

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

(116)

**LPA-186-2023 (O&M)
Decided on : 02.03.2023**

Dilbagh Singh & others

.....Appellant(s)

Versus

State of Punjab & others

.....Respondent(s)

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

Present:- Mr.Krishan Singh Dadwal, Advocate, for the appellants.

G.S. Sandhawalia, J. :-

1. Consideration in the present appeal is to the order dated 11.01.2023 passed in CWP-412-2015 titled *Kamal Inderjit Singh & others Vs. State of Punjab & others*, filed by the unsuccessful writ petitioners wherein their claim for directions to the respondents to appoint them on the post of Agriculture Sub-Inspector on the strength of being on the merit-list was rejected.

2. The reasoning which prevailed with the learned Single Judge was that the recruitment notice was of 11.11.2011 wherein out of the 238 posts of Agriculture Sub-Inspectors, 109 candidates were selected but only 91 candidates had joined the said posts though 160 candidates had been shortlisted. It was accordingly held that there was no right to force the employer to appoint them as they had never been selected during the whole selection process and keeping in view the fact that the

advertisement notice was 11 years back while placing reliance upon **Mani**

Subrat Jain etc. Vs. State of Haryana & others, 1977 SCC (1) 486, the writ petition was dismissed.

3. Counsel has vehemently submitted that once the appellants were on the merit-list for which a total of 238 posts had been advertised by the Agriculture Department, they had a right of consideration of appointment especially keeping in view the fact that directions had been issued by this Court on an earlier occasion to consider their representations. Reference was made to order dated 11.07.2014 (Annexure P-8) passed in CWP-23696-2013 titled *Satnam Singh & others Vs. State of Punjab & others* and in CWP-1796-2014 titled *Mohinder Pal Singh Vs. State of Punjab & others* wherein the learned Single Judge noticed that the petitioners had approached this Court without submitting any representations or serving any legal notice. Therefore, right was given to move application within 3 months from the said date and the Director, Department of Agriculture, Punjab had been directed to decide the same and pass appropriate order in accordance with law.

4. We are of the considered opinion that there is no such legal enforceable right especially in the background of the present case. It is to be noticed that after getting an order for deciding their representation, the legal notice was served on 15.07.2014 (Annexure P-9). Apparently, the same was not being decided and accordingly, COCP-3203-2014 was filed by Satnam Singh and others who were the writ petitioners on the earlier occasion and had got directions. The learned Single Judge vide order dated 18.11.2014 sought the compliance report from the State since the Director, Department of Agriculture had been impleaded. Resultantly, order date 04.12.2014 (Annexure P-11) was passed by the Director

Agriculture, Punjab which was subject matter of challenge before the learned Single Judge which has now been sought to be impugned.

5. A perusal of the said order would go on to show that the Punjab Agriculture University, Ludhiana had started the process of recruitment and after preparing the merit-list, the same had been sent to the Department. The Selection Committee had then been constituted on 28.11.2014 and it was noticed that 20% of the posts had to be filled up by Degree holders and 80% from Diploma holder candidates. For the Diploma holders, for which we are concerned of General candidates, the vacancies were 109. The candidates at Sr.Nos.1 to 160 had been called and it was noticed that the present appellants were way behind ranging from 168 onwards going upto 205. It was noticed that the appellants had not been called by the Departmental Committee for counseling as six months' time had already elapsed. In similar circumstances, COCP-652-2014 titled *Kulwant Singh Vs. Mangal Singh Sandhu* was decided on 11.12.2014 in favour of the Government by the Contempt Court which was also pertaining to the post of Agriculture Sub-Inspectors in the Agriculture Department by noting that a speaking order dated 06.05.2014 had been passed and there was no mandate and no statutory rules were present for having a waiting list nor a waiting list was prepared.

6. The State, in its reply, through the Joint Director took the plea that after 160 persons, the Departmental Committee did not call the persons beyond that for counseling and there was neither any waiting list. The second counseling had not been done as the 6 months' period had already expired after the first counseling and a speaking order had also been passed.

7. An application bearing CM-547-CWP-2016 was filed for staying the operation of the subsequent advertisement dated 31.12.2015 during the pendency of the writ petition wherein 230 posts of Assistant Sub-Inspectors and 8 posts of Horticulture Inspectors were advertised on the ground that the appellants had a prior vested right of consideration. The reply to the said application by way of status report was that 96 candidates had appeared in counseling and 94 candidates had been given appointment on 04.01.2013 out of the 160 candidates of General Category who were called. The appellants were not called for the counseling as their rank was below the merit-list prepared. A perusal of another affidavit filed would go on to show that it was averred that the second counseling could not be done within 6 months as per the instructions dated 27.07.1989 (Annexure R-1). The wait-list was valid only for 6 months and therefore, the offer could not be made after 6 months. It was also averred that 179 posts of Agriculture Sub-Inspectors had been filled through the Punjab State Service Selection Board in the year 2016.

8. From the above, it would be apparent that the case of the appellants did not fall within the first 160 candidates and thus, they were never called for counseling. Merely because other candidates did not join and out of the 109 posts only 91 candidates had joined could not give them any right to seek and claim appointment as a matter of vested right. It has been time and again held that mere inclusion in the select list does not confer upon the candidate a vested right. Reliance can be placed upon the judgment of the Apex Court in **Punjab State Electricity Board Vs. Malkiat Singh, 2005 (9) SCC 22** which placed reliance upon the Constitution Bench judgment in **Shankarsan Dash Vs. Union of India, 1991 (3) SCC 47**. The said view was followed in **All India SC & ST**

Employees Association Vs. A. Arthur Jeen & others, 2001 (6) SCC 380. Similar view was taken in **State of Orissa Vs. Bhikhari Charan Khuntia, 2003 (10) SCC 144** wherein it was held that mere inclusion in the select list does not create any indefeasible right for appointment in the absence of any arbitrariness. Apparently, from the facts and circumstances, it would be clear that the merit-list had been operated upto 160 candidates and not beyond that and therefore, it is not that any juniors had been appointed and the appellants had been left out nor there was any arbitrariness on the part of the respondents.

9. Recently, in **Commissioner of Police & others Vs. Umesh Kumar, 2020 (10) SCC 448**, the said view has been reiterated. The Apex Court set aside the judgment of the High Court by holding that the names had appeared in the result on account of being revised and Expert Committee had also been set up. A fresh list had come up whereby the respondents had failed to make the cut. Resultantly, it was held that they had no vested right of appointment and mere inclusion in the select list did not confer upon them a vested right.

10. In the present case also, once nobody below 160 in the merit-list had been called. Thus, we are of the considered opinion that the learned Single Judge was well within his right to not exercise the extraordinary writ jurisdiction in the absence of any arbitrary decision taken by the State. Also on account of the fact that there is substantial delay as admittedly the first set of candidates had joined on 04.01.2013 and writ petition had only been filed thereafter in the middle of the year 2013 which was eventually disposed of on 11.07.2014 (Annexure P-8) with direction to decide the representation. The learned Single Judge at that point of time also had noticed that no legal notice or representation

had been given to the Government and the question of limitation had been left open. Therefore, it was also noticed at that point of time that there was delay and that is also one of the grounds for the learned Single Judge not exercising his extraordinary writ jurisdiction.

11. As noticed above, for the subsequent recruitment process of 2016 also, posts have been filled up and as many as 179 posts of Agriculture Sub-Inspectors had been appointed and no interim orders were passed though an application had also been filed opposing the fresh recruitment process. In such circumstances, we are of the considered opinion that there is no scope for interference in the order of the learned Single Judge dated 11.01.2023 keeping in view the settled position of law.

Resultantly, the present appeal stands dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

02.03.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No