



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP- 26695-2016
Date of Decision:28.10.2024

NEERAJ MITTAL ...Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER
...Respondents

2. CWP- 16169-2017
Date of Decision:28.10.2024

RAKESH KUMAR ...Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjit Singh Kalra, Advocate for the petitioner
in CWP-26695-2016.

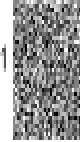
Mr. Shreesh Kakkar, Advocate for the petitioner(s)
in CWP-16169-2017.

Mr. Amar Preet Singh Bains, AAG, Punjab

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HARSIMRAN SINGH SETHI, J.(ORAL)

In the present petitions, the grievance being raised by the petitioners is that the respondents had issued an advertisement dated 28.11.2015 (Annexure P/2) for filling up the posts of Clerk, for which posts, the petitioners had competed and ultimately the respondents have declared the result for the same but all the said advertised posts could not be filled up and rather than giving the opportunity to the candidates, who had already competed in pursuance to the advertisement dated 28.11.2015 (Annexure



P/2), the respondents have issued another advertisement on 01.09.2016 (Annexure P-9) and made fresh selection to the said posts of Clerk. The grievance of the petitioners is that rather than issuing a fresh advertisement, the petitioners who had already competed and were waiting for appointment should have appointed against those posts.

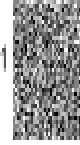
Upon notice of motion, the respondents have filed reply wherein, it has been stated that the candidates, who were found eligible for the post of Clerks in sports category, their names were recommended and the candidates, whose sports certificate have not been found as per gradation, their candidatures have been cancelled.

Learned State counsel further submits that as there was no waiting list prepared, State took up conscious decision to issue afresh advertisement and selection qua the fresh advertisement has also been made.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question which arises for consideration of this Court is whether once, there was no waiting list prepared by the respondents, can the petitioners claim that they should have appointed in pursuance to advertisement dated 28.11.2015 (Annexure P/2) rather than issuing advertisement qua the left over posts along with other posts, which became available in the meantime to be filled up by issuing fresh advertisement dated 01.09.2016 (Annexure P/9).

The said question came up for consideration before the Hon'ble
Supreme Court of India in **Civil Appeal No.3062-2023, titled as 'State of**



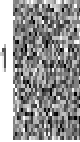
Karnataka vs. Smt. Bharathi S.’ decided on 19.05.2023 wherein, it has been held that duty to fill up the vacancy from the waiting list can only arise on the basis of the mandatory rules which prove for framing of a healthy unit and in the absence of any such mandate, the decision to fill up the vacancies is to be left to the wisdom of the State. Relevant paragraph of the judgment is as under:-

“The position that emerges from the above decisions is that the duty to fill up vacancies from the additional list within (waiting list) can arise only on the basis of a mandatory rule. In the absence of such a mandate, the decision to fill all the vacancies from the Additional List, is left to the wisdom of the State. We will however add that State cannot act arbitrarily and its action will be subject to judicial review.”

In the present case, after the publication of the result in pursuance to the advertisement dated 28.11.2015 (Annexure P/2), the State in its wisdom decided to advertise the posts once again vide advertisement dated 01.09.2016 (Annexure P-9) as number of posts had become available to be advertised afresh and the left over posts of the advertisement dated 28.11.2015 (Annexure P/2) were also included in the same.

Once, the State in its wisdom had taken a conscience decision to advertise the posts again and same were advertised and have already been filled up, no question for the grant of benefit so as to appoint the petitioners qua the earlier advertisement, cannot be allowed as at no stage petitioners were earlier selected to put on a waiting list.

Further, no rule has been cited before this Court that there was a mandate upon the respondents to fill up all the posts from the first/initial advertisement even if there is no waiting list prepared. In the absence of any mandate and any waiting list issued by the respondents, the petitioners



cannot claim benefit of appointment merely on the ground that they participated in pursuance to advertisement dated 28.11.2015 (Annexure P/2).

Further, nothing stopped the petitioners to compete for the post which were advertised vide advertisement dated 01.09.2016 (Annexure P/9) but petitioners chose not to compete for the same. Once, the petitioners chose not to compete for the posts, which were left over in pursuance to advertisement dated 28.11.2015 (Annexure P/2) and were made part of advertisement dated 01.09.2016 (Annexure P/9) and appointment have already been made, in pursuance to the advertisement dated 01.09.2016, no ground to disturb the appointment of the candidates, who have competed and selected in pursuance to advertisement dated 01.09.2016 (Annexure P/9) is made out.

Further, learned counsel for the petitioners have not been able to dispute that in the initial merit list, all the candidates, who were selected against the posts advertised, were higher in merit than the petitioners. The petitioners could not get selected in the initial selection and there was no waiting list. The petitioners are only claiming that as certain candidates from the initial merit list did not join, the petitioners should be given appointment against the said post whereas, the respondents rather than issuing a waiting list decided to advertised the posts afresh.

Once, the petitioners failed to make it to the select list keeping in view the number of posts advertised as per the advertisement dated 28.11.2015 (Annexure P/2) and there was no waiting list, the petitioners cannot claim the benefit of appointment. Only a candidate who is put on waiting list can claim certain benefit, which fact is missing in the present



case as the respondents did not issue any waiting list after issuance of select list keeping in view the posts advertised in pursuance to advertisement dated 28.11.2015 (Annexure P/2) hence, the petitioners cannot raise any grievance qua their non-selection or to grant them benefit of appointment against the posts, which remained vacant due to non-joining of the candidates, which were subsequently advertised by the respondents and the selection have already been made.

Keeping in view the facts and circumstances recorded Thereinabove, no ground for interference by this Court is made out and both the writ petitions are accordingly dismissed.

Civil miscellaneous application pending, if any, is also disposed
A photocopy of this order be placed on the files of connected.

(HARSIMRAN SINGH SETHI)
JUDGE

28.10.2024
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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |