

CM-20240-CWP-2023 in/and
CWP No. 7956-2017

2024:PHHC:001170

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102) CM-20240-CWP-2023 in/and
CWP No. 7956-2017
Date of Decision : 08.01.2024

Subhash Chander
...Petitioner

Versus

State of Haryana and another
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Himanshu Arora, Advocate and
Ms. Nikita Garg, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-20240-CWP-2023

Present application has been filed for revival of the writ
petition.

Notice of the application to the counsel opposite.

Mr. Harish Nain, learned Assistant Advocate General,
Haryana, who is present in Court, accepts notice on behalf of the
respondents. He raises no objection for the grant of prayer as raised in
the present application.

Keeping in view the averments made in the application,
which is duly supported by an affidavit, coupled with the fact that learned

counsel for the respondents has not objected to the relief as prayed in the present application, the same is allowed and the writ petition is accordingly revived.

On the joint request of learned counsel for the parties, the writ petition is taken up for hearing today itself.

CWP-7956-2017

1. Certain facts need to be noticed for the proper adjudication of the present case, which are as under :-
2. The Haryana Public Service Commission-respondent No.2 issued an advertisement No.12 dated 24.01.2004, advertising 102 posts of Haryana Civil Services (Executive Branch) and Other Allied Services, out of which, 58 posts were for HCS (Executive Branch) and the remaining were for Other Allied Services. The candidates applied and competed for the said posts. On 30.12.2004, the respondent-Commission after finalizing the selection process, recommended 102 candidates for appointment against the said advertised posts.
3. Despite recommendations made by the respondent-Commission, appointments were not made by the Government and ultimately, candidates, who were recommended for appointment by the respondent-Commission, filed writ petitions being CWP No. 3768 of 2005 and CWP No. 5437 of 2005 before this Court seeking appointment in pursuance to recommendation of the Commission. It may be noticed that candidates, who could not find their names in the list of

recommended candidates, challenged the recruitment process itself by filing CWP No.3327 of 2005.

4. During the pendency of the aforementioned writ petitions, the respondent-State reduced the cadre strength of the HCS (Executive Branch) from 300 to 230.

5. During the pendency of the said writ petitions, the respondent-State keeping in view the number of complaints received, constituted a Vigilance enquiry with the State Vigilance Bureau to find out as to whether, the selection process undertaken was in accordance with law or not, so that, an appropriate decision could be taken with regard to the claim being made by the selected/recommended candidates for their appointment as well as upon the complaints qua irregularities committed during the selection process. Keeping in view the stand taken by the Government that the matter was under consideration of the State Vigilance Bureau, the writ petitions filed seeking appointment in pursuance to the recommendation as well as those challenging the selection process itself were dismissed by this Court on the ground that the Government itself is considering the said issue.

6. Order passed by this Court dismissing the writ petitions on the ground that the Government is seized of the matter, was challenged before the Hon'ble Supreme Court of India, which Special Leave Petition came to be dismissed on 11.12.2007 with the observation that the State Government should expedite the enquiry and conclude the same at the earliest so as to decide whether, any appointment is to be made qua the

candidates, who have been recommended for appointment against the advertised posts.

7. While the matter with regard to selection against 102 posts advertised was pending consideration with the respondent-State, another advertisement was issued in the year 2009 by the respondent-State. The said advertisement of 2009 was then challenged vide CWP No. 2130 of 2009 before this Hon'ble Court wherein the issue raised was that while on one hand, the Government is not accepting the recommendations made by the respondent-Commission in pursuance to the earlier advertisement issued in the year 2004 on the ground that the issue qua the appointment of re-commended candidates is under consideration and without finalizing the said issue, a fresh advertisement has been issued by the respondent-State. The said writ petition was ultimately disposed of on 20.08.2010 with the observation that the vigilance enquiry pending with the State Vigilance Bureau, which has been initiated in pursuance to the allegation of irregularities while making recommendations in pursuance to the initial advertisement of the year 2004, shall be concluded within a period of six months.

8. Upon the expiry of the said period of six months when the enquiry initiated by the respondent-State did not attain finality, contempt petitions were filed and during the pendency of the said contempt petitions, respondent-State was directed to conclude the enquiry entrusted to the State Vigilance Bureau within a period of three months, so that, the

claim of the selected/recommended candidates in pursuance to the advertisement of the year 2004 could be decided.

9. The report of the said enquiry by the State Vigilance Bureau was submitted to the Chief Secretary, Government of Haryana on 09.11.2011 for consideration wherein it was mentioned that out of 102 selected/recommended candidates in pursuance to the advertisement issued in the year 2004, irregularities qua 64 candidates were noticed, which were detailed in the said report. The said report pointing out irregularities only qua 64 candidates was sent to the Government for its consideration.

10. Along with the report, a chart giving details of all the recommended candidates was also appended by the State Vigilance Bureau depicting the status of each candidate as to whether, recommendation qua particular candidate was free of any discrepancy or not. As per the said chart, against 38 candidates, no discrepancy was found qua their recommendation. It may be noticed that the petitioner was among 64 candidates against selection of whom irregularities were pointed out so as to term their selection as tainted.

11. Though, the vigilance report dated 09.11.2011 submitted by State Vigilance Bureau had already been submitted with regard to the status of the candidates as to whether they are tainted or not, no action qua appointment of selected/recommended candidates was taken by the State. Ultimately, the writ petitions were filed by the candidates. The candidates like the petitioner, who were being treated as tainted filed the

petitions seeking appointment on the ground that the vigilance report submitted by the State Vigilance Bureau is not correct, whereas 38 candidates against whom no discrepancy were found in the report filed writ petitions claiming appointment on the ground that once their selection has been declared untainted, they should be given appointment keeping in view recommendation of their name by the respondent-Commission in pursuance to the Advertisement issued in the year 2004.

12. The bunch of said writ petitions came to be decided by the Co-ordinate Bench vide order dated 29.05.2015 while passing order in CWP No. 108 of 2012 and other connected cases. The Co-ordinate Bench came to the conclusion that keeping in view the record which had come before the Court, no direction can be issued to the respondent-State to give the appointments to the 102 selected/recommended candidates and all those writ petitions were dismissed by recording observation qua the selection process.

13. The said order passed by the Co-ordinate Bench dated 29.05.2015 was assailed by the selected/recommended candidates by filing several Letters Patent Appeals. The petitioner and other candidates like him filed appeal challenging the vigilance report submitted by the State Vigilance Bureau dated 09.11.2011 as well as the judgment of the Co-ordinate Bench dated 29.05.2015 rejecting their claim qua appointment and the candidates, whose selection were declared untainted, approached the Hon'ble Division Bench in Letters Patent Appeal on the ground that they should have given the appointment keeping in view the

same vigilance report dated 09.11.2011 by setting-aside the judgment of learned Single Judge dated 25.05.2015.

14. During the pendency of the said appeals before the Hon'ble Division Bench, the respondent-State upon being directed by the Hon'ble Division Bench to state its stand now that the vigilance report dated 09.11.2011 was received, upon which direction respondent-State formed a Committee of Officers under the Chairmanship of Director General Vigilance Bureau, which Committee was tasked to review the report of the State Vigilance Bureau so as to eliminated the possibility of any candidate being wrongly attributed as tainted and submit its report for the State to give its final stand.

15. The said Committee of Officers formed by the Government looked into the selection process undertaken by the respondent-Commission qua the selection and recommendation of 102 candidates once again and gave a detailed report dated 29.01.2016 to the respondent-State. It may be noticed that members of the Committee, which was formed by the respondent-State was the then Additional Director General, State Vigilance Bureau, Panchkula, Inspector General of Police, State Vigilance Bureau, Panchkula, Superintendent of Police, State Vigilance Bureau, Hisar and Deputy District Attorney, State Vigilance Bureau, Panchkula. Vide the said report dated 29.01.2016, the Committee again reiterated and affirmed the findings of the State Vigilance Bureau qua the 38 candidates against whom no discrepancy/irregularity in the report dated 09.11.2011 and the names of 68 tainted candidates were also

mentioned in the said report. It may be noticed that in the report of the Committee of Officers dated 29.01.2016, the stand regarding the petitioner being tainted as noted in the report of the State Vigilance Bureau dated 09.11.2011 was again affirmed.

16. Subsequent to the submission of the report dated 29.01.2016 of the Committee of Officers the respondent-State through its Chief Secretary issued letter dated 26.02.2016 to the Advocate General, Haryana, wherein, it was mentioned that the Government has accepted in principal the report of the State Vigilance Bureau and the Government has decided to offer appointment to the 38 untainted candidates and the said appointments were to be given on certain terms and conditions, which were made part of the said letter.

17. Keeping in view the letter dated 26.02.2016, the Division Bench segregated the bunch of appeals in two categories, one of those filed by untainted candidates and second of those filed by tainted candidates. The Hon'ble Division Bench then vide order dated 27.02.2016 in LPA No. 1168/2015 and other connected cases, which formed part of the first bunch of appeals filed by untainted candidates modified the judgment of learned Single Judge dated 29.05.2015 qua the untainted candidates and partly allowed their appeals in terms of the letter dated 26.02.2016 and allowed the State Government to make appointment of 38 candidates, who were found to be untainted.

18. On the same date, the petitioner and other similarly situated candidates, who were declared tainted, withdrew their appeals which

formed part of the second bunch of appeals, which were of those candidates, who were termed as tainted with liberty to approach the Government for redressal of their grievance. It may be noticed here again that, in the appeals filed by the candidates, who were termed as tainted, the report dated 09.11.2011 of the State Vigilance Bureau was under challenge.

19. After withdrawing the said appeals/LPA, the petitioner and other similarly situated candidates approach the Government for consideration of their claim to be treated as untainted. The Government passed an order dated 09.03.2017 (Annexure P-10) on the representation of the present petitioner by which, the Government again rejected the claim of the petitioner so as to grant him appointment. A detailed order dated 09.03.2017 (Annexure P-10) was passed by the Government by noticing all the facts and circumstances as well as the reports of the State Vigilance Bureau and Committee of Officers, which had come before the Government.

20. In the present petition, the decision dated 09.03.2017 (Annexure P-10) rejecting the claim of the petitioner on his representation to declare him untainted has been rejected, is under challenge.

21. After notice of motion, the respondents have filed the reply, wherein, the respondents have again taken the same stand as mentioned in the impugned order 09.03.2017 (Annexure P-10) that the selection of the petitioner has been declared tainted more than once by premier

institution of the State i.e. State Vigilance Bureau and also by the Committee of Officers constituted by the Government, therefore, the representation of the petitioner so as to declare him untainted has not found favour with the Government and the same has been rejected by passing the impugned order dated 09.03.2017 (Annexure P-10).

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

23. From the facts, which have been mentioned here-in-before, it is clear that after the selection, the Government chose not to give appointment to any of the 102 selected/recommended candidates. The legal battle started before this Court, wherein, all the 102 selected/recommended candidates approached this Court through various writ petitions seeking appointment. Their claim was not accepted by this Court on the ground that the matter was under consideration of the State Vigilance Bureau of the Government and ultimately, the Hon'ble Supreme Court of India while disposing of the said litigation held that the State will be free to take appropriate decision keeping in view the vigilance report, which was yet to be received as the selection process was under scrutiny at the relevant point of time.

24. It is also a conceded position that the report of the State Vigilance Bureau qua the validity of selection process undertaken in pursuance to the Advertisement of the year 2004 was received by the Government on 09.11.2011. The State Vigilance Bureau in the said report bifurcated the 102 selected/recommended candidates as tainted and

untainted candidates, tainted being those candidates qua selection of whom discrepancies were found. The petitioner was part of the 64 candidates, who were declared as tainted. The petitioner had then approached this Court challenging the said report of the State Vigilance Bureau dated 09.11.2011 so as to declare him untainted by filing writ petition and the Co-ordinate Bench while passing order in CWP No. 108 of 2012 and other connected cases dated 29.05.2015 dismissed the bunch of writ petitions filed by the selected/recommended candidates along with that of the petitioner which were filed seeking grant of appointment in pursuance to selection/recommendation by the respondent-Commission with respect to the Advertisement of the year 2004.

25. Against the said decision, the petitioner as well as the other 101 candidates filed the LPA so as to claim the benefit of appointment in view of their recommendations. During the pendency of the LPA, the respondent-State upon being directed to State its stand qua appointment, formed a Committee of Officers to assist it, which Committee again affirmed the finding of the report dated 09.11.2011 of State Vigilance Bureau in its own report dated 29.01.2016 in which report also, the petitioner was declared as part of the tainted candidates. In light of the recommendation of the Committee of Officers the Government gave in principal approval to the report of the State Vigilance Bureau and accepted the claim of 38 untainted candidates for their appointment. The Hon'ble Division Bench disposed of the appeals filed by the 38 untainted candidates in terms of the stand taken by the Government and the

petitioner along with similarly situated candidates, who were termed as tainted rather than pressing their challenge to the report of the State Vigilance Bureau dated 09.11.2011, which was adopted by the Government, withdrew their appeals/LPA so as to approach the Government with representation without any liberty to approach the Hon'ble Court again on the same cause of action.

26. Keeping in view the above mentioned facts, it is clear that the report of the State Vigilance Bureau dated 09.11.2011 which was subject matter of challenge in the earlier petition filed by the petitioner remained basis for petitioner's non-appointment and even the finding qua the petitioner being tainted of the report of State Vigilance Bureau was affirmed by the Committee of Officers in the report dated 29.01.2016, which was tasked to cross all the possibility of a wrong candidate suffering before the Government took its decision. That being the factual position asking this Court to declare the petitioner as untainted candidate does not arise for the following reasons.

(a) While passing the order dated 11.12.2007 by the Hon'ble Supreme Court of India, the jurisdiction was given to the State to act in accordance with the report of the State Vigilance Bureau and its own enquiry qua the fairness of the selection process and for appointing the candidates in pursuance to the same. The State Vigilance Bureau in its report dated 09.11.2011 had declared the petitioner as tainted and the said view was adopted by the respondent-State vide impugned order dated (Annexure P-6), which report was subject matter of challenge in the

appeal filed by the petitioner before the Hon'ble Division Bench, which challenge was abandoned by the petitioner by withdrawing the appeal and consequently the judgment of Co-ordinate Bench dated 29.05.2015 became final qua the petitioner where the report of the State Vigilance Bureau was not set-aside to hold the petitioner not being a tainted candidate. Petitioner cannot agitate the same issue once again in this petition so as to seek a contrary view from this Court that petitioner is not a tainted candidate. If the prayer raised in the present petition is accepted then it will amount to passing of two different judgments on the same issue between the same parties without there being any additional facts qua the claim of the petitioner being not tainted. This is not permissible in the eyes of law.

27. The Hon'ble Supreme Court of India in Civil Appeal No. 3149 of 2019 titled as P. Bandopadhyaya & Ors. Vs. Union of India & Ors., decided on 15.03.2019 again affirmed the applicability of principle of res-judicata to writ petitions. The relevant paragraph 8.7 of the said judgment is as under :-

“8.7. The decision in S.V. Vasaikar & Ors. v. Union of India & Ors. [2003 (2) Mh. L.J. 691 : 2003 (4) Bom CR 79] was not challenged before the Supreme Court, and has since attained finality. Therefore, the relief sought by the Appellants before the High Court was barred by the principle of res judicata.

*Reference can be made to the decision of the Constitution Bench in **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.,***

(1990) 2 SCC 715 : AIR 1990 Supreme Court 1607.
wherein Sharma, J., on behalf of the five-judge bench, held:

*"35...It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in **Daryao v. State of UP, (1962) 1 SCR 574 : AIR 1961 Supreme Court 1457.** held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till*

set a.side in appeal a.s provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32..."

(emphasis supplied)

Albeit the decision of the Constitution Bench was in the context of a Writ Petition filed under Article 32, it would apply with greater force to bar a Writ Petition filed under Article 226, like the one filed by the present Appellants, by the operation of the principle of res judicata."

28. The present petition had earlier laid challenge to the report dated 09.11.2011 of the State Vigilance Bureau in which writ petition the petitioner got an order on merit from the Co-ordinate Bench declining to treat him as untainted candidate so as to secure him appointment in pursuance to recommendation of his name by respondent-Commission, which judgment of Co-ordinate Bench dated 29.05.2015 was subject matter of challenge in the LPA filed by the petitioner before the Hon'ble Division Bench of this Court, which appeal was withdrawn without seeking any liberty. Further, the impugned order dated 09.03.2017 (Annexure P-10) again has its primary basis the report dated 09.11.2011 of the State Vigilance Bureau. Even the report of Committee of Officers dated 29.01.2016 also hold the petitioner as a tainted candidate, which fact was already there before the Division Bench but rather than proving the report of State Vigilance Bureau as incorrect so as to get the judgment of learned Single Judge set-aside, petitioner chose to withdraw the appeal to approach Government, hence the stand of the Government that selection of the petitioner is tainted, which has already been accepted by

the Co-ordinate Bench vide order dated 29.05.2015, cannot be re-opened on the pretext of challenging the order passed by Government on the representation of the petitioner. Facts, which have attained finality between the parties i.e. the selection of the petitioner is untainted, cannot be reopened to be accepted once again in these proceedings.

29. Even otherwise, the Hon'ble Supreme Court in Civil Appeal No. 8072 of 2010 titled as ***State of Orissa and another Vs. Laxmi Narayan Dass (Dead) through Lrs & Others***, decided on 12.07.2023 in paragraph 37 of the judgment has held as under :-

*“37. On the question, as to whether after the withdrawal of a suit claiming the same relief without having permission to institute fresh one for the same relief, a writ petition will be maintainable before the Court, the guidance is available from the judgment of this Court in **M.J. Exporters Private Limited v. Union of India and others (2021) 13 SCC 543**, wherein the principle of constructive res judicata was applied. The case concerns a litigant who sought to file a fresh writ petition after withdrawal of the earlier writ petition filed for the same relief without permission to file fresh one. The Court held that the principles contained in Order 23, Rule 1 CPC are applicable even in writ proceedings. Para 15 thereof is extracted below:*

*"15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive res judicata which are laid down under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and which principles are extendable to writ proceedings as well as held by this in **Sarguja Transport Service v. STAT, (1987) 1 SCC 5.**"*

30. Learned senior counsel appearing on behalf of the petitioner has further argued that keeping in view the order passed by this Court during the pendency of the present petition so as to seek the status report from the respondent-department qua the status of the petitioner, it can be safely assumed that the matter has already been reopened by this court so as to be decided afresh as to whether, the selection of the petitioner is to be treated tainted or not.

31. The said argument cannot be accepted. Merely an interim order has been passed to seek certain opinion from the department does not mean that the earlier judgment between the parties, which attained finality on the same issue, will stand washed off. The orders passed by this Court in this petition is only to ascertain as to whether, the question being raised by the petitioner can be adjudicated or not. The interim orders are not the final orders but an exercise conducted by the Court so as to adjudicate the issue between the parties and reach a final conclusion.

32. Further, the interim orders cannot be treated as a final orders to mean that the issue of taintedness has been reopened by this Court. Rather, as per the settled principle of law, the issues already settled between the parties cannot be reopened by the Co-ordinate Bench and in the present case, the petitioner had already been declared tainted in the Vigilance Report dated 09.11.2011 by the State Vigilance Bureau, which was a subject matter of his earlier petition and during the pendency of his

LPA, he was again declared tainted by the Committee of Officers on 29.01.2016.

33. The Co-ordinate Bench had already upheld the decision of the Government to treat the selection of the petitioner as a tainted, which decision attained finality after the petitioner withdrew his LPA without getting it adjudicated on merits, hence, the said question cannot be reopened by this Court and rather this Court will not have even the jurisdiction to reopen the same and the interim orders will not give a right to the petitioner to open his issue to be decided once again.

34. It may be noticed that even during the pendency of the present petition also, in another exercise undertaken by the respondents, the selection of the petitioner has again been declared as tainted, which fact shows that there is a consistent view of the respondents that the selection of the petitioner is a tainted one. Once, a view has been taken by the Government on the basis of record/report, which record/report has been *prima-facie*, accepted by the Division Bench also while passing an order dated 27.02.2016, the same has to be held to be a good ground with the Government to decline the petitioner appointment in pursuance to his recommendation.

35. Even otherwise, there are no malafide, which have been agitated by the petitioner upon anyone so as to declare him a tainted candidate. In the absence of any malafide, any genuine reason, which has come from the Government for the acceptance of the report and for not accepting the recommendation of the petitioner against the post

which has been advertised in the year 2004, the action of the respondent-department has to be given preference over the claim of the petitioner. Once the employer feels that the selection of a candidate is tainted, the Court will not be sitting in an appeal over the said decision so as to impose an unwanted candidate upon the employer and that too where the employer has given a valid reason for not accepting a candidate as an employee, hence, the prayer of the petitioner so as to grant him appointment in pursuance to his recommendation by declaring him as an untainted candidate, cannot be accepted.

36. Bona-fide action taken by the State has to be upheld. The Hon'ble Supreme Court of India while deciding Civil Appeal No. 5803 of 2007 titled as ***Jitendra Kumar and others Vs. State of Haryana and another***, decided on 11.12.2007, in the earlier litigation between the parties, has categorically held that the selectees do not have any legal right for their appointment subject to any dispute regarding the bona-fide on the part of the State and in the present case in the absence of any mala-fide action alleged against anyone keeping in view the material which was presented before a State to arrive at a particular decision that the petitioner's selection is tainted, cannot be interfered with, especially when the public appointments are within the exclusive domain of the Government and the power of judicial review in such a matter is very limited. The relevant paragraphs 25 and 30 of the said judgment are as under :-

“25. However, upon change in the political set up and upon an objective consideration of the entire matter vis-a-vis the need and interest of the State, the cadre strength was fixed at 230. No serious challenge has been made to this part of the judgment of the High Court.

We also do not see any reason to interfere with the impugned notification dated 13.05.2005. What would be the need of the State and how an administration shall be run is within the exclusive domain of the State. The power of judicial review in such matter is very limited. The superior judiciary ordinarily would not interfere in a matter involving policy decision. We do not mean to say that the policy decision of the State is beyond the realm of judicial review. However, power of judicial review can be exercised only on the basis of known legal principles. [See Cellular Operators Assn. of India and Others v. Union of India and Others, (2003)3 SCC 186 , Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and Others, (2006)3 SCC 434 and Sarbananda Sonowal v. Union of India, (2007)1 SCC 174]

We, however, in the fact situation obtaining herein cannot opine that any case has been made out where the court shall delve deep into the aforementioned question.

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30. The legal principle obtaining herein is not in dispute that the selectees do not have any legal right of appointment subject, inter alia , to bonafide action on the part of the State. We may notice some of the precedents operating in the field.

In [Shankarsan Dash v. Union of India, 1991\(2\) SCT 194 : \[\(1991\)3 SCC 47\]](#) , this Court held :

"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 bonafide 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. Subhash Chander Marwaha, AIR 1973 Supreme Court 2216](#) , [Neelima Shangla v. State of Haryana, AIR 1987 Supreme Court 169](#) or [Jatendra Kumar v. State of Punjab, 1985\(1\) SCC 122](#). "

Yet again in [R.S. Mittal v. Union of India, 1995\(3\) SCT 284 : \[1995 Supp \(2\) SCC 230\]](#) , this Court held :

"...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 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 Murgad 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."

(Emphasis supplied)

In Asha Kaul (Mrs.) and Another v. State of Jammu and Kashmir, 1993(2) SCT 744 : [(1993)2 SCC 573] , this Court held :

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash Chander Marwaha ; Mani Subrat Jain v. State of Haryana, AIR 1977 Supreme Court 276 ; State of Kerala v. A. Lakshmikutty, (1986(4) SCC 632) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of

candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today...."

[See also A.P. Aggarwal v. Govt. of NCT of Delhi and Another, (2000)1 SCC 600]

In Food Corpn. Of India and Others v. Bhanu Lodh and Others, 2005(2) SCT : 151 : [(2005)3 SCC 618] , this Court held :

"14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bonafide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review."

37. No other argument has been raised.

38. Keeping in view the above, in the facts and circumstances of the present case, no ground is made out for the grant of prayer as made in the present petition.

39. Dismissed.

January 08th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No