



CWP- 2046-2020 (O&M) and other connected case

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216 (02 cases)

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

Date of Decision: 06.02.2025

1. CWP- 2046-2020 (O&M)

BALINDER SINGH

..... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

2. CWP- 2883-2020 (O&M)

BHARAT BHUSHAN AND ANOTHER

..... PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. D. S. Patwalia, Senior Advocate with
Mr. Aditya Chadha, Advocate
for the petitioners in CWP-2883-2020.

Mr. J. S. Mor, Advocate with
Mr. Rajinder Singh, Advocate
for the petitioner in CWP-2046-2020.

Mr. Kanwal Goyal, Advocate with
Ms. Sheena Dahiya, Advocate and
Ms. Harshita, Advocate
for the respondent Commission in CWP-2883-2020.



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Mr. Balvinder Sangwan, Advocate
for the respondent-UPSC in CWP- 2046-2020.

Mr. Harish Nain, AAG, Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

A common question of law on similar facts arises for consideration in these two petitions and the same are, therefore, being decided by this order. The question is, *whether the petitioners, who have not been placed in the select/merit list, have a right to seek appointment against the posts remaining vacant/unoccupied on the plea of being next below the selected candidates?*

2. For brevity, the facts are being taken from CWP-2883-2020, which has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondent Department to fill up vacant posts of Assistant Professor in Computer Science on the basis of selection made pursuant to advertisement 10/2016, dated 16.02.2016, by preparing a waiting list of the candidates in order of merit.

2.1. The third respondent-Haryana Public Service Commission advertised one hundred and sixty-seven posts of Assistant Professor in Computer Science vide the aforementioned advertisement. In response thereto, the petitioners applied for the post under BC-A category. However, they could not be recommended for appointment being slightly lower in merit as compared to the last recommended candidate; the two petitioners herein secured 67.28 and 67.14 marks, as compared to the last candidate who had secured 67.30 marks under BC-A category. The final selection



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result, declared on 11.08.2017, was challenged by some other candidates before this Court, and due to an interim stay granted the selected candidates could not be appointed. The stay was vacated vide order dated 01.10.2019, Annexure P-12, and the appointment letters were issued.

2.2. However, many posts remained vacant. In response to information sought under the Right to Information Act, 2005, the petitioners were furnished a list of Assistant Professors in Computer Science who joined the post pursuant to the selection dated 13.09.2019, Annexure P-16. It showed that four of the selected candidates did not join; of whom three belonged to BC-A category, and the fourth one to BC-A (Physically Handicapped/ Orthopedically Handicapped) category. Two of these posts are still vacant, as the recommended candidates have not joined. The petitioners made representation to the respondents that they being next in the order of merit should be considered for appointment against the vacant posts as per merit, but no action in the matter was taken, forcing them to file the instant petition.

3. In this background, learned Senior counsel appearing for the petitioners has contended that they have a right to be considered against the vacant posts of the category they belong to, on the basis of merit. As the Commission advertised one hundred and sixty-seven posts of Assistant Professor in Computer Science, it was incumbent upon it to make recommendations against all those posts on the basis of merit. Once it has come to the notice that the posts are vacant, they cannot shun the duty to recommend the candidates as per merit. The respondents have wrongly

declined to consider them for appointment on the plea that there is no



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waiting list of candidates who could be recommended against the posts falling vacant. Irrespective of there being no waiting list, the petitioners have a right to be considered against the posts which remained vacant and were never occupied/consumed, as the recommended candidates failed to join. Therefore, the concept of waiting list cannot be made a ground to deny them the recommendation. In support of his contention, learned counsel has referred to law laid down by the Division Bench vide judgment dated 20.02.2024, rendered in LPA-404-2022 titled *Haryana Public Service Commission v. Anshul and another*. It is also submitted that SLP filed against it by the Commission stands dismissed by the Supreme Court vide order, dated 08.07.2024.

4. Learned counsel for the respondent(s), on the contrary, contends that the petitioners have no right to seek appointment against any vacant posts since they are not amongst the candidates recommended for appointment by the Commission. Giving appointment to them against the vacant posts can only be in case there is a waiting list prepared by the Commission, which is not the case. No waiting list was prepared, and offering appointment to the petitioners, who are not in the select list of one hundred and sixty-seven candidates recommended by the Commission, only amounts to preparing a waiting list recommending the candidates therefrom. It has further been contended that in terms of Section 4 of the Haryana Civil Services (Executive Branch) and Allied Services and Other Services Common/Combined Examination Act, 2002 (for short, 'the Act of 2002'), there is a bar on appointment of candidates if their names have not been recommended by the Commission. Therefore, the petitioners cannot be



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given appointment. In support of the contention, he has relied upon a Supreme Court judgment titled *Vallampati Sathish Babu v. State of Andhra Pradesh and others*, (2022) 13 SCC 193. A reference has also been made to judgment dated 27.10.2022, rendered in CWP-24762-2017 titled *Divya Bhatia v. State of Haryana and others*, where this Court has taken a view contrary to the one taken in *Anshul* case (*supra*).

5. Submissions made by learned counsel for the parties have been considered.

6. The conceded position on record is that one hundred and sixty-seven posts of Assistant Professor in Computer Science were advertised by the Commission, against which recommendation of as many selected candidates was made vide announcement dated 11.08.2017. Two of the recommended candidates did not join and the posts remained vacant. There is no provision for preparing a waiting list of candidates for these posts, nor was any prepared. The petitioners are placed next below the recommended candidates, and are claiming appointment against the vacant posts on the strength of merit despite not having been recommended for the same by the Commission. Their case is based upon law laid down by the Division Bench in *Anshul* case, wherein by relying upon the Supreme Court judgment in *State of Jammu and Kashmir and Others v. Sat Pal*, (2013) 11 SCC 737, it was held that in case a post for which recruitment process had been conducted but remained vacant, it was required to be filled up as per merit from amongst the candidates who were eligible for appointment but could not be recommended only on account of being lower in merit. Such a situation did not give rise to the concept of waiting list because the post in



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question against which the recommendation was made could never be filled up. The waiting list commences to operate only after the posts for which the recruitment process has been conducted, have been filled up.

7. The law laid down by the Division Bench in *Anshul* case (*supra*) relying upon *Sat Pal* case (*supra*) cannot be made a ground to claim appointment against the vacant posts in the facts of the instant case. It is because, undisputedly, the recruitment process herein is determined as per provisions of the Act of 2002; the relevant Section 4 whereof reads as under:

4. (1) No appointment shall be made to any post or service to which this Act applies beyond the number of posts advertised.

(2) xxx xxx xxx xxx

(3) The State Government shall not be competent to offer appointment to a candidate, who is placed in the waiting list or who claims himself to be in the waiting list on the basis of Common/Combined Examination, for a post for which his name was not recommended by the Commission.

Provided that if a candidate has been appointed or offered appointment over and above advertised posts for any reason, the service of such candidate shall be dispensed with. However, he shall be entitled to be appointed to the service/post, if any, for which his name was originally recommended by the Commission:

Provided further that no recovery of higher salary, emoluments or any other financial benefits drawn by such candidate as a result of his appointment in excess of the advertised posts, shall be made from him but his pay shall be fixed in the scale of the post to which he is found entitled for appointment under this Act.



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(4) The State Government may offer appointment to the candidates to Haryana Civil Services (Executive Branch) and Allied Services or Other Services, as the case may be, to the extent of number of advertised posts only. However, no candidate shall be offered appointment even to the extent of number of advertised posts, if his name is not recommended by the Commission or if he does not fulfill the eligibility condition laid down by the State Government for appointment to that service/post by way of service rules, regulations or executive instructions, as the case may be.

8. A perusal of sub-section (3) of Section 4 provides that the Government is not competent to offer appointment to a candidate who is placed in the waiting list or claims himself/herself to be in the waiting list on the basis of common/ combined examination for a post for which he has not been recommended by the Commission. Sub-section (4) further provides that appointment can be offered only to the extent of number of posts advertised, and no candidate shall be offered appointment even against the advertised post in case his name has not been recommended by the Commission. The petitioners herein, having not been recommended by the Commission for appointment, claim themselves to be entitled to consideration against the vacant posts on the assumption of being in a waiting list/next below in merit. In view of clear stipulation in the statute mandating that no appointment can be made by the Government unless a candidate has been recommended by the Commission against the advertised post, the petitioners have no right to claim appointment against the vacant posts as it will be violative of the statutory provisions.

9. The Division Bench judgment in *Anshul* case (*supra*) does not



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consider the entitlement in the light of provisions of the Act of 2002 which undisputedly apply to the recruitment in question. It also needs to be noted that the judgment in *Sat Pal* case (*supra*), relied upon by the Division Bench, has been rendered in a different fact situation. The petitioner therein participated in process of selection for the post of Junior Engineer (Civil) Grade-II and figured in the final merit/select list of the Scheduled Caste candidates. One of the selected candidates, Trilok Nath, who was offered appointment on 22.04.2008 amongst the Scheduled Caste candidates had not joined, and the petitioner's name figured next below Trilok Nath. As per the prevalent rule, a waiting list was valid for one year; the merit list of candidates in continuation of those offered appointment constituted the waiting list, and would remain valid for a period of one year. The petitioner therein had approached the High Court seeking appointment against the vacant post of Trilok Nath. His petition had been disposed of by directing the appointing authority to examine the claim, which was rejected vide order dated 23.08.2011 on the following grounds:

6. In compliance with the directions issued by the High Court vide order dated 9-8-2010 in SWP No. 1156 of 2009, the appellants passed an order on 23-8-2011. By the said order dated 23-8-2011, the claim of the respondent for appointment against the post of Junior Engineer (Civil), Grade II was rejected for the following reasons:

“(i) In view of the fact that the waiting list issued in respect of the recruitment has outlived its validity way back in May 2008 itself, he cannot be granted appointment in accordance with the same.



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(ii) And that for the abovesaid reason, vacancies cannot be filled at a belated stage.”

In these circumstances, the Supreme Court held that petitioner Sat Pal’s name figured in the merit/select list of Scheduled Caste candidates, and the person next above him/Trilok Nath, who had been offered appointment on 22.04.2008, did not join. One post which remained vacant ought to have been offered to the petitioner/Sat Pal as per merit from amongst the Scheduled Caste candidates out of the waiting list during its validity as postulated by the rules. The Court observed as under:

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. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had



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participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil), Grade II on 22-4-2008. The aforesaid offer was made consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22-4-2008, because the vacancy was offered to Trilok Nath on 22-4-2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23-8-2011 (extracted above), that the waiting list was valid till May 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, insofar as the present controversy is concerned.

12. The date of filing of the representation by the parties concerned and/or the date on which the competent authority chooses to fill up the vacancy in question, is of no consequence whatsoever. The only relevant date is the date of arising of the vacancy. It would be a different legal proposition. if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates on the waiting list. The offer made to Trilok Nath on 22-4-2008 by itself leads to the inference that the vacancy under reference arose within the period of one year i.e. during the period of validity of the waiting list postulated by the rules. The offer of the vacancy to Trilok Nath negates the proposition posed above i.e. the desire of the employer not to fill up the vacancy. Herein, the appellants wished to fill up the vacancy under reference. Moreover, this is not a case where the respondent was seeking appointment against a vacancy over and above the posts for which the process of selection/recruitment was conducted. Based on the



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aforesaid inference, we have no hesitation in concluding that the appellants ought to have appointed the respondent Sat Pal against the vacancy which was offered to Trilok Nath.

10. It is, therefore, apparent that in *Sat Pal* case (*supra*), not only the petitioner/Sat Pal was in the merit/select list, there was a waiting list in place with a validity period of one year. And on the date vacancy was created on account of Trilok Nath not accepting the offer, i.e., 22.04.2008, the validity of waiting list had not expired. In the case in hand, the petitioners have neither been recommended for appointment, nor is there any provision for waiting list to be maintained. Besides, there is a clear bar on making appointments of candidates who have not been recommended by the recruiting agency. In the absence of any provision to fill up the vacancies out of the waiting list, the candidates who have not been recommended have no right to claim appointment against any vacancy. Resultantly, the judgment in *Sat Pal* case *ibid.*, or the view taken in *Anshul* case (*supra*) which is based upon the former, does not afford any ground to the petitioners to claim the relief.

11. Subsequently, the Supreme Court in *Vallampati Sathish Babu* case (*supra*), in somewhat similar factual background as exists in the instant case, held that in the absence of any provision for preparation of a waiting list, a candidate cannot be appointed on the strength of being next in merit, if his name does not figure in the select list. The *ratio* of the judgment can be deciphered from paragraphs 20 and 21, which are as under:

20. An identical question came to be considered by this Court in *Suresh Prasad*. In the said decision, it is specifically observed



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and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court has been subsequently followed by the Andhra Pradesh High Court in *Samiulla Shareef*.

21. Applying the law laid down by this Court in *Suresh Prasad* to the facts of the case on hand and considering the statutory provisions contained in Rule 16 of the 2012 Rules read with the Guidelines, we are of the view that the appellant cannot claim appointment on the unfilled vacancy being next below the candidate in the merit list. If the submission on behalf of the appellant is accepted, in that case, it will lead to providing for preparation of a waiting list, which otherwise is not permissible as per sub-rule (5) of Rule 16. If the same is permitted, in that case, it will be directing the respondents to act contrary to the statutory provisions. Therefore, the High Court has not committed any error in refusing to appoint the appellant to the post which remained unfilled due to one of the selected candidates in the final selection list not appearing for counselling. The impugned judgment and order passed by the High Court is absolutely in consonance with the relevant statutory provisions with which we agree.

12. The view was followed by the Supreme Court in *State of Uttar Pradesh v. Karunesh Kumar and others*, 2022 SCC Online 1706, reiterating that there “*is no vested right of the unsuccessful candidate to insist upon their consideration, in the absence of any such rule requiring for the*



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preparation of a waiting-list.” This clear position in law can be traced back to *Bihar State Electricity Board v. Suresh Prasad and others*, (2004) 2 SCC 681, holding as under:

7. In the present case pursuant to the direction of the High Court dated 23-3-1994, the appellant took steps for filling up 25 vacancies in the post of Operators from Advertisement No. 3/86 and the remaining 25 vacancies from Advertisement No. 6/92. The results were notified on 29-4-1994 on the notice-board. The Board recommended names of successful candidates under Advertisement No. 3/86 and Advertisement No. 6/92. Out of 22 candidates selected by the Board for appointment under Advertisement No. 3/86, 18 candidates did not turn up. At this stage it is important to note that Respondents 1 to 7 had applied for appointment under Advertisement No. 3/86 dated 15-12-1986 and they had qualified, but they were placed at Serial No. 23 onwards in the descending order. As stated above, a panel of 22 candidates was prepared for appointment under Advertisement No. 3/86 and Respondents 1 to 7 fell beyond the cut-off number. We are not shown any statutory recruitment rules which require the appellant Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of Respondents 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard.....

Accordingly, the impugned judgment holding that the appellant/Board ought to have made appointments by further preparing a panel for 18 vacant posts was held to be fallacious by the Supreme Court.

13. While deciding *Vallampati Satish Babu* case (*supra*), the Supreme Court referred to its earlier view in *Suresh Prasad* case (*supra*),



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and *Sat Pal* case (*supra*) having been decided in a different factual background for different reasons was not considered, nor was it meant to be. The law laid down in *Sat Pal* case does not apply to a situation where a candidate has neither been recommended nor placed in a waiting list. Consequently, this Court is unable to decide the issue raised herein by following the view taken in *Anshul* case decided by relying upon *Sat Pal* case. And the issue is to be decided following the settled law laid down in *Suresh Prasad* case and reiterated in *Vallampati Satish Babu* case. Accordingly, it is held that the petitioners herein, who are unsuccessful and not placed in the select/merit list, have no right to seek consideration against a vacant post in the absence of a waiting list, more so when there is a statutory bar on consideration of a candidate not recommended or 'placed in the waiting list or who claims himself to be in the waiting list on the basis of Common/Combined Examination'.

14. Further, a co-ordinate Bench in *Divya Bhatia* case (*supra*), while deciding an identical issue pertaining to vacant posts of Assistant Professor in Bio-technology against the advertisement in question (10/2016) and relying on *Vallampati Sathish Babu* case (*supra*) as well as provisions of the 2002 Act, has held that a candidate has no right to seek appointment against a post remaining vacant in case he/she has not been recommended by the Commission.

15. In view of the above discussion, there is no merit in the present case, and it stands dismissed.

16. Pending miscellaneous application(s), if any, shall also stand(s)

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disposed of.

17. Photocopy of this order be placed on the other connected case.

06.02.2025

Seema

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(TRIBHUVAN DAHIYA)

JUDGE