

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 31629 of 2024

Reserved On: 03.12.2024  
Pronounced On: 16.12.2024

Prachi Gupta and Another

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

**CORAM: Hon’ble Mr. Justice Sheel Nagu, Chief Justice.  
Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Ankur Mittal, Ms. Kushaldeep Kaur, Mr. Sakal Sikri,  
Mr. Siddhanth Arora and Ms. Saanvi Singla, Advocates  
for the petitioner(s).

Mr. Anurag Chopra, Additional Advocate General,  
Punjab, for respondents No.1 and 2.

Mr. Akshay Bhan, Senior Advocate  
with Mr. Amandeep Talwar, Advocate  
for respondent No.3.

**Sheel Nagu, Chief Justice.**

**1. Brief Facts**

1.1 These two petitioners desire to be appointed to the Punjab Civil Service (Judicial Branch) Entry Level. They belong to general category (open) It is their admitted case that no candidate lower in merit than the petitioners, as per the result, issued after the selection has been appointed. They pray for issuance of a writ of certiorari to quash the order passed by the Recruitment and Promotion Committee (Subordinate Judicial Services) on

issue them appointment letters.

1.2 The Punjab Public Service Commission (hereinafter referred to as “the PPSC”) advertised 159 posts of Civil Judge (Junior Division)-cum-Judicial Magistrate which included 83 posts under the general category which were divided into five sub categories, namely “Open (category No.71), ESM/LDESM Punjab, Freedom Fighters of Punjab, Sportsperson of Punjab and Physically Handicapped of Punjab. The selection was based upon the preliminary examination followed by the main written examination and viva voce. As per the final result, the petitioner No.2 is at serial No.81, whereas petitioner No.1 is at serial No. 82. As per the advertisement, the names of 52 candidates were required to be recommended for selection in open category which were made and the candidates joined.

1.3 Against the various horizontally reserved categories, there were no eligible candidates and 28 posts remained vacant. In view of the rules/instructions adopted by the State of Punjab, the Selection Committee took a decision to recommend the appointment of the candidates from serial No. 53 to 80 from the merit list by converting the aforesaid posts to open general category in December, 2023 with the stipulation that most of the borrowed vacant posts will be reverted after deducting from the vacancies for the open general category in the next advertisement.

1.4 The petitioners claim that out of 28 recommended candidates, two have expressed their inability to appear for document verification and for medical examination. Hence, the petitioners are required to be considered for two unfilled posts.

Services (Judicial Branch) Rules, 1959 (hereinafter referred to as “the 1959 Rules”). It shall be noted here that no provision has been laid down in the aforesaid rules with respect to the preparation of waiting list.

**2. Arguments put forth by the learned counsel representing the parties**

2.1 While drawing the attention of the Court to the aforesaid position, the petitioners’ counsel contends that two posts are vacant and available and the petitioners being next in the merit are required to be considered for appointment. He submits that these posts are the unconsumed seats against which the mandamus is required to be issued to appoint the petitioners. In support of his submissions, the learned counsel relies upon the judgment in *Miss Neelima Shangla v. State of Haryana and Others (1986) 4 SCC 268*, *Manoj Manu and Another v. Union of India and Others (2013) 12 SCC 171* and a Division Bench Judgment in *Anshul v. State of Haryana and Another (Civil Writ Petition No. 15962 of 2020 decided on 08.03.2022)*.

2.2 Per contra, the High Court’s counsel has submitted that the names of the petitioners were neither figured in the list of 52 selected candidates nor it is the case of the petitioners that the candidates lower in merit have been appointed. While relying upon the judgment in *Vallampati Sathish Babu v. State of Andhra Pradesh and Others (2022) 13 SCC 193*, *Bihar State Electricity Board v. Suresh Prasad and Others (2004) 2 SCC 681* and *The State of Karnataka & Others v. Smt. Bharathi S. AIR 2023 SC 2792*, he contends that there is no merit in the writ petition.

3. **Analysis of the arguments advanced by the learned counsel representing the parties.**

3.1 Having considered the arguments of the learned counsel representing the parties, the relief sought by the petitioners cannot be granted on account of the following reasons:-

- I) As per the settled law, merely obtaining the pass/qualifying marks does not confer upon the candidates with the right of appointment. In *State of Haryana v. Subhash Chander Marwaha (1974) 3 SCC 220*, the Supreme Court held that it is the prerogative of the appointing authority to grant admissions based on merit, and to take a decision refusing to offer appointment who has obtained less than particular marks.
- II) It is not the case of the petitioners that any candidate obtaining lower marks than the petitioners has been appointed.
- III) Originally, only 52 posts were advertised for open general category which have been consumed. It was only because of rules/instructions, the decision was taken to fill 28 posts of the next below candidates while borrowing the aforesaid posts from the various horizontally reserved categories with the stipulation that majority of such posts will have to be returned while deducting it from the open general category posts in the

next recruitment. Hence, the petitioners are neither in the original list of 52 candidates nor their names figured in another list of 28 candidates. Originally the names of 28 candidates were recommended to be appointed in November/December 2023. The appointed candidates are undergoing training in the Judicial Academy which is nearing completion.

- IV) The service rules do not envisage the preparation of wait list.
- V) The judgment passed in *Miss Neelima Shangla's case (supra)* is distinguishable as it was found that the Haryana Public Service Commission, after compiling the result chose to only recommend 26 candidates, although there were 54 vacancies altogether. The Supreme Court held that withholding of the name on the part of the Haryana Public Service Commission was not justified because they were only required to forward the names of the candidates who have passed the examination. The Supreme Court in the aforementioned case interpreted the service rules as applicable in the State of Haryana whereas this case relates to State of Punjab. In para 2 of the report, the Supreme Court has also observed that the Government or the High Court may take a decision not to appoint anyone who has obtained less than a particular

percentage of marks. Thus, the judgment is distinguishable.

VI) Similarly, in *Manoj Manu's case (supra)*, the appointing authority refused to appoint from the reserved list which was provided in the rules. In that context, the Supreme Court issued directions. Hence, this case is also distinguishable.

VII) In *Anshul's case (supra)*, the Division Bench while dismissing the Letters Patent Appeal considered that there was a wait list which should have been exhausted. The Supreme Court, while refusing to interfere in the aforesaid case, has kept the question of law open.

VIII) As per the recruitment notice, 52 posts of open general category were advertised out of which 17 were reserved for women. The petitioners belong to the open general category. They do not claim reservation in any of the category.

3.2 The learned counsel representing the petitioner has attempted to distinguish between the consumed and unconsumed vacancies in order to impress upon the petitioners' case, however, in the peculiar facts, the aforesaid submission does not require discussion because the government which is the appointing authority as well as the Recruitment and Promotion Committee (Recommendatory Body) has taken a conscious decision not to fill two posts which have been borrowed by converting on account of non-

4. Decision

4.1 For the foregoing reasons, we express our inability to grant any relief to the petitioners. Hence, the present writ petition is disposed of.

(Sheel Nagu)  
Chief Justice

(Anil Kshetarpal)  
Judge

December 16<sup>th</sup>, 2024  
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No