

(213)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-404-2022 (O&M)

Date of decision : 20.02.2024

Haryana Public Service Commission

.....Appellant

Versus

Anshul and another

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Ms. Harpriya Khaneka, Advocate, for the appellant.

Mr. D.S. Patwalia, Senior Advocate, with
Mr. A.S. Chadha, Advocate, for respondent No.1.

Mr. Deepak Balyan, Addl. Advocate General, Haryana,
for respondent No.2.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The Haryana Public Service Commission (in short, “the Commission”) challenges the order dated 08.03.2022 passed by the learned Single Judge in CWP-15962-2020 filed by the writ petitioner (respondent No.1 herein), whereby a direction was issued to the Commission to ascertain and determine the claim of the writ petitioner for the post of Naib Tehsildar. Accordingly, it was directed that if it was found that the writ petitioner was next in merit list after the last selected candidate in the General category, the Commission would proceed as per prescribed procedure to send the requisite

recommendation to the State Government, within a period of two months from the date the writ petitioner approaches it with a copy of the order, and he would be entitled to all consequential benefits and perks as per merit inter se as his other batch mates who had been appointed except for the monetary benefits on the principle of 'no work no pay'.

2. Learned counsel for the appellant - Commission has vehemently argued that as per the Haryana Civil Services (Executive Branch) & Allied Services and other Services Common/Combined Examination Act, 2002 (in short, "the Act"), appointment was not be offered to a candidate, who was placed in the waiting list on the basis of examination, for a post for which his name was not recommended by the Commission. The definition, as such, of the "waiting list" was stretched to the extent of mere recommendation of additional name by the Commission for appointment to a service/post over and above the advertised post. She submits that in such circumstances, the direction as such by the learned Single Judge is not justified. It is, accordingly, contended that due to non-joining of two appointees, two seats remained unfilled, and the whole case of the writ petitioner was based on the pleading that there was a waiting list to be operated in order of merit, and thereafter he had to be adjusted.

3. Learned senior counsel for the writ petitioner – respondent No.1, on the other hand, has submitted that the concept of waiting list as such would not come into play if a candidate had joined and resigned thereafter or not continued. He refers to the information provided under the Right to Information Act, 2005 (Annexure P-6), to contend that against 38 appointees, two had not joined. One of them had requested for extension of his period of joining, and the other appointee, namely Shri Nikunj, had not joined the

department, whose letter of appointment has already been withdrawn. It is submitted that two other candidates had resigned/relieved and, therefore, the concept of waiting list would operate against the appointees, who had resigned and relieved, whereas the writ petitioner could always be considered against the person who had not joined. Reliance is placed upon Section 4 (3) of the Act, which is also re-produced by the learned Single Judge, to point out that the bar as such would be only if a candidate had been appointed or offered appointment over and above the advertised post for any reason, and the services of such candidate shall be dispensed with.

4. The stand of the State is that no waiting list was prepared by the Commission and the onus has been thrown on the recruiting agency, i.e. the appellant – Commission. However, it is admitted that two vacant posts have not been notified as on date. The appellant – Commission as such had sent recommendations for preparation of the waiting list, but the Government had filed the same, while referring to the communications dated 15.06.2021 and 30.11.2021, and therefore, the Commission is in appeal.

5. Learned Single Judge has noticed that the last candidate selected, i.e. 38th candidate, in the General category had secured 78.46 marks and the writ petitioner with 78.41 marks was next in line. Reliance has been placed upon a decision of the Apex Court in ***State of U.P. and others Vs. Dr. Rajiv Kumar Srivastava, SLP No. 10604/2013 decided on 26.07.2013***, wherein it was held that due to non-joining of a selected candidate, the advertised post remained unfilled and, therefore, the concept of waiting list could not be brought in picture for defeating the legitimate right of the person appointed against the unfilled post.

6. Reliance can be placed upon the judgment in **State of J&K and others Vs. Sat Pal, 2013 (2) S.C.T. 250**, wherein the Apex Court dilated on the issue of the right of a person in the merit list, who would be eligible for appointment since the original person recommended had chosen not to join. Reliance can be placed upon paragraphs 10 and 11 of the said judgment, which read as under :-

“10. It is not a matter of dispute, that the respondent Sat Pal participated in a process of selection for recruitment against the post of Junior Engineer (Civil) Grade-II. It is also not in dispute, that his name figured in the merit/select list of scheduled caste candidates. Trilok Nath, who had been offered appointment against the post of Junior Engineer (Civil) Grade-II on 22.4.2008, did not join, despite the said offer of appointment. The instant fact is fully substantiated from the order dated 5.5.2008 issued by the Chief Engineer (R&B) Department, Jammu. Even though candidates who were higher in merit, were offered appointment to the post of Junior Engineer (Civil) Grade-II, for which recruitment was held, some of such posts remained vacant on account of the fact that persons higher in merit to the respondent Sat Pal had declined to join, despite having been offered appointment. Atleast one such vacancy offered to Trilok Nath never came to be filled up. In such a situation, the claim of the respondent Sat Pal whose name figured in the merit/select list, ought to have been offered appointment against the said post. The claim of respondent Sat Pal could not have been repudiated, specially on account of his assertion, that his name in the merit/select list amongst Scheduled Caste candidates immediately below the name of Trilok Nath, was not disputed even in the pleadings before this Court. It is not the case of the appellants before this Court, that any other candidate higher than Sat Pal in the merit/select list is

available out of Scheduled Caste candidates, and can be offered the post against which Trilok Nath had not joined.

11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil) Grade-II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were dully filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil) Grade-II on 22.4.2008. The aforesaid offer was made, consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22.4.2008, because the vacancy was offered to Trilok Nath on 22.4.2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in

the impugned order dated 23.8.2011 (extracted above), that the waiting list was valid till May, 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, in so far as the present controversy is concerned.”

7. In view of the above facts, we are of the considered opinion that the order of the learned Single Judge does not suffer from any infirmity, though prayer in the petition might not have been well drafted to the extent that the prayer was based on the waiting list. The concept of waiting list would only come into operation as and when a candidate is offered appointment and had joined, but thereafter opted out, and the post had been consumed. It is in such circumstances that the waiting list as such would have to be operated. If the waiting list had been prepared, the Commission would have been justified to say that the writ petitioner did not have any right of having gone through the exercise of selection and having drawn up merit list. We do not find any tangible reason why to deny appointment to a person who is meritorious and figures in the list. It is a known fact that the recruiting process is played by litigations from the moment, the advertisement is issued, making it almost impossible to take it to its logical end, having gone through the whole exercise. In the present case also, the advertisement is of the year 2015. The result was declared in 2019 and the joining took place in 2020. It is in such circumstances that the learned Single Judge has allowed the writ petition and also balanced the equity to the extent that the writ petitioner has been held to be entitled to all the consequential benefits as per merit inter se as his other batch mates, except for the monetary benefits on the principle of ‘no work no pay’.

8. Resultantly, there is no merit in the present appeal and same is dismissed.
9. Accordingly, all the pending applications stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

February 20, 2024
ndj

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No