

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107

CWP No.13181 of 2023
DECIDED ON: 04.07.2023

Roopdeen

.....Petitioner

VERSUS

State of Punjab and others

....Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mrs. Anju Arora, Advocate, for the petitioner.
Mr. D.K.Singal, Addl. A.G.Punjab

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner by way of the present petition has prayed for issuance of a writ in the nature of certiorari quashing the impugned order dated 08.02.2023 (Annexure P-22) passed by respondent no.3 and quashing the impugned result sheet Annexure P-16.

2. The case of the petitioner is that he had filed a writ petition earlier before this Court vide CWP No.11179 of 2017, wherein he had made similar prayers. It was his case that Diksha Kumari was wrongly placed at no.1 in the select list as she did not possess any experience at all. Interim order was passed in his favour restraining the respondents from appointing the concerned candidate on the post of Peon. Subsequently, she appeared before the Court and stated that she was not interested in joining the post in question. Upon her statement being recorded, the petitioner did not further press the petition and the same

was disposed of accordingly by this Court vide its order dated 25.04.2022 (Annexure P-17). Thereafter, the petitioner submitted a representation to the authorities which remained unanswered and he therefore, filed a fresh writ petition vide CWP No.24308 of 2022 before this Court wherein he again did not press the writ petition on merits and only requested for disposal of his representation with the authorities. This Court, accordingly, disposed of the writ petition with direction to decide the representation after taking into consideration the earlier order passed by this Court dated 25.04.2022 (Annexure P-17).

3. Respondents thereafter, considered the representation and passed a speaking order on 08.02.2023 (Annexure P-22) and rejected the claim of the petitioner for appointment whereupon the present writ petition has been filed assailing the said decision of the authority dated 14.02.2023. The prayers made by the petitioner in the earlier writ petition have also been again made in the present petition.

4. Learned counsel for the petitioner submits that the decision taken by the authority is clearly illegal and unjustified. The petitioner ought to have been offered appointment on the post of Peon as he alone was pursuing the case since the very beginning and was the only person having the experience and was awarded four marks in the category for the experience. Learned counsel submits that the contention taken by the authorities of Narender Singh who has been placed second in the merit list having secured more marks than the petitioner and his writ petition having been disposed of as not pressed cannot be a ground to reject the petitioner's claim. Further the contention of the respondents that the post

stand abolished as it was lying vacant for more than five years and is also not in terms of the Rules, learned counsel refers to the Govt. of Punjab Notification dated 06.06.2011, wherein, a direct recruitment post lying vacant for any reason for more than one year shall be deemed to have been abolished unless recruitment process is initiated with prior approval of the Department of Finance and direct recruitment post lying vacant for more than one year as on 31.03.2019 shall be deemed to be abolished. In case the relinquishment process has not been issued by the competent authority by 31.03.2019, would have no application to the present case.

5. I have considered the submission.

6. In the select list which was prepared, it is noticed that Diksha Rani was placed at no.1 and secured 77.05 marks even without given any marks for experience. Second candidate Narender Singh secured 67.1 marks although he was also not granted any marks for experience. The petitioner falls at no.3 in the merit with overall marks of 65.9 after being granted four marks for experience. Narender Singh also had preferred a writ petition before this Court after Diksha Rani withdrew her candidature, as noted above. The writ petition vide CWP No.21084 of 2022 came to be disposed of by this Court after noticing the fact that the appointing authority has decided not to make appointment from the merit list. Thus, the State Government took a stand not to fill the posts on the basis of said merit. The petitioner has also prayed to quash the said select list.

7. Since the State Govt. has itself decided not to fill the post on the basis of the said mark list, claim of the petition for appointment on

the basis of that merit list does not survive. In view thereof, the contentions raised by the learned counsel that the petitioner's stand at no.3 in the merit list and was having experience cannot be examined, since the State Govt. decided not to fill the post on the said select list. If any fresh advertisement is issued, the petitioner would always be free to apply and therein the select list would decide the person who is to be given appointment.

8. It is settled law as held by the Supreme Court in **Shankarsan Dash vs. Union of India (1991) 3 SCC 47**, that no person has a right of appointment. The only right available is for consideration on appointment. Since the respondents have themselves decided not to proceed with the said selection, no case for consideration can be said to be made out.

9. Writ petition is devoid of merit and is therefore, dismissed.

04.07.2023
mamta

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No