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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 18.03.2024*

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W.P.(C) 4021/2024**DELHI SUBORDINATE SERVICES SELECTION BOARD AND
ORS** PetitionersThrough: Ms.Avnish Ahlawat, SC, GNCTD
with Mr.Nitesh Kumar Singh, Ms.Laavanya
Kaushik, Ms.Aliza Alam & Mr.Mohnish
Sehrawat, Advs.

versus

MOHD VAQUAR KHAN RespondentThrough: Mr.Nirvikar Verma & Mr.Asesh
Luthra, Advs.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)****CM APPL. 16406/2024**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 4021/2024 & CM APPL. 16405/2024 (stay)

3. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 16.05.2023 passed by the learned Central Administrative Tribunal (Tribunal) in O.A No.4293/2018. Vide the impugned order, the learned Tribunal has allowed the Original Application (OA) filed by the respondent, by directing the petitioners to issue an offer of appointment to the respondent, if otherwise found eligible, for the post of PGT (URDU) based on his name being placed at serial no.3 in the list of



shortlisted candidates declared on 08.06.2016 for the said post for vacancy which was advertised in 2012. The learned Tribunal has consequently directed that the respondent be granted all consequential benefits on notional basis with reference to his batch mates as per his merit position.

4. Before dealing with the rival submissions of the parties, we may note the brief factual matrix as emerging from the record.

5. In the year 2012, the respondent no.1/DSSSB issued an advertisement inviting applications for filling one vacancy of PGT (URDU) - MALE. Based upon his application, the respondent appeared in the two tier examination held by the petitioner, the result whereof was declared on 08.06.2016. Based on the result, the respondent, along with two other persons, was short listed for the said post and he was placed at serial no., 3 of the short listed candidates. However, since the candidate, namely Mr. Abdussami, whose name was placed at serial no. 1 in the provisional list of short listed candidates, was not available for document verification, he was issued repeated notices, asking him to upload his documents, which he failed to do and consequently his candidature came to be cancelled on 29.06.2018. It appears that the candidate, namely Akram Parvez, did not fulfil the requisite educational qualification and his candidature was rejected. Consequently, the petitioner, who was placed at serial no.3 of the list of shortlisted candidates, became eligible for appointment, but was denied appointment on the ground that the validity of the waitlist had expired on 07.06.2017, whereafter the vacancy had been returned to the user department.

6. Being aggrieved, the respondent approached the learned Tribunal by way of the aforesaid OA, which has been allowed under the impugned order



by directing the petitioners to issue an offer of appointment to him and grant him all consequential benefits on notional basis.

7. In support of the petition, the only submission of learned counsel for the petitioners is that the learned Tribunal has failed to appreciate that since the petitioners had declared the result of the examination on 08.06.2016, the validity of the wait list had automatically expired on 07.06.2017 and therefore, the petitioners were justified in not cancelling the waitlist panel without issuing any appointment letter to the respondent. She, therefore, prays that the impugned order be set aside.

8. On the other hand, learned counsel for the respondent supports the impugned order and submits that once the candidate at waitlist no. 1 did not upload his documents in time, his candidature ought to have been rejected immediately, without waiting for the waitlist panel to expire. He submits that the learned Tribunal was, therefore, justified in directing the petitioner to appoint the respondent on the basis of his position in the list of shortlisted candidates.

9. Having considered the submissions of the learned counsels for the parties, we may begin by noting hereinbelow the findings of the learned Tribunal, as contained in paragraph 4.5 to 4.9 and paragraph 5 of the impugned order.

“4.5 In facts of the present case, if it is taken that the wait list panel had come to an end/lapsed as on 21.06.2017, it runs contrary to the stand taken by the respondents. If the wait list panel had lapsed as on 21.06.2017, there was no occasion for them to operate the same waitlist panel till 30.06.2018 as is reflected in the additional affidavit which reads as under:

"That the 3 top candidates of following Roll No. in post



code 155/ 12 have been shortlisted, one for selection and two for waiting list and were called for document verification on 14/ 06/ 2016 vide Notice No.F. (380/ CC- 1/ DSSSB/ 2016/ PF273-28I dated 8.6.2016, for preparing dossiers for declaration of result.

That the candidature of Sh. Abdussami A, having Roll no. 38000021 was kept pending under post Code 155/12 on the present at the time of document verification:

S. No	Rank	Roll No.	Name	Cat	Total Marks	Remarks
1	1	38000021	AbdussamiA	UR	185	Pending UR1
2	2	38000017	Akram Parvez	UR	184.75	N.E.No. BED/2 nd Div.
3	3	38000037	Mohammad Vaauar Khan	UR	183.75	WL:UR1

The candidature of candidate namely Abdussami A (38000021) was kept pending against single vacancy. The candidate was given three opportunities for providing the documents - 1st vide notice dated 09/06/2016 (documents were verified manually at that time), 2nd vide notice dated 05/07/2017 (Electronic mode was started, he was asked to upload e-dossier Notice uploaded on website), 3rd vide Notice No.22/03/2018 (and SMS was also sent on his registered mobile number). However candidate had not submitted requisite documents. Accordingly candidature of the candidate was cancelled vide Notice No. 681 dated 29/06/2018.

Further since validity of waitlist panel was lapsed on 21/06/2017 and it was appropriate to close the process on 30/06/2018. Hence no candidate was nominated against the vacancy created due to cancellation of candidature of Abdussami A. Vacancy was returned to Dte. of Education vide letter No. F.1 (280)/ CC-II/



DSSSB/ 2016/ 4066-73 dated 06.08.2018."

4.6 We may highlight that In light of the ratio of decision(s) cited above as well as OM dated 13.06.2000, there was no occasion for the respondent/DSSSB to contend and say that they have returned the vacancies after expiry of one year, i.e., on 21.06.2017 even though the same was operated for one of the waitlisted candidate who did not join till 30.06.2018 despite being given several opportunities. The respondents/DSSSB ought to have called the applicant, who was also in the wait list after sufficient opportunities had been given to the candidate above him. Hence, the date of expiry of wait list panel ought to be 30.06.2018 and not 21.06.2017.

4.7 Action on part of the respondents is deplorable in as much as, on the one hand, they are contending that for sake of filling up the vacancies, they kept on sending notices to Abdussami A on various occasions, i.e. 09.06.2016, 05.07.2017, 22.03.2018 and finally cancelled his candidature on 29.06.2018. In the event, the argument of the learned counsel for the applicant is to be accepted, then the validity of Wait List panel lapsed on 21.06.2017. No explanation is forthcoming as to why the notices dated 05.07.2017 and 22.03.2018 were issued to the said candidate, namely, Abdussami, who had neither expressed any intention to join nor joined. Hence, the action of the respondents is not only arbitrary but also discriminatory qua the present applicant inasmuch as it cannot be contended by the respondents that for one candidate the Wait List panel was operational till cancellation of his candidature on 29.06.2018 and for the other applicant the Wait List panel expired on 21.06.2017. The respondents, being model employers, cannot apply different yardsticks for the same set of candidates. It is also their fundamental duty to apply the same yardsticks to all the candidates.

4.8 Besides aforesaid, another notification dated 13.06.2013 was issued by 2nd respondent wherein the following was recorded:



"No. F.1 (192) /DSSSB /P&P / 13 / 5363-72

Dated:- 13.06.13

NOTIFICATION

1. The DSSSB has decided to draw a reserve panel/waiting list upto the extent of 10% of the posts in addition to the number of candidates selected as per the notified vacancies.
2. The reserve panel/ waiting list shall be valid for a period of 1 year from the date of declaration of result and the vacancies arising due to non-acceptance of the offer of appointment, not joining the post after acceptance of appointment, the candidates not found eligible for appointment or due to resignation of selected candidates within one year of joining the post, shall be filled up from this reserve panel.
3. This issue in accordance with the approval of Govt. of Delhi, as conveyed by Joint Secretary (Services III) Deptt. vide letter No.F.16(13)/DSSSB/ 2007-S.III/1635 dated 31.05.2013.

(Ashish Kumar)

Dy. Secy. (P&P)"

4.9 Clause 2 of the above notification itself contemplates that reserve panel/waiting list shall be valid for a period of 0 1 year from the date of declaration of the result and the vacancies arising due to nonacceptance of the offer of appointment, not joining the post after acceptance of appointment, the candidates not being found eligible for appointment or due to resignation of selected candidates within one year of joining the post, shall be filled up from this reserve panel/waiting list. Therefore, the respondents themselves cannot deviate from the above executive guidelines/instructions. As such the date of declaration of result is relevant and critical in the present case. The remaining vacancies ought to have been filled up from the reserved panel/Wait List, which included the name of the applicant.



5. CONCLUSION

5.1 In view of the above discussion, we set aside the decision of the respondents in cancelling the wait list panel as on 30.06.2018. The applicant, whose name was figuring in the Reserve Panel/Wait List, shall be sent offer of appointment, if otherwise found eligible/suitable, within eight weeks from the date of receipt of a certified copy of this order. He shall be given consequential benefits only on a notional basis with reference to his batch mates as per his merit position.”

10. From a perusal of the aforesaid, we find that the learned Tribunal has noted that not only was the stand of the petitioners that the wait panel had expired on 07.06.2017, was contrary to their own action of operating the said list till 29.06.2018, when the candidature of the candidate at serial no.1 was cancelled, but was also discriminatory qua the respondent. The learned Tribunal, therefore, observed that the petitioners being model employer ought to have applied the same yard stick for all candidates, including the respondents.

11. In the light of the aforesaid findings of the learned Tribunal, we have considered the submissions of the learned counsel for the parties and are of the view that there is no infirmity to the approach adopted by the learned Tribunal. We find that, as noted by the learned Tribunal, despite the candidate who was placed at serial nos.1 not coming forward for verification of his documents, the petitioners continued to issue notices to him till as late as 22.03.2018 and it was only on 29.06.2018 that his candidature was cancelled. In our view, once it is the petitioners' own stand that the select list and the wait list were to expire on 07.06.2017, there was no reason as to why communications were being sent to the candidate placed at serial no.1 till as late as March 2018 to furnish his documents for



verification.

12. The petitioners themselves being responsible for the delay in cancellation of the candidatures of the candidates placed at serial nos.1 & 2, cannot deprive the respondent of his entitlement to be appointed to the post of PGT (RDU). It is expected from recruitment agencies, like the petitioners, to take prompt actions to fill up a post after the result of the examinations are declared. In case, the selected candidates are not able to furnish the requisite documents in time, steps should be taken to cancel their candidatures without any undue delay. Furthermore, the process for verification of the documents furnished by the selected candidates must also be carried out expeditiously so that in case they are not found to be in order, the candidates placed in the waitlist can be appointed without any delay.

13. In the present case, it is only on account of the delay on the part of the petitioners in cancelling the candidature of the selected candidate at serial no.1 that the period of wait list expired. The learned Tribunal was, therefore, justified in cancelling the candidature. For the aforesaid reasons, we find no reason to interfere with the impugned order.

14. The writ petition is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

MARCH 18, 2024/kk