

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 8598 of 2022 (O&M)

Date of Decision: 19.05.2022

Ashish Chopra

.....Petitioner

Versus

High Court of Punjab and Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. D.K.Chopra, Advocate
for the petitioner.

LISA GILL, J(Oral).

Petitioner is aggrieved of the action of the Society for Centralized Recruitment of Staff in Subordinate Courts (for short 'SSSC') in not filling up all the posts of clerks in subordinate Courts which fell vacant between 01.01.2019 to 24.03.2021 with the said action purported to be inconsistent with the Employment Notice dated 05.01.2019.

Brief facts as pleaded in the writ petition are that Employment Notice dated 05.01.2019 was issued inviting applications for 352 posts of clerks in the subordinate Courts of Haryana. The petitioner, it is stated being fully eligible and qualified for appointment submitted his application pursuant to advertisement and took the written examination held on 10.11.2019. It is stated that petitioner qualified the Computer Proficiency test held on 21.09.2021 and he was summoned for document verification on 22.02.2021 and his documents were verified by the officials of the SSSC.

Result of this recruitment was declared on 24.03.2021. Merit list of 352 candidates was released. Petitioner was not reflected in the said merit list.

Grievance set-forth by the petitioner is that in view of the note in the Employment Notice to the effect that 'number of vacancies may be increased or decreased without any notice, depending upon the number of vacancies as on date of preparation of merit list and posting', it was incumbent upon the SSSC to have prepared a list of all the vacancies falling vacant on the date of preparation of the merit list which would include the posts falling vacant between 01.11.2019 to 24.03.2021. It is asserted that in case these vacancies had been included, petitioner would have been included in the merit list and would have been able to secure appointment for the post applied for. This act of the SSSC is stated to be violative of their own commitment/ promise/ assurance, therefore a direction is sought to work out the total number of vacancies of clerks arising between 01.01.2019 to 24.03.2021 and after redrawing the merit list accordingly to issue offer of appointment to those candidates who may find their place in the said redrawn merit list. It is thus prayed that this petition be allowed.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

Recruitment to the post of clerks has been carried out by the SSSC as per provisions of the Haryana Subordinate Courts Establishment (recruitment and General Conditions of Service) Rules 1997. Learned counsel for the petitioner has laid the foundation of petitioner's case on the note which appended in the Employment Notice dated 01.01.2019, which is reproduced as under:-

“Note: The number of vacancies may be increased or decreased without any notice, depending upon the

number of vacancies as on date of preparation of merit list & posting.”

Argument raised by learned counsel for the petitioner that this note creates an obligation on the SSSC to include all vacancies arising from 01.01.2019 till 124.03.2021, is devoid of any merit. This is so for the reason that admittedly, it was 352 posts which were advertised and the said number of posts have admittedly been filled by the respondents. It is indeed a settled position of law that an authority cannot fill up more than the notified number of vacancies advertised as recruitment of candidates in excess of the notified vacancies would be violative of Article 14 and 16 of the Constitution of India. To read an obligation to include the future vacancies by virtue of the abovesaid note, is not possible in the given facts and circumstances of the case.

At this stage, it is gainful to refer to the judgment of Hon’ble Supreme Court in **High Court of Kerala Vs. Reshma A. and others, 2021 (1) SCT 311**. The Hon’ble Supreme Court in the said case has held as under:-

“45. The constitutional principle which finds recognition in the precedents of this Court is that the process of selection in making appointments to public posts is subject to the guarantees of equality under Article 14 and of equality in matters of public employment under Article 16. The process of selection must comport with the principles of reasonableness. Where the authority which makes a selection advertises a specific number of posts, the process of selection cannot ordinarily exceed the number of posts which have been advertised. While notifying a process for appointment, the authority may take into consideration the actual and anticipated vacancies but not future vacancies. Anticipated vacancies are the vacancies which can be reasonably contemplated to arise due to the normal exigencies of service such as promotion, resignation or death. Hence, in

notifying a given number of posts for appointment, the public authority may legitimately take into account the number PART H of vacancies which exist on the date of the notification and vacancies which can reasonably be accepted to arise in the exigencies of the service. While the exact number of posts which may fall vacant due to circumstances such as promotion, resignation or death may be difficult to precisely determine the authority may make a reasonable assessment of the expected number of vacancies on these grounds. However, future vacancies conceptually fall in a distinct class or category. Future vacancies which arise during a subsequent recruitment year cannot be treated as anticipated vacancies of a previous selection year. Vacancies which would arise outside the fold of the recruitment year would not fall within the ambit of anticipated vacancies. For it is only the vacancies, actual and anticipated which would fall within the course of the selection or recruitment year that can be notified when the selection process is initiated. These are constitutional principles to which statutory edicts are subordinate.”

In the factual matrix of the case, no infirmity can be found in the action of the respondents in filling up 352 vacancies as advertised and non inclusion of vacancies which may have been arisen from 01.01.2019 to 24.03.2021. Therefore, I do not find any ground for interference in this writ petition.

No other argument has been addressed.

Accordingly, this writ petition is dismissed with no order as to costs.

19.05.2022
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.