



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order : 12th July, 2023**
 + **W.P.(C) 9442/2018**

RUPINDERJIT KAUR Petitioner
 Through: **Mr.K.P.Gupta, Advocate**

versus

THE MANAGER, DHANPATMAL VIRMANI SR. SEC. SCHOOL AND ORS. Respondents
 Through: **Mr. Yeeshu Jain, Ms. Jyoti Tyagi and Ms. Manisha, Advocates for DOE, Mr. Vipul Lamba, Advocate for R-7, Mr. Avadh Kaushik, Advocate for R-8**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“a. Quash and set aside the appointment of respondent No. 8 to the post of TGT Maths in Dhanpatmal Virmani Sr. Sec. School, Roop Nagar, Delhi - 110007 vide minutes of the Staff Selection Committee dated 25.08.2017 (Annexure- Pl).

b. Direct the respondent No. 1 to 6 to appoint the petitioner to the post of TGT Maths in Dhanpatmal Virmani Sr. Sec. School; Roop Nagar, Delhi - 110007 with all consequential benefits.



c. Direct the respondent No. 7 to cancel the Degree of MA Maths of respondent No. 8 as the same is obtained by playing a fraud with the University.
d. Any other or further relief which this Hon'ble Court deems fit, just and proper in the peculiar circumstance of the case in interest of justice may also please be awarded."

2. Learned Counsel for the petitioner submitted that the present writ is filed by the petitioner being aggrieved of the decision by the respondent whereby her selection to the post of Trained Graduate Teacher, Maths (hereinafter "TGT Maths"), at the respondent school was not confirmed.

3. It is submitted that one post of TGT Maths was vacant at the respondent school, pursuant to which advertisement for the application of the said position was published on 15th October 2016. The petitioner applied for the said advertised post regarding TGT Maths.

4. It is submitted that out of 58 candidates who applied for the said position 13 candidates were found eligible for interview. It is further submitted that only 6 candidates appeared before the Selection Committee for the interview on 25th August 2017, including the petitioner and respondent no. 8. Subsequently, respondent no. 8, Ms. Pooja was declared selected *vide* minutes of the Staff Selection Committee dated 25th August 2017, for the said post.

5. It is submitted that as per the merit list, respondent no. 8 scored 1st rank, Ms. Ashu Rani scored 2nd rank and the petitioner herein scored 3rd rank.

6. It is further submitted that a Writ Petition bearing W.P (C) No.



1160/2018 was filed by Ms. Ashu Rani, who was one of the participants appearing in the interview and stood second to respondent no. 8 in the merit list, for selection to the aforesaid post. Ms. Ashu Rani, the petitioner therein alleged that the degree of Masters in Mathematics held by the respondent no. 8 is fabricated and there is interpolation of marks given in the interview to the respondent no. 8. It was contended by the petitioner that since, the respondent no. 8 is not qualified; her appointment is illegal and invalid. It is submitted that respondent no. 8 was awarded 7.4 marks for her MA Degree which stands null and void as her degree was forged and fabricated. A Coordinate Bench of this Court *vide* order dated 07th February 2018 in the said petition, disposed of the Writ Petition with the direction to the respondent no. 4 to conduct an inquiry regarding the same.

7. It is submitted that pursuant to the direction of the Coordinate Bench of this Court, the inquiry was conducted by respondent no. 4. The petitioner herein requested the respondent school to supply her copy of the Inquiry Report. The same was out rightly denied by the respondent school and *vide* their reply dated 31st May 2018, stated the reason that, since the matter is pending for adjudication before this Court, they cannot supply with the Inquiry Report to the petitioner.

8. It is submitted that the petitioner sent a notice dated 18th June 2018 to the respondents and a reminder letter dated 13th July 2018. The respondent did not respond and the petitioner was left with no choice , had to approach this Court by way of the present writ petition.

9. It has been further submitted that, Ms. Ashu Rani submitted her No-Objection letter dated 02nd August 2018 to the petitioner stating and



declaring that she is not interested in her appointment to the said position at the respondent school.

10. It is submitted that the said post of TGT Maths is lying vacant till date. It is further submitted that the respondent no. 8 has been relieved from her post and Ms. Ashu Rani who stood 2nd in the merit list, prepared for the selection of candidate on the post of TGT Maths, is no longer interested in the said post. As there is no contesting participant for that very post, petitioner may be considered as prayed. Considering the current facts and circumstances, the petitioner has a right to be appointed at the said post.

11. Learned counsel for the petitioner submitted that considering the aforesaid contentions, the petitioner is now eligible to be appointed for the vacancy for which the respondent may accordingly be directed. In view of the same, it is prayed that the respondent may be directed to appoint the petitioner to the concerned post.

12. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the averments made by the learned counsel for the petitioner and submitted that the present petition has been filed with the sole objective/purpose of harassing the respondent and coercing them, since she is not legally entitled to the reliefs as prayed by her.

13. It is submitted that the present petition is nothing but an abuse of the due process, instituted with the intent to derail the process of law. It is further submitted that the writ jurisdiction conferred upon this Court as the guardian of the Constitution is being grossly misused by the petitioner by making such a frivolous prayer by way of filing the instant petition as there is no relief which accrues to her.



14. It has been submitted by the learned counsel appearing on behalf of the respondent that the merit list was prepared long back in the year 2017 and now more than 5 years have elapsed. Therefore, a fresh process for selection of candidates for the said post is required to be initiated for the appointment of any suitable candidate. Such post cannot be filled on the basis of the merit list prepared way back in August 2017.

15. It is further submitted that the post of TGT Maths in the respondent school is lying vacant since respondent no. 8 was relieved from her post. Furthermore, any appointment can only be made after the Directorate of Education advertises the said post.

16. Learned counsel appearing on behalf of the respondent submitted that in view of the aforesaid arguments advanced, the petition is devoid of any merit and is liable to be dismissed. It is further submitted that there is no legal right that has been accrued to the petitioner on the basis of the merit list of 2017.

17. Heard both the parties and perused the records.

18. During the course of the arguments the learned counsel for the petitioner submitted that at this stage, he is only pressing upon 'prayer b' since 'prayer a and c' stand infructuous. It was argued and put forth by the learned counsel appearing for the petitioner that respondent no. 8 had been relieved from her post and Ms. Ashu Rani who secured 2nd rank in the merit list has given her No-Objection stating that she is not interested in joining the post of TGT Maths at the respondent school. It has been pleaded by the learned counsel for the petitioner that since rank no. 1 is disqualified and rank no. 2 is no longer interested in joining the said position, the petitioner remains to be the, only eligible candidate left to



join the post of TGT Maths as per the merit list of 2017.

19. For the reference of this Court, Prayer 'b' is reproduced as under:

"b. Direct the respondent No. 1 to 6 to appoint the petitioner to the post of TGT Maths in Dhanpatmal Virmani Sr. Sec. School; Roop Nagar, Delhi - 110007 with all consequential benefits."

20. At this juncture, this Court finds it necessary to adjudicate upon the present petition by framing the following issues: -

1. *Whether the merit list of 2017, entitles the petitioner any legal right to get appointed at the concerned post?*
2. *Whether the merit list prepared in the year 2017 could survive for indefinite period?*

21. Keeping in view the arguments advanced by the learned counsel for the parties and contents made in the instant petition, this Court will now deal with the issue No. 1 i.e., *Whether the merit list entitles the petitioner any legal right to get appointed at the concerned post?*

22. The Hon'ble Supreme Court in the case of **Commissioner of Police & Anr. v. Umesh Kumar, Civil Appeal No. 3334/2020** order dated 07th October 2020, on the aspect of whether the merit list creates a legal right for appointment to the concerned post, has observed as follows:

"14. The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In Punjab SEB vs. Malkiat Singh¹⁰, this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Court held:

"4. ...the High Court committed an error in proceeding on the basis that the



respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] which reads: (SCC pp. 50-51) “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] .”

(emphasis supplied)”

17. The High Court has been manifestly in error in issuing a mandamus to the appellants to appoint the respondents on the post of Constable (Executive) in Delhi Police. The direction was clearly contrary to law....”

23. Further, the Division Bench of High Court of Kerala while dealing with a similar issue observed in **A. Abdul Razak v. Union of India, 2018 SCC OnLine Ker 9460**, as under;

“6. It is settled law that the mere inclusion of candidates in a select list will not confer on them any indefeasible right to appointment to a post, in relation to which the select list was drawn. Reference may be made, in this connection, to the judgment of the Supreme Court in State of Andhra Pradesh v. D. Dastagiri, [(2003) 5 SCC 373], where the court found that, even if the selection process was complete, and the only task remaining was to publish the select list, the candidates who are selected and whose names find place in the select list do not get a vested right to claim appointment based on the select list. In the said case, it was also held that if the State Government took a policy decision not to make any appointment, it was not within the realm of the court to compel the State Government to make an appointment contrary to



their policy decision.”

24. The aforesaid judgments have clearly elaborated upon the issue that a candidate does not have a vested right on the post merely on the ground that his name is reflected in the merit list. Inclusion of a candidate's name in the merit list/list of shortlisted candidates will not by default create any legal right in their favour. Consequently, it will not create a legal duty upon the authority to appoint such candidate.

25. Applying the legal principle as laid down in the aforesaid judgments, in the present scenario, even though the petitioner secured 3rd position in the merit list of 2017, it will not entitle her to any legal right to be appointed at the said post. Not granting her the position after rank 1 was dismissed and rank 2 waived her seat, does not amount to violation of any legal right. Therefore, the interference of this Court under Article 226 of the Constitution of India is not warranted in directing the respondent to appoint the petitioner on the said post. Accordingly, issue no. 1 has been decided.

26. Now advertent to the issue No.2 - *Whether the merit list prepared in the year 2017 could survive for indefinite period?*

27. The Hon'ble Supreme Court in the judgment of **Girdhar Kumar Dadhich v. State of Rajasthan, (2009) 2 SCC 706**, has observed the following:

“16. Furthermore, the select list would ordinarily remain valid for one year. We fail to understand on what basis appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart



from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us.

17. In State of Rajasthan v. Jagdish Chopra [(2007) 8 SCC 161 : (2007) 2 SCC (L&S) 837] this Court held: (SCC pp. 164-65, paras 9 and 11)

“9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. In State of Bihar v. Amrendra Kumar Mishra [(2006) 12 SCC 561 : (2007) 2 SCC (L&S) 132] this Court opined: (SCC p. 564, para 9)

‘9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel.’

It was further held: (Amrendra Kumar case [(2006) 12 SCC 561 : (2007) 2 SCC (L&S) 132] , SCC p. 565, para 13)

‘13. The decisions noticed hereinbefore are authorities for the proposition that



even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.'

11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] and Asha Kaul v. State of J&K [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] .)"

28. The Hon'ble Supreme Court in the judgment of ***Girdhar Kumar Dadhich (Supra)*** has held that the validity of the merit list is for a reasonable period only and it cannot be considered valid for an indefinite or even a prolonged period.

29. In the present scenario, the merit list was published way back in the year 2017 for the post of TGT Maths, since more than 5 years have elapsed. Considering the belated stage, it will be highly improper for this Court to review the said merit list. There has to be certain reasonable duration during which the merit list can be considered by this Court to grant any relief. Furthermore, this Court whilst relying upon the above mentioned judgment finds that although there exists no explicit rule or law which prescribes a fixed period or duration for which the merit list remains valid, the merit list cannot be kept alive for consideration for such a significantly long time period. Hence, in the process of imparting justice and dealing with the issue within the four corners of law, no merit is found in the contention of the learned counsel for the petitioner.



Accordingly, issue no. 2 has been decided.

30. This Court has relied upon the aforesaid judgments and is of the view that a merit list only enlists the selected candidates but does not confer any right for appointment upon the selected candidates and the merit list cannot stay alive for an indefinite period of time for enforcement.

31. This Court is also of the view that the petitioner has failed to make out her case for issuance of the writ of Mandamus directing the respondents to appoint her to the post of TGT Maths at the respondent school.

32. Accordingly, the instant petition being devoid of any merit, stands dismissed.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 12, 2023
SV/DB

[Click here to check corrigendum, if any](#)