



2023:DHC:7849



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 13th October 2023**

+ **W.P.(C) 13595/2023**

PAWAN KUMAR Petitioner

Through: **Mr. R.K.Ojha , Advocate**

versus

UNION OF INDIA & ORS. Respondents

Through: **Ms.Avshreya Pratap Singh Rudy,**
SPC with Mr.Vidur Dwivedi,
Advocate for R-1/UOI
Mr.Sanjay Khanna, Standing Counsel
with Ms.Pragya Bhushan,
Mr.Karandeep Singh, Mr.Tarandeep
Singh and Mr.Amit Singh, Advocates
for R-2/NTA

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 53640/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

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1. The petitioner *vide* the present petition under Article 226 of the Constitution of India seeks the following reliefs:

Signature Not Verified **W.P.(C) 13595/2023**

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 11.10.2023
17:34:51



*“i) Issue writ of mandamus or any other writ or orders, directions to the concerned authority / Respondent no. 2 to allow the petitioner to join the post; and
ii) Pass such other or further order / orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”*

2. Learned counsel appearing on behalf of the petitioner submitted that the conduct of the respondent in the instant case has infringed the petitioner’s fundamental and legal rights.

3. It is further submitted that the respondent no. 1 issued a notification for the recruitment to the post of non-teaching positions in Delhi University pursuant to which the petitioner applied for the said exam and appeared for the position of Junior Assistant and Laboratory Attendant.

4. It is further submitted that the the respondents’ university had initially allocated the vacancy of 152 candidates, thereupon, only 15 vacant positions have been occupied out of 152. It is submitted that the said conduct amounts to illegal and arbitrary conduct at the behest of the respondents and the same is infringing the petitioner’s fundamental and legal rights.

5. It is contended that the appropriate authority erred in complying with the rules, regulations and guidelines as enunciated by several judicial pronouncement of Hon’ble Supreme Court.

6. In view of the foregoing averments, the learned counsel appearing on behalf of the petitioner submitted that instant petition may be be allowed and the reliefs as prayed for be granted.

7. *Per Contra*, the learned counsel appearing on behalf of the



respondents submitted that the instant petition is nothing but an abuse of power of law and the same is liable to be dismissed being bereft of any merits.

8. It is submitted that the petitioner has filed the instant petition, merely on the basis that the petitioner was not selected and since there is no legal right vested in the petitioner and hence, there is no such violation of any legal right as has been alleged by the petitioner.

9. It is contended that the respondent has exercised its power as per the statutory mandates and allotted rightly the seats to the candidates, who scored the highest marks.

10. It is further contended that there is no illegality or irregularity committed by the respondents in the process of selecting the candidates as alleged by the petitioner.

11. Hence, in view of the foregoing submissions, the respondent seeks that this Court be pleased to dismiss this petition.

12. Heard and perused the material on record.

13. It is the case of the petitioner that he has not been selected for the non-teaching positions i.e., Junior Assistant and Laboratory Attendant despite scoring high marks in the examination as conducted by the respondent. It is further alleged that the respondent instead gave preference to the candidates who scored less marks than the petitioner.

14. The petitioner in order to assert his case has annexed its provisional admit card, merit list of selected students which does not contain the marks of the candidate and RTI response dated 26th July 2023 to the query made by



the petitioner regarding providing the mark sheets of successful Other Backward Class candidates' in the examination conducted for the appointment to the position of Junior Assistant and Laboratory Attendant as well as the marksheet of the petitioner.

15. The former query was answered by the authority by stating that the said information could not be provided as per Clause 8 (1) (e) of the Right to Information Act, 2005. The latter query was replied to by the authority stating that the mark sheet for the said exam has not been issued by the respondent the result for the examination conducted for appointment to the post of the Junior Assistant and the Laboratory Attendant are available on its website.

16. In view of the aforesaid, there is no document produced on record to establish the fact that the petitioner has scored more marks than the selected candidates. Mere allegation does not suffice as there should be some documentary evidence to prove it.

17. This Court is of the view that the petitioner should established a reasonable nexus between the material on record and alleged the violation of his legal rights. In such cases, if the Court is satisfied that there is some substance in allegations of the petitioner, only then the Court could intervene.

18. Now this Court will take into consideration merely the averments as made by petitioner into its consideration in order to adjudicate whether the petitioner has a legal or fundamental vested right seeking issue of writ of mandamus, thereby, directing the respondent to appoint the petitioner at the



said position.

19. The law of service jurisprudence is well settled. Over the last few decades, the Hon'ble Supreme Court and various High Courts have laid down the law with regards to the fundamental issue of discretion vested in the executive pertaining to the selection of a candidate and its appointment to the concerned position.

20. An advertisement inviting applications for appointment to a vacant post at a particular department does not create any legal or fundamental right in favour of the concerned applicant that can be enforced by way of writ jurisdiction. It is prudent to note that until and unless the petitioner who is seeking issuance of a writ can prove *malafide* on the part of a government official/official in-charge, there cannot be any violation of a legal or fundamental right.

21. The law of service jurisprudence prescribing the limitations upon the rights which can be exercised by an applicant pursuant to inclusion of name in the merit list has been discussed by the Hon'ble Supreme Court in detail in the matter of ***Shankarsan Dash v. Union of India, (1991) 3 SCC 47***. The Hon'ble Court held as under:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the 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. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or



any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], *Neelima Shangla v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759], or *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].

8. In *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55 per cent marks, were appointed, although under the relevant rules the eligibility condition required only 45 per cent marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55 per cent marks or more should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the government to decide how many appointments should be made and although the High Court had appreciated the position correctly, it had “somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies”. It was expressly ruled that the existence of vacancies does not give a legal right to a



selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] , was turned down holding that it was open to the government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , was allowed by this Court but, not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The government accordingly made only 17 appointments and stated before the court that they were unable to select and appoint more candidates as the Commission had not recommended any other candidate. In this background it was observed that it is, of course, open to the government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and, there must be a conscious application of mind by the government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant.”

22. In regard to the matter in hand, this Court is of the considered view that in accordance to the settled legal principles in relation to the appointment; an appointment can never be claimed as a matter of legal right.



The candidates, who appeared in the process of selection, cannot claim appointment as a legal or a fundamental right. All appointments to the public posts can only be made by giving due regard to the constitutional schemes and also by following the recruitment rules in force.

23. The provisions enshrined under the Constitution of India mandate equal opportunity in the public employment. The concerned competent authority in-charge for the particular public employment, must ensure that such an equal opportunity is granted in a free, fair and reasonable manner while conducting the relevant process of selection.

24. This Court, while going through the principles laid down by the Hon'ble Supreme Court in its various decisions has observed that the concept of equal opportunity is to be ensured and the same can be done only by following the recruitment rules in force and by conducting the selection process in a transparent and fair manner.

25. In the instant petition, the petitioner does not have a vested right for appointment to the position merely because the petitioner has alleged that he scored more marks than the ones appointed at the said position. The appointment of the candidate to a position is a discretion vested with the executive which if exercised in accordance with the law does not merit interference.

26. There is no material on record to show that the respondent has acted contrary to the law and selected those candidates which scored less or did not have the requisite qualification. There is no irregularity or illegality in the actions of the respondent and therefore, this Court does not merit any



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interference to issue writ of mandamus directing that the candidate to be appointed at the said position by the respondents.

27. In view of the foregoing discussion, the instant petition stands dismissed.

28. The pending applications, if any, stands dismissed.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 13, 2023

Dy/db/ryp