

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.15433 of 2017

Reserved on 08.05.2023

Pronounced on: **02.06.2023**

Parmod Kumar

.... Petitioner

Versus

Pt. B.D. Sharma University of Health Sciences, Rohtak through its Registrar,
and others.

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Neeraj Kumar, Advocate, for the petitioner.

Mr. Sumer Singh Brar, Advocate, for the respondents.

JAISHREE THAKUR.J

1. The petitioner herein seeks a writ in the nature of mandamus directing the respondents to appoint him on the post of Receptionist with all consequential benefits.
2. Brief facts of the case are that respondents University advertised various posts including a post of Receptionist under BC-B category, vide advertisement No.1/2008 (Annexure P-1). The petitioner, being fully eligible, participated in the selection process and his name figured at serial No.2 of the waiting list prepared in the year 2014.
3. It is submitted that one Babru Bhan Yadav was selected against the said post, but he did not join as he already having been promoted by the University to a higher post. The person at serial No.1 in the waiting list, namely, Rajinder also did not join as he had been selected elsewhere.

However, the petitioner was not given appointment. He sought information through RTI regarding the appointment against the said post and in reply thereto, he was informed that the waiting list candidate has not been offered any appointment letter.

4. In the year 2016, the respondents-University again advertised 17 posts of Receptionist (Annexure P-11) under various categories. The petitioner made many representations to consider his case for appointment, but his request was not acceded to.

5. Pursuant to notice of motion having been issued, respondents-University filed reply by contending that petitioner has no right to claim for the post of Receptionist at this belated stage as the selection process for the said post advertised in the year 2008, culminated on 11.06.2014. It is further submitted that as per the instructions dated 28.10.1993 issued by the State Government, the validity of the original selection list is of six months and the waiting list remains valid for the next six months and in this case, the selection/waiting list has already been redundant on 10.06.2015.

6. I have heard learned counsel for the parties and have gone through the pleadings of the case.

7. The claim of the petitioner herein is that the person who was selected for the post advertised did not join and the person in the waiting list too did not join, the next person in the waiting list must have been called, which in the instant case was not done.

8. Reliance is placed on the judgment rendered by the Division Bench of this Court in a bunch of ***LPA No.1165 of 2017, State of Haryana and others Versus Naresh Kumar, decided on 01.12.2022*** wherein the

grievance of the writ petitioners was that they were denied the right of appointment by not operating the waiting list within a period of one year. The writ petition was allowed, however, the Letter Patent Appeals as filed by the State were dismissed and the writ petitioners were ordered to be issued appointment letters. While deciding the said bunch, it has been observed that the right of appointment has to be considered at the time waiting list was in operation. On account of lack of reasons for not operating the waiting list, the object of preparing the select list had been defeated. Here in this case, the selection process culminated on 11.06.2014 and as per the State Government policy, it remains valid up to 10.06.2015, but during that period, the candidates from the waiting list were not called.

9. As per the written statement filed, the claim of the petitioner is belated as the post was advertised in the year 2008 and the selection process was completed on 11.06.2014 and the waiting list expired on 10.06.2015. No other plea has been taken thereunder. The question whether the petitioner can be deprived appointment by not operating the waiting list has been settled by the Division Bench of this Court in the bunch of ***LPA No.1165 of 2017 (supra)***. The petitioner herein cannot be faulted by the respondents on the defence that the waiting list has expired. Once selected candidates have not joined despite joining letters having been issued to them, the State ought to have called the next person on the merit list, be it a candidate on the waiting list as in this case. The purpose of preparing the waiting list is to avoid re-advertising and going through the process of selection afresh to fill up the vacancies that occur. It is in that background that it becomes incumbent upon the State itself to operate the waiting list in case there are vacancies. The

ratio laid down in the bunch of ***LPA No.1165 of 2017 (supra)*** is fully applicable to the facts of the present case. Since the petitioner was on the waiting list and the respondents did not call him to join after persons higher in merit list had failed to do so, the onus of filling up the vacancies was squarely on the respondents and this cannot be permitted to take the defence of the waiting list having expired.

10. Therefore, keeping in view the ratio laid down by the Division Bench of this Court in the bunch of ***LPA No.1165 of 2017 (supra)***, the writ petition is allowed and the respondents-University is directed to issue appointment letter to the petitioner, within a period of two months from the date of receipt of certified copy of this order provided he fulfills all other requisites. It is made clear that the petitioner herein will only get notional benefits for the purpose of seniority, length of service etc. from the date his batchmates under the advertisement were appointed but he will not be entitled for actual monetary benefits.

(JAISHREE THAKUR)
JUDGE

02.06.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No