

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-20947-2018 (O&M)  
Date of decision: 27.11.2024

Sonu ..Petitioner

Versus

Union of India and others ..Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Sushil Bhardwaj, Advocate for the petitioner.

Mr. Gaurav Pathak, Sr. Panel Counsel, Union of India.

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**AMAN CHAUDHARY, J.**

1. The prayer made in the present petition is for setting aside order dated 05.07.2018, Annexure P-17 cancelling the candidature of the petitioner and appointing him to the post of Soldier in Indian Army under Sol GD category.
2. The petitioner having been erroneously granted 20 bonus marks meant for a ward of an ex-serviceman under relaxation norms, became included in the select list, which were subsequently withdrawn after issuance of notice to him and upon on his failure to submit the requisite "relation certificate" to substantiate his eligibility as such, a condition necessary to claim the benefit therein, whereupon his score came to be 121, while the cut-off for the category was 126, necessitating the removal of his name from the merit list.
3. Hon'ble the Supreme Court in **State vs. Umesh Kumar**<sup>1</sup>, while holding that no absolute or guaranteed right to appointment is created and that the respondent, who was selected in the first merit list but upon declaration of revised result before appointment letter was issued, had failed to obtain marks above the

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<sup>1</sup> (2020) 10 SCC 448.

cutoff for OBC category, to which he belonged. The relevant para whereof reads thus:

“19. 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 v. Malkiat Singh [Punjab SEB v. Malkiat Singh, (2005) 9 SCC 22 : 2006 SCC (L&S) 235] , this Court held that the mere inclusion of candidates in a selection list does not confer upon them a vested right to appointment. The Court held : (SCC p. 26, para 4)

“4. ... the High Court [Malkiat Singh v. Punjab SEB, 1999 SCC OnLine P&H 75 : ILR (1999) 2 P&H 329] 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 [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800] 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 [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] , Neelima Shangla v. State of Haryana [Neelima Shangla v. State of Haryana, (1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jatinder Kumar v. State of Punjab [Jatinder Kumar v. State of Punjab, (1985) 1 SCC 122 : 1985 SCC (L&S) 174] .” (emphasis supplied)

4. In **Rakhi Ray vs. High Court of Delhi**,<sup>2</sup> Hon’ble the Supreme Court observed that mere inclusion of the name of a person in the select list does not grant them an indefeasible right to be appointed, empanelment simply establishes eligibility for consideration and under no circumstance equates to selection or creates an enforceable claim to the position, the process of filling vacancies must be conducted in alignment with statutory rules and constitutional principles.

5. In view of the above and as a fall out thereof, the present petition being sans merit, is hereby dismissed.

**27.11.2024**  
ashok

**( AMAN CHAUDHARY )**  
**JUDGE**

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

<sup>2</sup> (2010) 2 SCC 637