

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 15.09.2022
Judgment delivered on : 19.10.2022

+ W.P.(C) 9454/2017

DR. PRAGYA SHUKLA Petitioner

versus

UNION OF INDIA & ANR. Respondents

+ W.P.(C) 10140/2017

DEEPTI SHARMA Petitioner

versus

UNION OF INDIA AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Mahesh Srivastava, Advocate with Mr. Vaibhav Manu Srivastava, Advocate along with Petitioner-in-Person in W.P.(C) 9454/2017.

Mr. R. K. Saini, Advocate in W.P.(C) 10140/2017.

For the Respondents : Ms. Bharathi Raju, CGSC with Mr. Ruchir Mishra and Mr. Mukesh Kr. Tiwari, Advocates for UOI/R-1.

Mr. T. Singhdev, Ms. Raman Preet Kaur, Ms. Michelle B. Das, Mr. Abhijit Chakravarty and Mr. Bhanu Gulati,

Advocates for NMC.

Mr. Naresh Kaushik, Advocate for UPSC in
W.P.(C) 9454/2017.

Mr. Vijay Joshi, Senior Panel Counsel for
UOI with Mr. Anirudh Shukla, and Mr.
Gurjas Singh Narula, Advocates for UOI/ R-
1.

Mr. Naresh Kaushik, Advocate for UPSC in
W.P.(C) 10140/2017.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

W.P.(C) 9454/2017

1. The petitioner challenges the impugned judgment dated 23.05.2017 in OA No. 4690/ 2014 and Order dated 10.08.2017 in RA No. 181/2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal"), whereby the aforesaid OA of the Petitioner was dismissed.

2. By way of an application bearing CM No. 42645/2017 under Order 1 Rule 10 of CPC, filed by the Petitioner, this Court vide Order dated 08.01.2018 permitted the erstwhile Medical Council of India now National Medical Commission, to assist the Court at the time of

hearing of arguments. The Medical Council of India is hereinafter referred to as “MCI” for convenience.

3. The facts involved in the present case, capitulated in the impugned order, are as under:-

A. The Union Public Service Commission-Respondent No.2 (hereinafter referred to as “UPSC”) issued Advertisement No. 15/2013 published in Employment News dated 12-18 October, 2013 inviting online recruitment applications for recruitment by selection for various posts including 14 posts of Assistant Professor (Radiotherapy) in the Ministry of Health and Family Welfare (Vacancy No.13101509112 at serial number 9). Out of the 14 posts, 2 were reserved for SC, 1 for ST and 4 for OBC. Remaining 7 posts were for unreserved category. For selection/ recruitment to the said post, following qualification/experience was prescribed:

"QUALIFICATIONS: ESSENTIAL:

A. EDUCATIONAL:

(i) A recognized medical qualification included in the First or the Second Schedule or Part-II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part-II of the Third Schedule should also fulfil the conditions stipulated in sub-section (3) of section 13 of the Indian Medical Council Act, 1956. (ii) Post Graduate degree in the

*concerned speciality i.e. MD (Radiotherapy), D.M.R.T. or equivalent diploma of two years duration or equivalent.**The candidate holding DNB qualifications would need to get their qualification verified by NBE as whether it is as per the recruitment of the Gazette notification No.MCI-12(2)/2010-Med.Misc. dated 11.6.2012 and produce such verification certificate at the time of interview. B. EXPERIENCE: Three years' teaching experience in the concerned specialty as Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite Postgraduate qualification. [Teaching experience in any other post like the post of General Duty Medical Officer/Medical Officer shall not be considered for eligibility purpose for recruitment to teaching posts]."*

4. The petitioners in both the OA's before the Tribunal, claiming to be possessed of the requisite qualifications and experience, applied for the post of Assistant Professor (Radiotherapy) under the General category. It is stated that the results were published in the Employment News of 27 September – 03 October, 2014 for the post of Assistant Professor (Radiotherapy), Teaching Specialist Sub-Cadre of Central Health Services, Ministry of Health and Family Welfare. The name of Dr. (Ms.) Pragya Shukla (OA No.4690/2014) was at number 4 out of the 8 recommended candidates. The petitioner was intimated vide communication dated 07.08.2014 that her name was recommended to the Ministry of Health and Family Welfare for appointment to the post of Assistant Professor (Radiotherapy). Para 2 of the said communication, however, contained a stipulation that the

offer of appointment would be made only after the Government have satisfied themselves after such enquiry as may be considered necessary that the applicant was suitable in all respects for appointment to the service. Other good mental and bodily health and physical capacity etc. were also made conditions for such appointment. The petitioner, Dr. Deepti Sharma in OA No.3974/2015 was at serial number 13 of the list in general category. One Dr. Savita Arora was placed second in the reserve list as per the result uploaded on the website of UPSC. The said Dr. Savita Arora challenged the appointment of the applicant Dr. Pragya Shukla by filing OA No.2818/2014. The Tribunal passed interim order dated 19.08.2014 to the effect that any appointment shall be subject to the outcome of the said OA. While the said OA was pending, the respondents issued letter dated 12.12.2014 cancelling the candidature of the applicant and withdrew the intimation letter dated 07.08.2014. It is this letter which was subject matter of challenge in OA No.4690/2014 and the present W.P.(C) No. 9454/2017.

5. The Petitioner/Pragya Shukla (W.P.(C). No.9454/2017), in her OA 4690/2017 sought the relief of quashing of the cancellation of her candidature vide letter dated 12.12.2014 issued by the UPSC and consequentially that her appointment to the post of Assistant Professor (Radiotherapy) be confirmed as per letter dated 07.08.2014. Whereas Dr. Deepti Sharma, Petitioner in WPC No. – 10140/2017, in her OA NO. 3974/2015 sought the relief of reassessment of her candidature in the light of disqualification of Dr. Sweety Gupta, Dr, Pragya Shukla

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and Dr. Asmita Jain and to revise the waiting list of the candidates to include the names of other qualified candidates including her who did not form part of the reserve/wait list. Dr. Deepti Sharma also sought offer of appointment to the post of Assistant Professor (RT) in case other candidates in the waitlist above her not being found suitable.

6. The factual narration as brought out in the impugned order by the Tribunal is not disputed. However, after perusing the records, we are of the view that, the questions requiring determination would be as under:-

(i) Whether the teaching experience of the Petitioner/Dr. Pragya Shukla vis-à-vis the experience stipulated under the Advertisement no. 15/2013 dated 12 - 18.10.2013 published in the Employment News is valid in terms of Central Health Services Rules(CHS) 1996.

(ii) Whether the Minimum Qualification for Teachers in Medical Institutions Regulations 1998 framed by the MCI(now National Medical Commission) under Section 33 of Indian Medical Council Act, 1956 would prevail over the CHS RULES 1996 or 2014 ?

7. Mr. Mahesh S., learned counsel for the Petitioner/Pragya Shukla submits that she had fulfilled the essential qualifications with respect to Educational requirements being MD in Radiotherapy and according to him, the Petitioner also fulfilled the essential experience as stipulated in the advertisement of three years experience in the concerned specialty as Senior Resident after the requisite PG Degree

Qualification. He further submits that the Petitioner/Pragya Shukla had, in the Application Form, submitted that her experience in the Delhi State Cancer Institute from 22.11.2011 – 31.10.2013 is 1 year 11 months and 10 days coupled with her experience in Tata Memorial Hospital, Mumbai from 01.08.2009 – 31.07.2011, which is two years. Consequentially, he submits that the total experience gained by the Petitioner/Pragya Shukla would be 3 years 11 months and 10 days. Learned Counsel submits that Petitioner/Pragya Shukla fulfils the essential experience as stipulated in the advertisement which, he submits, was based on the Central Health Services Rules, 1996 (in short, ‘CHS Rules’). Thus on the basis of the above, learned counsel submits that, the withdrawal of the letter dated 07.08.2014 and cancellation of her candidature by UPSC vide letter dated 12.12.2014 is arbitrary, whimsical, unjust, unconstitutional, and contrary to the statutory rules resulting in violation of her fundamental rights and ought to be quashed and appropriate direction to implement the terms of the letter dated 07.08.2014 be issued.

8. Comparing the condition (iii) of the Teaching Specialist Sub Cadre Post (II) of Schedule-III of the CHS Rules 1996 with that of the amended Rules of 2014, Learned Counsel submits that the words “.....in a **recognized teaching institution** after obtaining the *first post graduate degree.*”, have been added by way of amendment in CHS Rules 2014 and were conspicuous by their absence in 1996 Rules. This, learned counsel submits, is the essential difference between the rules of 1996 and those of 2014. Since the notification

was published in the month of October 2013, the amendment as inserted in the 2014 Rules would not be applicable to the case of the Petitioner/Pragya Shukla. Looked at from that point of view, Learned Counsel submits that Petitioner/Pragya Shukla fulfils the essential criteria and therefore her candidature could not have been cancelled.

9. Learned Counsel draws attention to “ANY OTHER CONDITIONS” of the Advertisement No. 15/2013 which stipulates that, *“the other conditions of service will be laid down in CHS Rules, 1996, and other rules enforced from time to time in particular.”* Having regard to the above, learned counsel submits that it is clear that in the present case the condition stipulated under the CHS Rules 1996 alone would be applicable and the Respondents are precluded from referring to either the CHS Rules 2014 or the MCI Regulations of 1998 prescribing the minimum qualifications. In that view of the matter, Learned Counsel submits that the impugned order needs to be quashed and set aside.

10. Learned counsel refers to the letter dated 07.06.2017 issued by the MCI in response to the query raised by Petitioner/Pragya Shukla vide her letter dated 25.04.2017 to submit that even the MCI had confirmed that the academic qualifications of Petitioner/Pragya Shukla meet the eligibility criteria as prescribed in its regulations on Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 as amended from time to time. Thus, learned counsel submits that the contention of Petitioner/Pragya Shukla gets

reiterated and fortified by the aforesaid reply dated 07.06.2017 and there is no way the Respondents can refuse the relief sought. He further relies upon the judgment rendered by the Supreme Court in *State of Bihar vs. Dr. Asis Kumar Mukherjee and Ors., 1975(3) SCC 602.*

11. Opposing the arguments of the petitioner, learned counsel for MCI, Mr. T. Singhdev submits that MCI Regulations of 1998 prescribe the Minimum Qualification for Teaching Posts and are mandatory in nature given the fact that the same are promulgated in accordance with Section 33 of Indian Medical Council Act, 1956 (in short, 'IMC Act'). He further submits that this power under Section 33 is further derived from Entry 66 of List 1 of Schedule VII of the Constitution of India conferring authority and jurisdiction upon the Union to prescribe qualification in respect of higher education. Therefore, in pursuance of the Constitutional mandate, the Legislature has prescribed and brought into force the *Minimum Qualification for Teachers in Medical Institutions Regulations 1998*, as amended from time to time.

12. Learned counsel further submits that in the present case, there is no contradiction between 1996 or 2014 Rules except that 2014 Rules prescribe three years teaching experience from a recognized teaching institution i.e. recognized Medical College. This, he submits is in consonance with the Regulations of 1998.

13. Learned counsel also submits that once the Minimum

Qualification Regulations were notified and brought into force pan India, no Medical College or Institution can continue with imparting Medical Education, except in accordance with those regulations. If they do, then such qualifications are treated as invalid. Keeping this in mind, learned counsel submits that the distinction sought to be drawn between 1996 & 2014 Rules, regarding recognized or unrecognized institutions, gets obliterated in as much as, the regulations would be deemed to be holding the field and anything to the contrary would be invalid. Therefore, in the present case, the teaching experience, if any, of the Petitioner/Pragya Shukla in Delhi State Cancer Institute would not be countable for qualifying as teaching experience for the post of Assistant Professor (Radiotherapy).

14. In so far as the letter dated 07.06.2017 is concerned, learned counsel submits that the same was issued in respect of the teaching experience gained by the Petitioner/Pragya Shukla during PG, which, as per the MCI Regulations, would qualify for the post of Assistant Professor (Radiotherapy), subject to other essential conditions. It was not relatable to the alleged Teaching experience claimed to have been obtained by Petitioner/Pragya Shukla in Delhi State Cancer Institute. Moreover, the aforesaid letter dated 07.06.2017 does not enure to the benefit of the Petitioner in the present case, since, UPSC in its advertisement is seeking a higher qualification/experience which the Petitioner does not possess i.e., 3 years teaching experience in the subject as Resident after obtaining the said post graduate qualification.

15. Lastly, learned counsel submits that Delhi State Cancer Institute is not a teaching institution recognized by the MCI and therefore, the experience gained therein is, not valid for this post and referred to the letter dated 08.08.2014 whereby MCI has clearly stated that Delhi State Cancer Institute is not a teaching institution recognized by MCI.

16. Ms. Bharathi Raju, supports the impugned order and also adopts the arguments put forth by the MCI.

17. Petitioner in rebuttal submits that the 1996 Rules do not prescribe a 'recognised college' and therefore as per the 1996 Rules, the Teaching experience of 1 year 11 months and 10 days gained in Delhi State Cancer Institute ought to be counted and so counted, Petitioner/Pragya Shukla would be eligible for the post of Assistant Professor (Radiotherapy).

18. We have considered the facts, the arguments put forward and the position of law as obtaining on the date of the advertisement and do not agree with the contentions urged on behalf of Petitioner/Pragya Shukla.

In re: Question No.1

19. This issue need not detain us for long since what is essential to perceive is that the Rules prescribe three years teaching experience '**after Post Graduation**'. So perceived, there is no contradiction between 1996 and 2014 Rules. In fact, if the word 'after' is taken into consideration, then the 1996 Rules, the 2014 Rules and the 1998

Regulations as amended from time to time, carry the same connotation. Resultantly, it is only the three years Teaching Experience obtained after PG is successfully completed that enures towards the essential teaching experience. Therefore, any teaching experience during PG is irrelevant for the subject post and thus there cannot be any controversy to that. The word 'after' contained either in 1996 Rules, the Advertisement No. 15/2013 dated 12 - 18.10.2013 as also the 2014 Rules, has the same effect.

20. This brings us to the next contention urged on behalf of the Petitioners that it is only the 2014 Rules that brought in 'recognized medical college' which was absent in 1996 Rules and therefore even if Delhi State Cancer Institute is not a recognized Medical College, there is no bar in counting the experience gained therein as teaching experience for the post of Assistant Professor (Radiotherapy). There are two answers to that, *firstly*, that in the year 1998, the Minimum Educational Qualification Regulations had been notified which would take precedence in so far as Medical Education is concerned and as such from the time of such notification, the presumption that teaching experience should be obtained in a recognized medical college gets enforced and anything to the contrary ought to be negated; *secondly*, MCI has categorically submitted that Delhi State Cancer Institute is not equal to a recognized medical college or institution teaching medical education and therefore, teaching experience gained during the employment or Residency there, would be ineligible to be considered as qualified teaching experience. Learned counsel for the

Petitioner/Pragya Shukla does not dispute this factual situation. Thus, either which way one looks at this situation, the teaching experience gained by the Petitioner/Pragya Shukla at Delhi State Cancer Institute would not count towards eligibility of three years teaching experience as required under advertisement or Rules.

21. Thus, the experience gained by the Petitioner in Delhi State Cancer Institute cannot be counted towards the essential experience in so far as the subject post is concerned as per the advertisement 15/2013 dated 12-18.10.2013. In view of this, the Petitioner/Pragya Shukla cannot be held to be qualified for the post of Assistant Professor (Radiotherapy) and the Authorities below rightly recalled letter dated 07.08.2014 and correctly cancelled the candidature vide their letter dated 12.12.2014.

22. Insofar as the judgement of the Supreme Court in State of Bihar & Ors. Vs. Asis Kumar Mukherjee & Ors. reported in (1975) 3 SCC 602 is concerned, the rules, namely the CHS Rule 1996, the Regulations of 1998, as well as the CHS Rules 2014 were not examined by the Supreme Court as the said decision was rendered in the year 1974 on the facts and the position of law obtaining as on that date and thus the Petitioner cannot derive any advantage of the observations made therein. In any case, ultimately the Supreme Court had only passed directions to the competent authority to examine and consider the qualifications. Moreover, the Regulations of 1998 were notified in exercise of power under Section 33 of the IMC ACT 1956,

read with Entry 66 List 1 of Schedule VII of the Constitution of India.

23. So far as Question No.2 is concerned, this too, is purely academic now in view of our conclusion with respect to question no.1 in as much as the deficiency in Rules of 1996 have been notified by amendments carried out by way of 2014 Rules and align them with the Minimum Qualification Regulations, 1998 of the MCI. Thus, the question as framed being academic is left open. The judgments referred to, cited by learned counsel for MCI, need not be delved into having regard to the question being academic and as such, are not quoted herein.

24. Thus the present writ petition is dismissed with no order as to costs.

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25. In the present matter, Petitioner/Deepti Sharma impugns judgment dated 23.05.2017 passed in O.A. No.3974/2015 alongwith judgment dated 16.08.2017 passed in RA No.184/2017 in O.A. 3974/2015 whereby the Tribunal had dismissed the O.A. and subsequent Review Application, denying the relief of revision of waiting list of candidates and re-assessment of the candidature of the Petitioner/Deepti Sharma, sought by the Petitioner, in the light of disqualification of Dr. Sweeti Gupta, Dr. Pragya Shukla and Dr. Asmita Jain from the appointment to the subject post.

26. Mr R K Saini, Learned counsel for the Petitioner/Deepti

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Sharma submits that present petition stems out of the result of the above mentioned petition bearing W P (C) No.9454/2017 instituted by Dr. Pragya Shukla and the fate of Petitioner/Deepti Sharma for the appointment to the subject post emerges from the disqualification of the selected candidates for the subject post. Learned counsel at the very outset contended that the Petitioner/Deepti Sharma is not seeking inclusion of her name in the Reserve/Wait List after it has been finalized or to recommend her candidature beyond the Reserve/Wait List. What the learned Counsel submits is that contingent upon the dropping of the three names (two from the main list and one from the wait list) the position of Petitioner/Deepti Sharma would automatically change from 13 to 10 and thus the petitioner would be deemed to become Wait List candidate no.3 in the panel and as a result of the above deeming fiction, become eligible for appointment to the left over vacancies of the subject post. However, Learned Counsel very fairly concedes that the petitioner/Deepti Sharma was never part of the reserve/Wait List.

27. Learned counsel for the Petitioner argued that after cancellation of the candidature of two persons in the main list, the names of two available candidates from the reserve list i.e., Serial Nos.8 and 9 were released (which means that they became part of the main list) and were issued offer of appointment. It is further submitted by the learned Counsel that subsequently the name of one more person from the reserve list i.e. Dr. Akhilesh Mishra (Sr. No.11) was released in place of a candidate (out of 7 to whom offer of appointment was

issued) who did not join.

28. Learned Counsel further submitted that actually 3 candidates out of 7 from the original select List (after issuance of offer of appointment) did not join. On that basis, learned counsel submits that as such, names of two more persons from the Reserve/Wait list could have been released from the reserve list in their place. However, he submits, that the Respondent UPSC declined to do so on the ground that there were no more available candidates in the wait list/reserve list. He submits that the respondent-UPSC completely overlooked the fact that two names out of the reserve list already stood shifted to the main list and candidature of one wait list candidate (out of 4) stood cancelled and consequently next 3 names from the select list were liable to be treated as part of the wait list of 4 and as such after recommendation of Dr. Akhilesh Mishra (Sr. No.11), the names of next 3 candidates beyond the Reserve/Wait List i.e. No.12 Dr. Ruchi Sharma and No.13 Dr. Deepti Sharma (Petitioner) were available to be released against the two more vacancies caused on account of non-joining of two originally selected candidates after issuance of appointment letter like that of Dr. Ritesh and Dr. Anish Bandhopadhyay.

29. Learned counsel for the Petitioner further argued that life of the panel is one and half years and cancellation of the candidature of 3 persons (2 out of 7 in the main and 1 out of 4 in the wait list) as well as the cancellation of appointment of the 03 recommended candidates

on account of non-joining/surrendering the post - all happened during this period.

30. Learned counsel for the Petitioner lastly argued that the subject recruitment process for the post of Assistant Professor (Radiotherapy) has taken place after a period of 12 years and the Petitioner/Deepti Sharma is presently aged about 38 years and she will be over-age by the time the next recruitment takes place as the maximum age for the post is 40 years.

31. *Per contra*, Mr. Naresh Kaushik, learned counsel for the UPSC submits that in the instant Recruitment case, the Commission recommended 10 candidates (07-Gen, 01-OBC, 01-SC & 01-ST) against the requisition for 14 posts (07-Gen, 04-OBC, 02-SC and 01-ST) of Assistant Professor in Radio Therapy and 04-Gen candidates were kept in Reserve List. The remaining 4 posts (01-SC, 03-OBC) became infructuous. Subsequently, on the basis of a representation, the Ministry examined the candidature of 03 candidates in consultation with MCI and it was found that 03 candidates (02 in the recommended list and 01 candidate in Reserve List) do not have recognized experience for the post of Assistant Professor (Radio Therapy). Accordingly, their candidature was cancelled and in their place, 02 candidates were released from Reserve List. Subsequently, 01 more available candidate has been released from reserve list in place of a candidate who did not join. Thus, the reserve list had already been exhausted after release of 03 names from it. Learned

counsel further submits that the petitioner in the present case was, admittedly, not even part of the Reserve/Wait List and therefore, had no right as such even for consideration at all what to talk of consideration for appointment.

32. Learned counsel argued that there is neither any precedent nor any guidelines to include more names in the reserve list after it has been finalized by the Commission or to recommend candidates beyond the Reserve List after it is finalized. Learned counsel further submitted that vacancies created due to non-joining of the candidates will have to be carried forward for subsequent vacancies for which fresh advertisement will be issued on receipt of request from the Ministry of Health and Family Welfare and thus argued that considering such request from the candidate for recommending candidates beyond the Reserve List would open a pandora's box as many similar requests may pour in from the candidate in other recruitment cases.

33. We have examined the issue raised by the petitioner/Deepti Sharma and are of the view that the present petition is devoid of merits and merits dismissal.

34. It is an admitted case of the petitioner that she is not part of the Reserve List and is way down in the merit as is clear from the Table as furnished by the respondent-UPSC in its reply to a query raised by the petitioner under the RTI Act which is extracted hereunder:

“LIST OF CANDIDATES INTERVIEWED

S.No.	Name of the candidate	Category	Roll No.	Marks obtained
1.	Dr. Anurita Srivastava (DOB : 24.07.1975)	Gen	05	75
2.	Dr. Sweety Gupta (DOB : 13.08.1976)	Gen	26	75
3.	Dr. Ritesh Kumar Pasricha (DOB : 06.02.1971)	Gen	18	70
4.	Dr. Anis Bandyopadhyay (DOB : 20.01.1976)	Gen	04	70
5.	Dr. Pragya Shukla	Gen	15	67
6.	Dr. Vikash Kumar	Gen	28	66
7.	Dr. Jaspreet Kaur	Gen	11	65
8.	Dr. Vikas Yadav	Gen	27	64
9.	Dr. Savita Arora	Gen	23	62
10.	Dr. Asmita Jain	Gen	06	60
11.	Dr. Akhilesh Mishra	Gen	02	58
12.	Dr. Ruchi Sharma	Gen	20	54
13.	Dr. Deepti Sharma	Gen	09	53
14.	Dr. Deepak Kumar Mittal	Gen	08	52
15.	Dr. Agrawal Prachikumari Pushkar	Gen	01	51
16.	Dr. Puja	Gen	16	50
17.	Dr. Chiniraj R.	OBC	29	49
18.	Dr. Ramaiah Vinay Kumar	ST	41	49
19.	Dr. Vikas Madholl	SC	40	42
20.	Dr. Rajendra Singh	OBC	33	40
21.	Dr. Babita Bansal	SC	36	35
22.	Dr. Karuna Singh	SC	38	34

It is clear from the above table that the petitioner in the present case is neither falling within the merit as required under the Advertisement No.15/2013 nor within the zone of consideration being beyond even the Reserve/Wait List candidates and therefore, the petitioner clearly has no right of consideration at all.

35. That apart, the arguments urged on behalf of the petitioner are clearly speculative and are contingent upon the cancellation of the candidature of other meritorious candidates or those in the Reserve/Wait List. The whole substratum of the petitioner's case hinges on the spectrum of "*if's and but's*" and contingent upon certain things happening. In the service jurisprudence there is no principle of a "*Wait List*" to a "*Wait List*". Therefore, even taking the case of the petitioner at its best, there is no way a candidate, not even forming a part of the Reserve/Wait List, urge to have any right whatsoever for being considered.

36. Moreover, as per the settled service jurisprudence, there is sanctity to a reserve/wait list and it is solely due to such reasons that the candidates falling within such list may be considered for appointment against vacancies created due to non-joining of the original select list candidates. Though, the caveat being that the prerogative is still that of the user department or the agency carrying out the selection procedure. A word of caution being that no candidate has an indefeasible right to appointment and only to consideration

alone. It is trite that it is the prerogative of the Government/department to fill or not fill all the vacancies.

37. The attempt of the petitioner to climb the ladder upwards, based on the speculative and contingent situations, cannot be permitted inasmuch as it would bring to fore all those candidates who were beyond the Reserve/Wait List opening a Pandora's box and flood gates choking the recruitment procedure and resulting in a tsunami of litigations. This is impermissible.

38. It is also irrelevant to consider the qualifications of the petitioner, though no attempt was made by the petitioner to urge the same, inasmuch as, no candidate beyond the ones falling within the Reserve/Wait List can even have a right of consideration.

39. This Court cannot also countenance a situation where, under writ jurisdiction, a direction or Mandamus may be issued to the respondent to fill up the vacancies with candidates who are lower in merit and to select persons with mediocre results. The substratum to hold competitive examinations and to select the best and meritorious candidates would be defeated.

40. Learned counsel for the petitioner/Deepti Sharma very fairly conceded that there is no authority or precedent in favour of the proposition put forward that candidates not falling even within the Wait List can be considered for appointment. In other words, there cannot exist a 'wait list' to a 'wait list'.

41. In view of the clear admission of the petitioner that she never formed part of the Reserve/Wait list and the arguments put forth, being based on speculations and contingencies, are untenable and are hereby rejected.

42. In view of the above, the present writ petition is also dismissed without any order as to costs.

TUSHAR RAO GEDELA, J

SANJEEV SACHDEVA, J

OCTOBER 19, 2022

piyush/nd/yg

