

CM No.17500 of 2023 in/and
CWP No.33703 of 2019 (O&M)

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2023:PHHC:131403

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103+240)

CM No.17500 of 2023 in/and
CWP No.33703 of 2019 (O&M)
Date of Decision : 10.10.2023

Amit Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CM No.17505 of 2023 in/and
CWP No.34823 of 2019 (O&M)

Lalit and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CWP No.30714 of 2019 (O&M)

Sombir and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CWP No.35088 of 2019

Deepak

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP No.7445 of 2022

Ramesh Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP No.9232 of 2023

Naveen Kumar and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurpreet Singh, Advocate and
Mr. Karan Kathuria, Advocate and
Mr. Gunjan Nahata, Advocate for the petitioners.
(in CWP Nos.33703, 34823 and 35088 of 2019)

Mr. Aayush Gupta, Advocate for the petitioners
in CWP No.30714 of 2019.

Mr. Gagandeep Singh, Advocate for
Mr. Jarnail Singh Saneta, Advocate for the petitioners
in CWP No.7445 of 2022.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

By this common order, the abovementioned writ petitions, the
details of which have been given in the heading of the order, are being

disposed of as all these petitions involve the same question of law on similar facts.

In the present petitions, the grievance of the petitioners is that they had competed for selection for the post of Conductors as advertised by the respondents vide Advertisement No.04 of 2017 by which 930 posts of the Conductors in various categories were advertised.

The prayer of the petitioners is that the petitioners were placed in the waiting list, which was issued by the respondents themselves on 02.12.2018 and the said waiting list was to expire after a period of one year in December, 2019 and by that time, number of the posts advertised had become vacant due to non-joining of the candidates, hence the petitioners were required to be offered appointment being in the waiting list but the petitioners were not offered the said post on the ground that they already had surplus staff to accommodate.

Learned counsel for the petitioners submits that on one hand, the petitioners were not given the appointment on the ground that there was already surplus staff whereas, the respondents have issued an advertisement during the pendency of the writ petition dated 31.08.2023 requiring 280 Conductors to be appointed on contract basis. Learned counsel for the petitioners further submits that once the vacant posts are there, and the petitioners have already cleared the selection process for the post in question, and the respondents need the man power to perform the duties of the post of Conductor, rather than making the contractual appointment, the petitioners who are already awaiting the appointment on the post in question are entitled to be considered against those vacant posts for appointment keeping in view the interim order passed by the Coordinate Bench of this

Court that the respondents will not decline the claim of the petitioners by taking a plea that the waiting list has already expired during the pendency of the writ petition.

Learned State counsel on the other hand submits that the claim of the petitioners was considered at the time when the waiting list was issued and at that time, the staff was already surplus. Learned State counsel further submits that there are two kinds of petitions which are before this Court. One, the candidates who had approached the Court during the subsistence of the waiting list and other, are the candidates who had approached the Court much later after the expiry of the waiting list hence, these two types of cases be dealt on the merit keeping in view the grievance raised before this Court.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

It is a settled principle of law that the candidates who are seeking appointment should be vigilant about their rights. The petitioners, who had approached this Court within the subsistence of the waiting list, can raise a valid grievance that the posts which had become available due to non-joining of the selected candidate during the subsistence of the waiting list, vacant posts should be offered to them before the expiry of the said waiting list. Keeping in view the interim order already passed by the Coordinate Bench dated 23.10.2019, the respondents were restrained from raising the objection that during the pendency of the petition the validity of the waiting list has expired, the candidates who had approached this Court by filing petitions before the expiry of the waiting list i.e. before December,

2019, have a right to claim consideration against the post which had become available prior to expiry of the waiting list.

The objection of the respondents-State that at the relevant time, the department already had surplus staff. The said argument cannot be accepted for the reason that the petitioners are only claiming the appointment against the vacant posts due to non-joining of the selected candidates. The respondents had issued particular number of appointments orders keeping in view the number of posts advertised hence, once the respondents themselves had issued appointment orders to the selected candidates either from the select list or from the waiting list and they did not join, the department cannot take a plea that they already had surplus staff so as to offer appointment to the remaining candidates in the waiting list. Once, a similarly situated employee from the waiting list has given appointment order but the said employee did not join the post, the candidate next in merit from the waiting list is entitled for the grant of appointment in case, the claim is raised before the authorities concerned or before the competent Court of law within the subsistence of the select list/waiting list hence, the candidates who had approached this Court before December, 2019 have a right to be considered especially when now, in the year 2023, the respondents have already issued an advertisement seeking the appointment to the post of Conductor.

Keeping in view the said settled principle of law, the present petitions are disposed of with the direction that the candidates who have raised the claim before the competent Court of law before December, 2019 have a right to be considered against the post which had remained vacant due to the non-joining of the candidates and their claim be considered

accordingly by passing appropriate speaking order. It is made clear that the candidates who did not raise any grievance despite being on the waiting list upto the validity of the select list/waiting list, will be ousted from the said consideration.

Let the claim of the petitioners be considered before making any appointment in pursuance of the advertisement dated 31.08.2023 so that, no prejudice is caused to the petitioners. Let an appropriate order be passed within a period of four weeks from the date of receipt of a certified copy of this order.

Photocopy of this order be placed on the files of other connected cases.

CM Nos.17500 and 17505 of 2023

As the main petitions stand disposed of, the present applications also stand disposed of.

October 10,, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No