

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

222

LPA-357-2018 (O&M)
Date of Decision: 30.08.2022

State of Haryana and others

Versus

..... Appellants

Mukesh Kumar Yadav and others

..... Respondents

2.

LPA-2205-2017 (O&M)

State of Haryana and others

Versus

..... Appellants

Kulwinder Singh and others

..... Respondents

3.

LPA-1132-2018 (O&M)

State of Haryana and others

Versus

..... Appellants

Sajid

..... Respondent

4.

LPA-1277-2018 (O&M)

State of Haryana and others

Versus

..... Appellants

Sandeep singh and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Ms. Shruti Jain Goyal, DAG, Haryana.

Mr.R.K.Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate
for the respondent (s).

G.S.SANDHAWALIA, J. (Oral)
CM-903-LPA-2018

Application is for condonation of delay of 140 days in filing the appeal.

Keeping in view the averments made in the application and in view of the nominal delay of 140 days in filing the appeal is hereby condoned.

CM stands disposed of.

Main case :

The present appeals are directed against the common judgment of the learned Single Judge passed in CWP No.24437 of 2013 “Kulwinder Singh and others vs. State of Haryana and others” decided on 18.09.2017. The writ petitioners were seeking directions for consideration of the claim for appointment against the posts which remained vacant due to the non joining of the candidates of general category and further directions to appoint the petitioners against the posts of Ex-servicemen general category which remained vacant due to non-availability of the Ex-servicemen general category candidates. The post in question is of the Jail Warder (Male).

The learned Single Judge allowed the petition by directing that the validity of the waiting list to be deemed to have been extended till 17.06.2014 i.e. for two months more than their original validity and therefore, the letters issued to the candidates of the wait list in February 2014, as per the affidavit of the Additional Chief Secretary dated

24.07.2017 was to be re-issued and the candidates would be given one month time to join the post of Jail Warders, since the petitions had been instituted in the year 2013. Further directions were issued that if they do not join, the next set of candidates as per the merit of the waiting list would be offered such appointment within a period of another one month. The petitioners upon appointment would be entitled to all consequential benefits from 17.07.2014 except actual arrears of pay and had not actually worked on the posts in question.

Counsel for the state has tried to convince us that on account of the fact that the waiting list had expired on 17.04.2014 and since the first appointment had been offered on 24.04.2013, the learned Single Judge was not correct in extending the period. She submitted that there are reasonable grounds available as such with the State Government since the code of conduct had been imposed from 05.03.2014 to 05.05.2014 and therefore, the letter dated 30.01.2014 wherein the candidates have been allowed to join could not be given effect to. It is submitted that once the waiting list had expired, the learned Single Judge was not correct in extending the same by virtue of the said order. It is sought to be argued that there is only a right of consideration and there is no right for appointment.

We are of the considered opinion that the appeals must fail on account of the conduct of the State Government itself. We are of the firm opinion that on account of the arbitrary action of the State itself, directions can be issued and the learned Single Judge was well within his jurisdiction to direct the Government to operate the wait list and extend the period of the wait list. The law laid down by the Apex Court in **Shankarsan Dash vs. Union of India (1991) 3 SCC 47**, wherein it has been held that though there

is no absolute right as such of appointment but wherein the Government's action as such is arbitrary, then the candidates have a legal vested right as such to seek consideration and due operation of the wait list.

The factual matrix for us to arrive at the conclusion is that the advertisement in question was issued on 31.07.2012. 1036 posts of Male Warders were sought to be filled up and the cut off date was 30.08.2012. The recommendations of the Recruitment Committee were received on 18.04.2013. The wait list of 85 male candidates, 66 general category and 19 BC category was also received from the recruitment Committee. 34 candidates did not join their duty out of the 953 selected. The 5 candidates who had not join their duty, submitted their representations requesting them to join duties. Communications were sent on 07.08.2013, 22.08.2013 and 16.09.2013 (Annexures R-1 to R-3, respectively) by the Director General of Prisons requesting the State government to take action (in LPA-2205-2017). It is not disputed that on 02.05.2013, a joint application of 92 candidates from the waiting list was also received that they should be given appointment against the posts which were still lying vacant. Admittedly, the Government was approached on 07.08.2013 to fill up vacant posts and for a period of 6 months, the Government chose to sleep over the matter. Only on 30.01.2014, it allowed permission to 05 candidates who had not joined earlier and also to fill up 20 posts (general 14 and BC 06) from the waiting list. The Superintendent Headquarter Jail, Ambala vide a letter dated 11.02.2014 directed the 20 candidates to submit their character verification and in the meantime, the Lok Sabha election as such was slated from 05.03.2014 to 05.05.2014 and therefore the process could not be completed. On account of the wait list having expired on 17.04.2014, the

Government took shelter of the instructions dated 20.01.1988 that the wait list was only valid for one year which had been reiterated on 07.10.1998 (Annexure P-3) that since the period of one year had expired.

Thus from the above sequence of events, it would be clear that the Government failed to act upon the wait list which has been prepared and operate it the request of the Prison Department, for a period of over 6 months. The action as such was totally arbitrary. It was their own inaction as such that the wait list could not be operated and the process of recruitment having been taken to its logical end was not fructified in a proper manner. Now, for the State to turn around and say that the learned Single Judge had wrongly extended period of two months to protect the interest of candidates who had approached the writ Court in the year 2013, would be travesty of justice. The relevant part of the judgment of the **Shankarsan Dash's case (supra)** reads as under :-

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. **However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.** And if the vacancies or any of them are filled up, the State is*

*bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in **State of Haryana v. Subhash Chander Marwaha and others, (1974) 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others (1986) 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, (1985) 1 SCR 899.***”

Keeping in view the above, we are of the firm opinion that the State itself is responsible for the mess it has created and it has unnecessarily filed the present Letters Patent Appeal for reasons best known to them. The purpose of issuing the advertisement was to fill up the posts and on the other hand, the State fails to take action and operate the wait list to fill up all the posts and take the recruitment process to its logical end. The candidates were then forced to approach this Court for redressal of their grievances, which has been rightly allowed but the State Government further chose to litigate.

Resultantly, we are of the considered opinion that these appeals are misconceived and are accordingly dismissed with costs of Rs.25,000/-. The same be deposited with the PGI Poor Patient Fund, which is period of 2 months from today.

(G.S.SANDHAWALIA)
JUDGE

30.08.2022
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>