



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

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CWP-20351-2021

Date of Decision: 19.11.2024

KRISHAN KUMAR

...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Sunil Kumar Nehra, Advocate and
Mr. Viren Nehra, Advocate for the petitioner.

Mr. Praveen Chander Goyal, Addl. A. G., Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondents to consider the petitioner for appointment against the post of PGT History (Group B) as a General category candidate, and offer him appointment from the date similarly situated candidates have been appointed pursuant to advertisement 04/2015, dated 28.06.2015.

2. Facts of the case in brief are, the third respondent/Haryana Staff Selection Commission issued the aforementioned advertisement inviting applications against 398 posts of PGT History (Group B) for Rest of Haryana cadre; out of which 200 were reserved for General category. The petitioner being eligible and having participated in the selection process, secured 128 marks as per the final result of selection dated 09.06.2019, Annexure P-3. Although the last recommended candidate in General category also secured 128 marks, the petitioner could not be recommended for appointment being younger in age.



2.1 As per affidavit, dated 28.05.2024, filed on behalf of the second respondent, it has been specifically stated that pursuant to the selection the Department had offered appointment to 361 candidates for the post of PGT History, and 37 of them failed to join despite reminders. As per the stand taken, neither the petitioner nor any other candidate can be considered against the vacant posts as that would amount to creating a waiting list of candidates. This is not permissible in view of Government order dated 13.12.2004, Annexure R-1, whereby Lecturers/PGTs working in Secondary Education Department have been declared Gazetted Group B employees, and as per instructions dated 18.09.2018, Annexure R-2, no waiting list is to be prepared for Group B posts.

3. Learned counsel for the petitioner has contended that the stand taken by the respondents is contrary to law settled by this Court vide judgment, dated 08.03.2022, rendered in CWP-15962-2020-*Anshul v. State of Haryana and another*. It has been upheld by the Division Bench vide judgment dated 20.02.2024, passed in LPA-404-2022, against which SLP-12404-2024, also stands dismissed by the Supreme Court vide order dated 08.07.2024. Therefore, the petitioner is entitled to be considered against the posts lying vacant. Learned State counsel, on the contrary, has reiterated the stand taken by the respondents in the affidavit filed on their behalf.

4. Heard.

5. As per undisputed facts on record, the petitioner has duly participated in the selection process for the post of PGT History as a General category candidate pursuant to the aforementioned advertisement. Despite being meritorious, he could not be recommended for appointment only on account of being younger in age as compared to the last recommended



candidate who also secured equal/128 marks in the selection. Against the total advertised posts, the Department offered appointments to 361 candidates; out of those 37 are still vacant as the candidates who were offered these posts did not join. The only reason cited by the respondents for not offering appointment to the petitioner despite the posts lying vacant is, absence of any provision to make a waiting list of candidates. The reason is unsustainable, since as per the settled law waiting list is meant to offer appointment to candidates against the posts remaining vacant despite the offer of appointment having been accepted. The situation does not arise in the instant case as the candidates against 37 posts did not accept the offer of appointment. Therefore, it is incumbent upon the respondents to offer appointment to the petitioner against the vacant post on the basis of merit determined by the Commission.

6. A reference in this regard can be made to the following observations by the Supreme Court in *State of J & K and others v. Sat Pal*, (2013) 11 SCC 737, relied upon by the Division Bench in *Anshul* case:

10. ...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 candidature 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. ...

7. In view of the discussion, the petition is allowed and the respondents are directed to offer appointment to the petitioner as per merit, subject to fulfilling the requisite conditions, with notional service benefits from the date other selected candidates pursuant to the advertisement in question have been appointed and actual benefits from the date of joining. The directions shall be carried out by the respondents within a period of two weeks of receiving a certified copy of this order.

(TRIBHUVAN DAHIYA)
JUDGE

19.11.2024
Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>