

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11346 of 2018 (O&M)
Date of decision: 14.02.2024

Amrik Singh
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. H.C. Arora, Advocate
and Ms. Sunaina, Advocate
for the petitioner.

Mr. Jai Narain, AAG, Punjab.
for respondents No.1 and 2.

Mr. Vikas Singh, Advocate
for respondent No.3.

NAMIT KUMAR J. (Oral)

1. The petitioner has approached this Court by way of filing the present petition seeking a writ of mandamus for directing the respondents to issue appointment letter to the petitioner for the post of Assistant Engineer (Mechanical), against 04 posts of Assistant Engineer (Mechanical), advertised for General category in pursuance to advertisement (Annexure P-1), issued in January, 2017.
2. The case set up in the present petition is that against the 04 advertised posts of Assistant Engineer (Mechanical), the petitioner was at Serial No.5 in the selection list and only 02 selected candidates have joined the posts and therefore, the petitioner has a right to be considered for appointment.

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3. In the written statement filed by respondent No.3, it has been stated as under:-

“That the answering respondent had issued an advertisement Annexure P-1 for filling up various posts which included four post of Assistant Engineer (Mechanical). The advertisement was issued in December 2016 and the last date for submissions of the application was 27.01.2017 online and the last date for receipt of printed application was 7.2.2017. The petitioner was one of the applicants for the post of Assistant Engineer (Mechanical). Since four posts of General Category were to be filled up, the top four candidates in the merit list were called for document verification and only two candidates were appointed as the other two did not appear. Now the petitioner has filed the present writ petition praying for a direction that since he is at Sr. No.5 in the merit list, therefore, he is entitled to be appointed against the vacancy which has remained unconsumed. It is submitted here that various posts were advertised through the advertisement, Annexure P-1, and all the unconsumed vacancies are to be re-advertised by the answering respondent. The answering respondent had not prepared any waiting list and therefore will fill up the unconsumed vacancies as per requirement by issuing fresh advertisement. In this situation, it is submitted that the writ petition is liable to be dismissed.”

4. In nutshell, the stand of the respondents is that since 04 posts of General category were to be filled up, therefore, the top 04 candidates in the merit list were called for document verification and only 02 candidates were appointed as other 02 candidates did not appear. It has further been submitted that no waiting list was prepared

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by respondent No.3 and the unconsumed vacancies are to be readvertised.

5. A Division Bench of this Court in ***“Ritu D/o Sh. Nafe Singh vs State of Haryana and others”***, 2013(3) SCT 281, while considering the similar issue has held as under:-

*“10. A somewhat similar and relevant issue came up for consideration before the Hon'ble Apex Court in **RS Mittal v. Union of India**, 1995(3) SCT 284. The matter pertained to the selection and appointment of candidates for appointment to the post of Judicial Member, Income Tax Appellate Tribunal. The duly constituted Selection Board had prepared a panel of selected candidates which included the name of the appellant therein, namely, RS Mittal and the recommendations were sent on 25.1.1988 to the Central Government for consideration. The Central Government, however, did not make any appointment and issued fresh advertisement on 22.2.1990 inviting applications for the same very posts. Such action was sought to be defended on behalf of the Union of India on the plea that the life of the panel was for a period of 18 months and the same stood expired in July 1989 itself. Deprecating the stand taken on behalf of the Union of India and holding that the appointment should have been offered within a reasonable time of the availability of the vacancy and thereafter to the next candidate, it was observed in the following terms:*

“It is no doubt correct that a person on the select-panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by

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the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

11. Adverting back to the facts of the present case, it was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere impanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt. Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing

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Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations i.e. 27.1.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.

*12. Even otherwise, the very objective of preparing a waiting/panel list and for such list to be kept operative for a specific period is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period. A reference in this regard can usefully be made to the judgments of this Court in **Ajmer Singh v. State of Haryana and others, 1997(1) CLJ (Service) 86 and Raghubir Chand Sharma v. State of Punjab, 1992 (1) RSJ 195.***

6. To the same effect is the judgment passed by the learned Single Judge of this Court in “**Suman Rani vs State of Haryana and others**”, 2016(4) SCT 361, which has been upheld in LPA No.427 of 2017 titled as “**State of Haryana and another vs Suman Rani and another**”, decided on 29.03.2017 and the judgment in “**Naresh Kumari vs State of Punjab and another**”, 2015(2) SCT 121, which has also been upheld by this Court in LPA No.1436 of 2015 titled as “**State of Punjab and another vs Naresh Kumari**”, decided on 30.09.2015.

7. Now advertng to the facts of the present case, once respondent No.3 has advertised 04 posts, the petitioner who was at Serial No.5, in the merit list has a right of consideration for appointment as the other 02 candidates, who were called for documents verification

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did not appear and it was incumbent upon respondent No.3 to call the next 02 candidates for documents verification. Although mere selection does not confer any right of appointment as per the settled law, however at the same time, the appointment cannot be denied without justifiable reasons. The stand taken by respondent No.3 cannot be accepted as the petitioner has a right to be considered and the respondents are duty bound to make appointment against all the 04 advertised posts, especially when the petitioner, who is at Serial No.5 in the merit list is available, his rights cannot be infringed.

6. In view of the above, the present petition is allowed. Respondent No.3 is directed to consider the claim of the petitioner for appointment to the post of Assistant Engineer (Mechanical), in accordance with law within a period of 02 months from the date of receipt of certified copy of this order. Needless to mention here that the appointment of the petitioner shall relate back to the date, when other two candidates were appointed, and his pay shall be fixed notionally from that date, without giving him any back wages.

(NAMIT KUMAR)
JUDGE

14.02.2024
yakub

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