

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

CWP-14086-2022 (O&M)
Date of decision: 26.07.2024

Sombir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Sumit Sangwan, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

AMAN CHAUDHARY, J

1. The prayer made in the present petition is for quashing the order dated 08.06.2022, whereby the claim of the petitioner for appointment, being next in the waiting list, has been rejected.

2. Notably, as per the result for the post of Pharmacist, declared on 07.04.2021, pursuant to the advertisement dated 19.06.2015, the petitioner, who had applied against the 6 posts reserved for SBC category out of total 121, which were subsequently converted into General, was placed at waiting No.3.

3. As is evident from Annexure P-3, the recommendations by the Commission were sent of only 5 candidates on 11.05.2021, instead of 6, to whom the appointment letters were issued after four months on 21.09.2021, whereby they were directed to join within 15 days thereof. However, 2 out of these candidates namely, Manoj Kumar and Mandeep Kaur at Sr. Nos.2 and 3, did not join. Consequently, in their place, after 6 months on 21.04.2022, those at Nos.1 and 2 in waiting list i.e. Pardeep Jangu and Deepika were offered appointment *albeit* were provided the same period to give their joining, but still, till date the one at Sr.No.2 did not join.

4. As per the Instructions dated 25.06.2019, Annexure P-4 issued by the Chief Secretary to Government of Haryana, the validity of the waiting list was to be one year from the date of recommendation by the Haryana Staff Selection Commission, which being 11.05.2021 as mentioned in the letter of appointment Annexure P-3, would be till 10.05.2022.

5. The petitioner therefore represented on 09.05.2022, Annexure P-5 requesting that he being at S.No.3 in the waiting list, be issued appointment letter, which when did not evoke response, this Court on 18.05.2022 in a writ petition filed by him, directed the same to be decided but it was rejected vide impugned order by relying on Instructions dated 08.09.1972, as per which, sufficient time was to be given to the candidate for joining before rejecting their candidature and 13.09.2019, maximum of 30 days, which expired on 20.05.2022, by such time the waiting list came to be expired.

6. The aforesaid premise is completely misconceived. Insofar as the 1972 Instructions are concerned, these were even otherwise not applicable, being based on Instructions dated 26.05.1972, which stood repealed, as is apparent from Section 3 of the Haryana Civil Services (Executive Branch and Allied Services and other Services Common/Combined Examination) Act, 2002, produced during the course of hearing.

7. Pertinently, on the non-joining of the first candidate, who were granted 15 days, so was Deepika, at waitlist No.2, in the wake of which, it was incumbent upon the authorities to have called the petitioner to join, once there was no sign of her having accepted the appointment or any request for extension of the said period, which even for to her, would be as indicated in the offer made, was of prime importance and not the Instructions dated 13.09.2019.

8. As a matter of fact, Instructions dated 25.06.2019 would be applicable, as considering the ratio of CWP-15403-2011, the Government had decided that all Group 'C' and 'D' vacancies becoming vacant due to any reason, including resignation or death of newly appointed candidates, during the validity of the waiting list, shall be filled up from therein, which in the present case was till 10.05.2022, ergo, it was imperative on part of the authorities to have offered appointment to the petitioner.

9. Hon'ble the Supreme Court of State in **J&K vs. Sat Pal**¹, wherein the appellants were directed to appoint the respondent, whose name had though appeared in final merit/ select list, however while considering the aspect of waiting list, observed thus:

“11 ...That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly 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, insofar as the present controversy is concerned.

12. The date of filing of the representation by the parties concerned and/or the date on which the competent authority chooses to fill up the vacancy in question, is of no consequence whatsoever. The only relevant date is the date of arising of the vacancy. It would be a different legal proposition, if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates on the waiting list. The offer made to Trilok Nath on 22-4-2008 by itself leads to the inference that the vacancy under reference arose within the period of one year i.e. during the period of validity of the waiting list

postulated by the rules. The offer of the vacancy to Trilok Nath negates the proposition posed above i.e. the desire of the employer not to fill up the vacancy. Herein, the appellants wished to fill up the vacancy under reference. Moreover, this is not a case where the respondent was seeking appointment against a vacancy over and above the posts for which the process of selection/recruitment was conducted. Based on the aforesaid inference, we have no hesitation in concluding that the appellants ought to have appointed the respondent Sat Pal against the vacancy which was offered to Trilok Nath.”

10. This Court in **Gian Singh vs. State of Punjab**², while relying on the aforesaid judicial pronouncement, in a case similar to the present one, wherein the petitioner being next in waiting list, directed him to be considered for offering appointment on account of a vacancy created when another candidate from the waiting list had been disqualified.

11. On a cumulative consideration of the matter, the present petition deserves to be and is hereby allowed. The respondents are directed to consider the petitioner for appointment in accordance with law, against the post ordered to be kept vacant by this Court vide order dated 06.07.2022, within a period of two months, from when a certified copy of this judgment is received by them. In case of appointment, his seniority shall be determined from his merit position. However, all consequential benefits, shall flow notionally, except monetary to which he is not entitled.

26.07.2024
Raman

(AMAN CHAUDHARY)
JUDGE

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