

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1165-2017 (O&M)

State of Haryana and others

... Appellant (s)

Versus

Naresh Kumar

... Respondent (s)

(2)

LPA-1166-2017 (O&M)

State of Haryana and others

... Appellant (s)

Versus

Pushpa Devi and others

... Respondent (s)

(3)

LPA-1191-2017

State of Haryana and others

... Appellant (s)

Versus

Smt. Sheelwanti and others

... Respondent (s)

(4)

CWP-24685-2014

Phool Kumar

... Petitioner (s)

Versus

State of Haryana and others

... Respondent (s)

(5)

CWP-2619-2015

Anil Kumar

... Petitioner (s)

Versus

State of Haryana and others

... Respondent (s)

Reserved on : 22.11.2022

Pronounced on : 01.12.2022

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

Present: Mr. Hitesh Pandit, Additional Advocate General, Haryana
for the appellants in LPA Nos.1165, 1166 & 1191 of 2017 &
for the respondents in CWP Nos.24685 of 2014 &
CWP No.2619 of 2015.

Mr. Amit Dhanda, Advocate for
Mr. Jasbir Mor, Advocate for respondent Nos. 1 to 5
in LPA No.1165 of 2017.

Mr. Anurag Goyal, Advocate for
Mr. Karamveer Singh Banyana, Advocate
for the respondents in LPA Nos.1166 & 1191 of 2017.

Mr. Shivam Malik, Advocate for
Mrs. Santosh Malik, Advocate
for the petitioner in CWP-24685-2014.

Mr. Neeraj Kumar, Advocate
for the petitioner in CWP-2619-2015.

G.S. Sandhawalia, J.

Present order shall dispose off 5 cases i.e. LPA Nos.1165, 1166 & 1191 of 2017 and CWP No.24685 of 2014 & CWP No.2619 of 2015.

2. LPA Nos.1165, 1166 & 1191 of 2017 raise the issue of consideration of the judgment of the learned Single Judge wherein he decided three writ petitions lead case of which was **CWP No.21687 of 2015 ‘Pushpa Devi and others Vs. State of Haryana and others’**. Vide the order under consideration dated 24.01.2017 the learned Single Judge set aside the order dated 01.05.2015 (Annexure P-11), vide which the writ petitioners claim for appointment to the post of Social Studies Masters had been rejected. Resultantly, directions were issued to issue appointment letters to the writ petitioners within a period of three months and if the respondents find difficulty in respect to the vacancies concerned being not available they were to create supernumerary as a one time measure and the appointment orders were to be issued with notional benefits.

3. In **CWP No.24685 of 2014 ‘Phool Kumar Vs. State of Haryana and others’** and **CWP No.2619 of 2015 ‘Anil Kumar Vs. State of Haryana and others’** the petitioners claim similar relief of appointment to the post of Social Studies Masters and challenge has also raised to the speaking order dated 14.11.2014, whereby their claim was

rejected on the ground that there was one year validity of the select list, in view of the observations made on 03.11.2014 in **COCP No.2511 of 2013 ‘Phool Kumar Vs. Chander Shekhar’**. The said cases have been tagged in view of the order passed since reliance was being placed on the judgment already passed.

4. The learned Single Judge while allowing the writ petitions came to the conclusion that the writ petitioners were in the waiting list and the ones’ who were reflected in the main list did not report for duty within 15 days and therefore, the wait list being in operation for a period of one year, the official respondents had time to fill up the 35 vacancies between 24.11.2012 to 05.06.2013. On account of lack of reasons for not operating the wait list, the object of preparing the select list had been defeated and, therefore, 35 candidates had been denied the right to seek appointment. It was also noticed that ones who had not reported for duty had been issued show cause notice for cancellation of appointment to the post of Social Studies Masters on 12.08.2014 (Annexure P-10).

5. The defence as such that the posts had become surplus was only as per the data which was available on 10.03.2015 and not regarding the vacancies of 2009 advertisement. Therefore, the reasoning given that on account of the Right of Children to Free & Compulsory Education, 2009 coming into force, the writ petitioners were not liable to be accommodated and were held to be not acceptable and it was only a lame excuse for not appointing the writ petitioners.

6. We are of the considered opinion that the learned Single Judge was well justified in coming to the said conclusion and the State in its usual manner has tried to defend its lack of action and stonewall the rights of persons who underwent the recruitment process and were

successful to the extent of having got their names on the waiting list upto Sr. No.1. On account of their inaction and for lack of justifiable reasons, we are of the considered opinion that the argument raised by the State that there is only a right of consideration and a right of appointment while relying upon the judgment passed in **Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47** rather is against them in the facts and circumstances. Relevant observations of the said judgment 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.”

7. Thus, what has to be seen from the facts and circumstances whether the State has acted in an arbitrary manner and the decision not to fill up the vacancies is not with the bonafide or appropriate reason. Therefore, on that account the learned Single Judge was well justified in coming to the conclusion that the right of appointments has to be considered at the time wait list was in operation and not a subsequent

event which is not sought to be put up which, which also in the facts and circumstances we feel is not justified, since a contrary stand has been taken, which would be clear from the factual aspect which we now shall proceed to discuss.

8. It is not disputed that the advertisement (Annexure P-1) is dated 13.08.2019 bearing No.4 of 2009, whereby 373 posts of Social Studies Masters were sought to be filled up. The result was declared on 31.05.2012 (Annexure P-3) on the basis of the interviews held in the month of May, 2011 by the Haryana Staff Selection Commission (HSSC). Resultantly on 06.06.2012 (Annexure R-1) the HSSC had recommended the candidates for appointment to the post of Social Studies Masters, wherein it was specifically mentioned that the candidates selected in the waiting list were not to be considered against fresh vacancies as validity period of the waiting list was for one year from the date of issuance of letter. It was for the State Government to verify the documents pertaining to the qualifications, experience, age and caste/category etc and their antecedents before issuance of appointment orders.

9. As per the affidavit of the Additional Director Administration-cum-Additional Secretary to Government of Haryana filed, it was averred that letter dated 08.11.2012 was addressed to all the newly selected Social Studies Masters directing them to report to different District Institutes of Education and Training (DIETs) and a public notice was also issued on 09.11.2012. 339 candidates appeared for counseling and appointment orders alongwith place of posting were displayed on the department website and 33 candidates who had been called for counseling through registered letter dated 19.02.2013 were asked to appear on 13.03.2013. When they did not appear for counseling, the appointment

orders were issued to them on 15.03.2013 on account of the non-joining information was received that 35 candidates had not joined their duties, the details of which are given as under:-

Category	Male	Female
General	2	0
SC	14	11
BCA	2	1
ESM/DESM/DFP	3	1
PHC deaf & dumb	1	0

10. It is, thus, the case of the respondents that due to the non-joining of the 35 candidates on 03.03.2014 after seeking extension of the validity of the waiting list since the recommendations were more than one year old, the relaxation was sought from the Chief Secretary for examining the validity of the waiting list. The request was made on 06.05.2014 and the Chief Secretary, Haryana had two queries and sent the file back on 21.05.2014. Thereafter, in pursuance of the instructions dated 08.09.1972 show cause notices were issued to 35 non joined candidates on 12.08.2014 (Annexure P-10), but none of them appeared and another opportunity was given before candidatures were to be cancelled. Only three candidates from the non joined candidates appeared on 29.08.2014 and requested for joining. Resultantly on 13.11.2014 the opinion was given from the Chief Secretary that since there was one year validity period of the main list as well as the waiting list, the same had expired on 05.06.2013.

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 *Ragbir 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.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

01.12.2022
Naveen

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No