

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

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**CWP-2104-2023 (O&M)
Reserved on:- 03.02.2023
Pronounced on: 08.02.2023**

SUDHA

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Shivam Malik, Advocate
for the petitioner.

HARNARESH SINGH GILL, J.

By way of the instant petition, the petitioner seeks issuance of a writ in the nature of Certiorari quashing the impugned order dated 24.12.2020 (Annexure P-22), vide which the claim of the petitioner for appointment to the post of Post Graduate Teacher (PGT) Biology, was rejected by respondent No.3-Haryana Staff Selection Commission (hereinafter referred to as 'the Commission').

Learned counsel for the petitioner submits that the Commission vide advertisement No.1/2012 dated 07.06.2012, had advertised various posts of Post Graduate Teacher–HES-II (Group-B Services), including 760 posts of PGT (Biology); that the petitioner had applied for the said post online, under the General Category; that, on 16.07.2012, the Commission circulated instructions with regard to verification/scrutiny of the documents-cum-interview; that on 19.09.2012, the commission issued a notice for conducting

verification/scrutiny of the documents-cum-interview; that the petitioner was called for the documentation/scrutiny of the documents on 30.10.2012 and that as per the criteria, 67 marks were earmarked for academic qualifications and 33 marks for the interview. He further submits that the final list for the posts in question was declared on 23.06.2014 and that grievance of the petitioner is that no waiting list was prepared by the Commission, which otherwise is required, as per Rules. Still further, it is submitted that the cut-off marks of the last selected candidate under the General Category were 57.83 marks, whereas the petitioner had secured 57.73 marks and that had there been the waiting list, the petitioner would have been in the zone of consideration, as some posts of PGT Biology are still lying vacant in the Department due to non-joining of the selected candidates. It is, thus, contended that the legal right of the petitioner has been infringed because of non-preparation of the waiting list by the Commission.

Learned counsel for the petitioner further submits that respondent No.2 had proceeded to cancel the candidatures of 135 candidates by issuing notices to them, on the ground of them having acquired decrees from the Deemed Universities and besides that, more than 100 candidates were overage and another 100 were having bogus certificates.

Learned counsel for the petitioner, while relying upon the letter dated 20.01.1988, of the Chief Secretary to Government of Haryana, submits that a conscious decision has already been taken by the

competent authority that main list as well as the waiting list shall be prepared by the Subordinate Services Selection Board and the said waiting list shall be valid for a period of one year from the date of recommendations. Further, while relying upon the instructions dated 28.10.1993 of the Haryana Public Service Commission, learned counsel for the petitioner submits that waiting list is to be mandatory prepared by the Department.

Learned counsel for the petitioner submits that, since no waiting list was prepared, the petitioner preferred CWP-14169-2014; that the said writ petition was tagged with a bunch of other similar writ petitions and that the said petitions were decided by the Coordinate Bench of this Court on 13.11.2017, holding that the petitioner along with the other similarly situated candidates, will be entitled to appointment against the vacant seats, which were never consumed and it was ordered that appointment letters be issued, in terms of the merit vis-a-vis all the candidates, within a period of two months. The relevant extract from the judgment dated 13.11.2017, would read as under:-

'Resultantly, this Court is of the opinion that the petitioners would be entitled for appointment against the vacant seats which were never consumed being in the zone of consideration and accordingly, the writ petitions are allowed. The petitioners shall be offered appointment letters and the State should operate the merit list in the respective categories in the subjects of

English, Hindi, and Biology. In case there are persons senior in merit than the petitioners, they will firstly be offered the said posts and in case the vacancies still exist, the petitioners will be accommodated. The necessary exercise be concluded within a period of two months from the date of receipt of certified copy of the judgment'.

Learned counsel for the petitioner further submits that aggrieved against the judgment dated 13.11.2017, the respondent-Department preferred an LPA-2435-2017, which was disposed of by the Hon'ble Division Bench of this Court on 23.08.2018. The relevant part whereof reads as under:-

'There is indeed no doubt that even if the respondents had been selected on merit and were within the zone of the advertised vacancies, it would not confer a right upon them to claim appointment. As an extension of that logic they being next in merit list to those selected would also have no right to claim appointment. The only direction that the Writ Court could have given considering the vacancy positions and the respondents being next up in merit after the selected candidates, was that they ought to be considered by the State for appointment.

Learned Single Judge committed a wrong in saying that the respondents are entitled for

appointment which binds the appellant to a mandate.

Therefore, we only clarify the order of learned Single

Judge to mean that the private respondents be

considered for appointments in view of the existing

vacancies.

All appeals stand disposed of in above terms'.

Learned counsel for the petitioner further submits that now the respondent-Department has passed the order dated 24.12.2020 (Annexure P-22), rejecting the claim of the petitioner, which is impugned herein.

I have heard the learned counsel for the petitioner.

There is no dispute that the petitioner had cleared the written test and was called for documents verification-cum-interview on 30.10.2012. The last selected candidate in the General Category had secured 57.83 marks, whereas the petitioner had secured 57.73 marks.

The case of the petitioner was duly considered by the respondent-Department and the same was rejected vide the order impugned herein. The posts in question are Group-B Posts and it has specifically been mentioned in the impugned order that at the time of advertisement of the posts in question, instructions dated 01.07.2008 issued by the Chief Secretary, Government of Haryana, were applicable, wherein it was categorically mentioned that there was no requirement to maintain waiting list in respect of Group-B Posts. The relevant extract of the letter dated 01.07.2008, is as under:-

*'..... In view of this, the Government does not
fell the necessity of maintaining any waiting list, in
respect of Group-B posts'.....*

The judgment dated 13.11.2017 passed by the Single Bench of this Court, vide which the petitioner along with other similarly situated candidates were held entitled to appointment, subject to the availability of the vacancies and the State was directed to operate the merit list in the respective categories in the subjects of English, Hindi, and Biology. As noticed above, the Hon'ble Division Bench in LPA-2435-2017, while clarifying the said directions of the Single Bench had observed that the writ petitioners be considered for appointment in view of the existing vacancies.

The Hon'ble Supreme Court in Civil Appeal No.2473-2022 titled as Vallampati Sathish Babu vs State of Andhra Pradesh and others, decided on 19.04.2022, has held as under:-

*8. Now, the submission on behalf of the appellant
that as per sub-rule (5) of Rule 16, all the 33 posts
notified are required to be filled is concerned, the same
has no substance. Sub-rule (5) of Rule 16 is required to
be read as a whole and in its entirety and the same is
required to be read along with the Guidelines issued.
What is provided under sub-rule (5) of Rule 16 is that
the number of candidates selected shall not be more
than the number of vacancies notified. However, it*

further provides that there shall be no waiting list and posts, if any, unfilled for any reason whatsoever shall be carried forward for future recruitment. Therefore, there shall not be any appointment of more than number of vacancies notified but that does not mean to prepare and operate the waiting list, which otherwise is specifically not provided for under the Rules, 2012.

8.1 An identical question came to be considered by this Court in the case of Suresh Prasad and Ors. (supra). In the said decision, it is specifically observed and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court has been subsequently followed by the Andhra Pradesh High Court in the case of Samiula Shareef and Ors. (supra).

9. *Applying the law laid down by this Court in the case of Suresh Prasad and Ors. (supra) to the facts of the case on hand and considering the statutory provisions contained in Rule 16 of the Rules 2012 read with the Guidelines, we are of the view that the appellant cannot claim appointment on the unfilled vacancy being next below the candidate in the merit list. If the submission on behalf of the appellant is accepted, in that case, it will lead to providing for preparation of a waiting list, which otherwise is not permissible as per sub-rule (5) of Rule 16. If the same is permitted, in that case, it will be directing the respondents to act contrary to the statutory provisions. Therefore, the High Court has not committed any error in refusing to appoint the appellant to the post which remained unfilled due to one of the selected candidates in the final selection list not appearing for counselling. The impugned judgment and order passed by the High Court is absolutely in consonance with the relevant statutory provisions with which we agree.*

In view of the above discussion and for the reasons stated above, present appeal fails and the same deserves to be dismissed and is accordingly

dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs'.

Further, the Hon'ble Supreme Court in Appeal (Civil) No.6084-1998 titled as Bihar State Electricity Board vs Suresh Prasad and others, decided on 25.02.2004, has held as under:-

'We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash Vs. Union of India (supra) it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such 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. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. In the present case pursuant to the direction of the High Court dated 23.3.1994, the appellant took steps for filling up 25 vacancies in the post of Operators from advertisement No. 3/86 and the remaining 25 vacancies from

advertisement No. 6/92. The results were notified on 29.4.1994 on the notice board. The Board recommended names of successful candidates under advertisement No. 3/86 and advertisement No. 6/92. Out of 22 candidates selected by the Board for appointment under advertisement No. 3/86, 18 candidates did not turn up. At this stage it is important to note that respondent Nos. 1 to 7 had applied for appointment under advertisement No. 3/86 dated 15.12.1986 and they had qualified but they were placed at serial no. 23 onwards in the descending order. As stated above a panel of 22 candidates was prepared for appointment under advertisement No. 3/86 and respondent Nos. 1 to 7 fell beyond cut off number. We are not shown any statutory recruitment rules which require the Appellant-Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of respondent Nos. 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard. In our view, the judgment of this Court in the case of Shankarsan Dash Vs. Union of India (supra) squarely applies to the facts of this case.

*Further there was no infirmity in the judgment of this Court delivered on 4.12.1998 and in our view with respect there was no need to recall the said judgment. Before concluding we may state that the judgments of this Court in [Jai Narain Ram v. State of U.P. & Ors.](#) and *Purushottam v. Chairman, MSEB (supra)* have no application to the facts of this case.*

In the result, the appeal is allowed and the impugned orders of the High Court are set aside. Consequently, CWJC Nos. 3732/95 and 9213/95 are dismissed.

In the facts and circumstances, the parties are directed to bear their own costs'.

In the advertisement under challenge, there is no provision regarding the waiting list and thus, in the absence of the same, the Department is not bound to prepare the same.

Thus, keeping in view the aforementioned discussion and the settled position of law, as referred above, I find no merit in the present petition.

Dismissed.

08.02.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>