with. It is, thus, apparent that even on 17.11.2016 appointments were being made against the said advertisement No.4 of 2009 for the post of Social Studies Masters after the opinion had been given on 13.11.2014 by the office of the Chief Secretary. Relevant portion of the order dated 17.11.2016 reads as under:-

“OFFICE OF THE DIRECTOR ELEMENTARY
EDUCATION HARYANA, PANCHKULA

Order No. 17/173-2012 HRM-1 (1) Dated, Panchkula 17.11.2016

In pursuance of judgment dated 21.01.2014 of Hon'ble Punjab & Haryana High Court, Chandigarh in LPA No. 1563 of 2012 in CWP No. 16710 of 2012 titled as Geeta Devi V/S State of Haryana and others, the claim of the Appellant/Petitioner i.e Geeta Devi for the post of S.S. Mistress under Ex-Serviceman (General) (Female) category has been considered in compliance of this judgment (Supra) appointment letter is issued to petitioner i.e Geeta Devi, on the basis of recommendations received from the Haryana Staff Selection Commission No. HSSC/Confid./Recomm./2012/332 dated 06.06.2012 against advt.4/2009 category no.5 for appointment in Haryana School Education (Group-C) State Cadre Service Rules-2012 on the post of S.S. Mistress in the scale of 9300-34800+GP 4600/-plus other allowances as sanctioned by the Haryana Govt. from time to time on the following terms and conditions.

Sr. No.	Employee ID No.	Merit No. With Category	Name & Address	Place of Posting	Remarks
1	098397	143 (DFF, General)	Geeta Devi D/o Sh. Ram Kumar, Village Girawar, PO Jondhi, Distt. Jhajjar	GHS Silothi (4667) Distt. Jhajjar	A/V

16. In the present bunch of cases as noticed the writ petitioners filed writ petitions in the year 2015 agitating for their grievances after the impugned order had been passed on 01.05.2015 (Annexure P-11) in pursuance of the order dated 14.11.2013 CWP No.24963 of 2013 ‘Pushpa Devi and others Vs. State of Haryana and others’ (Annexure P-10) and, therefore, the writ petitioners/respondents have been agitating for redressal of their grievances and on account of the inaction of the State have been left out from the zone of appointment, though there were 35 clear vacancies available as per the pleadings and as argued by the State counsel.

17. The ground raised on the issue of parity, to be fair to Mr. Pandit that the judgment passed in LPA No.2024 of 2014 wherein for the same advertisement the directions issued for the post of Maths Masters were set aside, which was on account of the fact that after restructuring posts were reduced to 2144 and there

were surplus masters and no junior had been given appointment. As noticed from the record above, it transpires that the stand of the State regarding surplus posts apparently has been held to be not tenable in view of the contradictory speaking orders passed and on account of the fact that on an earlier occasion the said stand had never been taken. Therefore, the judgment relied upon by the State is not applicable to the facts and circumstances, as this fact could not be demonstrated before the Coordinate Bench at that point of time regarding the Maths Master.

18. In **Ritu Vs. State of Haryana and others' 2013 (3) SCT 281** while allowing the LPA, wherein the claim for appointment to the post of Hindi Teacher had been rejected, it was held that inaction on the part of the State Government within a period of 15 days as per stipulation contained in the offer of appointment itself had clearly defeated the very objective of waiting/panel list and on account of lack of promptitude the appellant was affected. The State did not act within the validity of one year and therefore, the action of the appointing authority was held to be suffering from the vice of arbitrariness and could not be sustained. The said principles are, thus, directly applicable to the facts and circumstances of the present case, which read as under:-

“11. Adverting back to the facts of the present case, it was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere impanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt.Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies

advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations i.e. 27.1.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.

12. Even otherwise, the very objective of preparing a waiting/panel list and for such list to be kept operative for a specific period is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period.

A reference in this regard can usefully be made to the judgments of this Court in *Ajmer Singh v. State of Haryana and others*, 1997(1) CLJ (Service) 86 and *Raghubir Chand Sharma v. State of Punjab*, 1992 (1) RSJ 195.

13. In the present case, the inaction on the part of the State Government in not having cancelled the offer of appointment made to Smt. Manju Rani within a period of 15 days as per stipulation contained in the offer of appointment itself has clearly defeated the very objective for which the waiting/panel list had been prepared in which the name of the appellant duly figured.

14. For the reasons recorded above, we allow the instant appeal and set aside the impugned judgment dated 6.10.2012 passed by the learned Single Judge in Civil Writ Petition No.5980 of 2011. We further direct that the respondent-Department shall issue appointment letter to the appellant for the post of Hindi Teacher within a period of 30 days from the date of passing of this judgment. There shall, however, be no order as to costs.

Appeal allowed.”

19. In such circumstances, we are of the considered opinion that the order of the learned Single Judge is not liable to be interfered with. Resultantly, LPA Nos.1165, 1166 & 1191 of 2017 which are directed against the order of the learned Single Judge dated 24.01.2017 are dismissed, whereas CWP No.24685 of 2014 & CWP No.2619 of 2015 are allowed. All pending civil miscellaneous application(s), if any, also stand disposed of. The State shall issue appointment letters to the writ petitioners in both the sets, as directed by the learned Single Judge. The said exercise be carried out within a period of 2 months from the date of receipt of certified copy of this order.

20. It is, however, made clear that the successful writ petitioners will only get notional benefits from the date of the last similarly selected candidate of the same selection process was appointed and they will not be entitled for actual monetary benefits, provided they fulfill all other requisites.”

Accordingly, in view of the above discussion, the present appeal is allowed in the same terms as CWP-24685 of 2014 reproduced above were allowed.

(G.S. SANDHAWALIA)
JUDGE

15.12.2022
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No