

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(123)

CWP-6036-2024

Date of Decision : March 14, 2024

Suraj

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Lochab, Advocate, for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Ms. Harpriya Khaneka, Advocate, for respondent No.3-HPSC.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the prayer of the petitioner is that he had competed for the post of Drug Control Officer and keeping in view the number of posts advertised, the petitioner could not get selected but submits that now as all the posts advertised have not been filled up, the claim of the petitioner should be considered for appointment against the said vacant post.

2. Learned counsel for the petitioner submits that the claim of the petitioner for the post in question has been declined vide letter dated 01.03.2024 (Annexure P-10) while replying to the legal notice submitted by the petitioner.

3. It may be noticed that the respondent No. 3- Haryana Public Service Commission issued an Advertisement No.2 dated 10.09.2015

(Annexure P-1) advertising 4 posts of Drug Control Officer. Out of the said 4 posts, 2 were to be filled from the General category, 1 from the reserved category of Scheduled Caste and 1 from the reserved category of backward class. The petitioner competed for the post in question in the General category. In the meantime, by a Corrigendum dated 04.06.2019 (Annexure P-2), the post of Drug Control Officer to be filled were increased from 4 to 26 and out of the 26 posts, 15 were to be filled from General category, 6 from the reserved category of Scheduled Caste and 3 from the backward class of BC(A) and 2 from BC(B).

4. The petitioner competed for the said post and appeared in the written test, which was held on 03.10.2019. The petitioner was called for interview on 13.08.2020 in which the petitioner appeared and ultimately, the result of the selection process was declared on 18.09.2020 in which, the petitioner's name was not mentioned in the list of selected candidates against the 15 posts to be filled up in the General category. While making the selection for the post in question, the last candidate selected in the General category was shown to have secured 59.76 marks. The petitioner himself has mentioned in the petition that the petitioner is an un-selected candidate.

5. The grievance of the petitioner is that as two candidates namely Kapil Sharma and Ankush Gupta, who were selected against 15 posts to be filled from the General category, did not join the post in question within time prescribed, the said two posts should have been offered to the candidates next in the merit list and as the petitioner is next in the merit, he should be given one of the two vacant post. As the said prayer of the petitioner was not being accepted, the petitioner sent a legal notice and in reply to the said legal notice, the respondents mentioned that as no waiting

list was prepared for the post in question, the petitioner cannot himself claim to be a selected candidate in the waiting list to be appointed against the post in question and as per the Haryana Civil Services (Executive Branch) and Allied Services and other Services Common/Combined Examination Act, 2002, no waiting list is to be prepared hence, the petitioner cannot claim one of the two posts which could not be filled up in the General category. The said action of the respondents is under challenge in the present writ petition.

6. Keeping in view the service of advance copy of petition, Ms. Harpriya Khaneka, Advocate, has put in appearance on behalf of respondent No.3- Haryana Public Service Commission and submits that qua the post of Drug Control Officer, two lists were issued, one of the selected candidate and one of the un-selected candidates and the petitioner is the part of the list of un-selected candidates hence, any candidate, who has not been selected by the Commission, cannot raise a claim qua the vacant post as only the selected candidate either in the main list or in the waiting list, can claim appointment, which is not the case in the present case.

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

8. In the present petition, the grievance being raised by the petitioner is that he should be given one of the two post of Drug Control Officer in the General category, which remained vacant. The question is whether, the petitioner can claim such relief keeping in view the facts and circumstances of the present case.

9. It is a conceded position that while framing the merit list for the post in question, there was no waiting list prepared so that in case any post which remained vacant, could be filled up from the waiting list. Further,

the petitioner has conceded in paragraph 6 of the writ petition that he is an “un-selected candidate”. Once, the petitioner himself has conceded that he is an un-selected candidate, an un-selected candidate has no right to claim a post even if, any of the selected candidate does not join or the post advertised remain vacant. There is no obligation upon the selecting agency to frame a waiting list. In the absence of any waiting list, the petitioner cannot even claim that he is next in the waiting list so as to claim appointment.

10. Further, with regard to the contention which has been raised by the learned counsel for the petitioner is that he is at No.1 in the category of “un-selected candidate”, nothing has come on record to show that the petitioner was ever selected for the post in question and once the petitioner has himself conceded that he is un-selected, the question whether he is at serial No.1 or No.2 out of the un-selected candidates, is im-material as no “un-selected candidate” can raise a claim for any post.

11. Further, the said question of law whether, the selecting agency is under an obligation to frame a waiting list, has already been decided by this Court while passing order in ***CWP No.24762 of 2017 titled as Divya Bhatia vs. State of Haryana and others, decided on 27.10.2022.*** In the said judgment, it has been held that there is no obligation upon the selecting agency to frame a waiting list and in the absence of any waiting list, the candidates, who are not the part of the select list, cannot claim appointment even if any of the post advertised remains vacant.

12. Learned counsel for the petitioner has not been able to distinguish that the judgment in ***Divya Bhatia’s case (supra)*** is not applicable in the facts and circumstances of the present case.

13. The last argument which has been raised by the learned counsel for the petitioner is that keeping in view the judgment of the Division Bench of this Court in ***LPA No.404 of 2022 titled as Haryana Public Service Commission vs. Anshul and another***, the petitioner is entitled for the grant of the benefit. The judgment in ***Anshul's case (supra)*** will not come to the rescue of the petitioner to claim the benefit of appointment for the post in question as, in paragraph 4 of the said judgment, it has been mentioned that the Commission did not intend to form a waiting list after the two posts remained vacant and in case, the said list would have been prepared, the respondents therein would have been next in line to seek appointment. In the present case, no such fact has been brought on record that the Commission wanted to prepare any waiting list after two candidates failed to join the post of Drug Control Officer in the General category. That being so, merely that the posts remained vacant, in the absence of any waiting list, no “un-selected candidate” cannot raise any claim for selection.

14. In the present case, the respondents have issued two lists one for the selected candidates and the second list of un-selected candidates. In the present case, the name of the petitioner appears in the list of unselected candidates. That being so, the judgment of the Division Bench of this Court in ***Anshul's case (supra)*** cannot be made applicable as even as per the selection agency, the petitioner has been put in the list of unselected candidates. An un-selected candidate cannot claim to be treated as selected so as to claim appointment against any post which remain vacant hence, the claim of the petitioner to grant him the benefit of appointment against one of two post of Drug Control Officer, which remain vacant in the General category, cannot be accepted.

- 15.Keeping in view the above, no ground is made out for any interference by this Court in the present case.
- 16.Dismissed.

March 14, 2024harsha(HARSIMRAN SINGH SETHI)JUDGE

Whether speaking/reasoned : Yes/NoWhether reportable : Yes/No