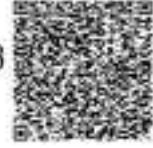


LPA-216-2021 (O&M)

2025:PHHC:010703-DB



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

LPA-216-2021 (O&M)

Date of Decision: January 23, 2025

Director, Technical Education and Industrial Training, Punjab and another
..... Appellants

Versus

Hardeep Singh and another Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. S.S. Gill, Sr. DAG, Punjab.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Kanan Malik, Advocate for the respondents.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 04.07.2019 whereby CWP-20477-2015 filed by present respondents (writ petitioners) was allowed.

2. Abovesaid writ petition was filed by writ petitioners seeking declaration of result to the post of Plumber Instructor (SC other) and Tractor Mechanic Instructor (BC). It is further prayed that department be restrained from re-advertising the said posts for which verification of documents had taken place

on 11.06.2015 pursuant to notice, Annexure P-10.

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3. Writ petitioners pleaded that vide advertisement dated 01.03.2013 (Annexure P1), applications were invited for filling up 216 posts of Craft Instructors in various trades. One post each, was advertised for Plumber Instructor (SC other) and Tractor Mechanic Instructor (BC). Writ petitioner No. 1 applied for the post of Plumber Instructor and petitioner No. 2 applied for Tractor Mechanic Instructor under the categories as mentioned above, being qualified for the same. Written examination was taken by writ petitioners and they were placed at serial Nos. 4 and 5 in the respective merit lists. Candidates, three times the number of posts were called. Four candidates were called for document verification for the post of Tractor Mechanic Instructor and three for Plumber Instructor. None of the said candidates were selected, being ineligible or absent. Selection process was halted due to orders passed in CWP-18753-2018. However, subsequently vide order dated 18.09.2013 in CM-8113-2013 in CWP-22757-2011, it was directed that selection process pursuant to advertisement dated 01.03.2013 may continue but result be not declared till further orders. It was further clarified vide subsequent order dated 05.03.2014 in CWP-22757-2011 that interim is only qua post of Craft Instructor. Vide order dated 30.04.2015 in the abovesaid writ petition, earlier order restraining the State from making appointments was modified and State was held to be at liberty to make appointments to the post of Craft Instructors. Department after issuing appointment letters to eligible candidates issued public notice (Annexure P10) in respect to unfilled posts in various trades calling eligible candidates in the merit list for verification of their documents on 11.06.2015. Writ petitioners, it is stated, appeared in June, 2015 for document verification but for reasons best known, result was not declared. Aggrieved therefrom, writ petition was filed.

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4. Writ petition was contested by respondents while taking a stand that pursuant to advertisement dated 01.03.2013, seeking applications for 216 posts of Craft Instructors in various trades, written test was conducted by Recruitment agency in July, 2013. Tentative merit list of three times the advertised posts of each trade and category was displayed. In the Plumber trade (SC), three candidates were called for and in Tractor Mechanic trade (BC), four candidates were called, as merit percentage of 3rd and 4th candidate in the merit list was the same. Candidates at serial Nos. 1 and 2 in Plumber trade (SC) were absent and candidate at serial No. 3 was not found eligible. In respect to the post of Tractor Mechanic trade (BC), candidates at serial Nos. 1 and 2 were not found eligible with candidate at serial No. 3 being absent. Litigation in respect to the selection, in the meantime had ensued. Candidates falling in merit of 3 to 5 times the number of posts were subsequently called for scrutiny of documents on 11/12.06.2015, out of which it was found that many of them could not produce original documents and from amongst the approximately 90 candidates present about ten candidates, who were found eligible, were very low in merit. Decision was then taken by the Government of Punjab on 11.08.2015 to fill up the post of Craft Instructors from candidates falling only within three times merit of the advertised posts and remaining vacant posts would be re-advertised later on, so that meritorious candidates would get a chance to apply, leading to healthy competition and resulting in selection of best candidates.

5. Learned Single Bench on considering the facts and circumstances, concluded that denial of appointment to writ petitioners after scrutiny of their documents pursuant to issuance of public notice (Annexure P10) merely on the basis of subsequent decision of Government to re-advertise the unfilled

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vacancies, did not stand the test of reasonableness. Writ petition was, thus, allowed. Aggrieved therefrom, present appeal has been filed by the Department.

6. Learned counsel for appellants vehemently argued that learned Single Bench has erred in allowing the writ petition. Writ petitioners admittedly did not fall in the merit list of candidates three times the advertised posts. It was not appreciated by learned Single Bench that employer has the right to choose best candidates for the post in question, therefore, Department should not be compelled to recruit persons lower in merit. Furthermore, all recruitments with respect to posts advertised in the year 2013, are admittedly under investigation by the Vigilance Bureau, Punjab and is being closely monitored in CWP-PIL-243-2019. In case, appointment is afforded to writ petitioners, who are candidates falling in 3 to 5 times merit, it would set an incorrect precedent. It is, thus, prayed that this appeal be allowed.

7. Per contra, learned counsel for respondents while supporting verdict dated 04.07.2019 submits that once having called the candidates falling in 3 to 5 times in merit vide public notice (Annexure P10) and thereafter having scrutinized and verified documents of the writ petitioners, it is not open to the State to back track at this stage and not offer appointment on such specious grounds as above. Learned counsel relies upon judgment of Hon'ble the Supreme court in **Shashi Bhushan Prasad Singh versus The State of Bihar and others 2024 SCC Online SC 2698** to buttress the case of writ petitioners. It is, thus, prayed that this appeal be dismissed while upholding impugned order dated 04.07.2019.

8. We heard learned counsel for parties at length and have perused the file carefully with their able assistance.

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9. Issuance of advertisement dated 01.03.2013 inviting applications for appointment to the post of Craft Instructors, is a matter of record. Litigation which ensued qua the said selection is a matter of record as well. Admittedly, writ petitioners did not fall in the merit list of candidates within three times of the post in question. They fall in the merit list 3 to 5 times the posts. It is specifically explained in the reply as well as additional affidavit dated 09.05.2024, filed in compliance of order dated 29.11.2023 passed in this appeal, that conscious decision was taken by the State to appoint only those candidates who fall in the merit list of candidates failing in three times of merit, in order to ensure that best eligible candidates are selected. In case, candidates falling in three times the merit are not available, posts would be re-advertised. Learned counsel for respondents was unable to point out any Rule or Regulation which casts a duty upon respondent – State to call upon candidates falling in merit of 3 to 5 times the number of posts. Judgment of Hon'ble the Supreme Court in **Shashi Bhushan Prasad Singh's** case (supra), in our considered opinion, is not applicable to the facts of the present case. In the said case, final select list had been prepared and it was found that decision of State Government to scrap the entire process after preparation of final select list and undertaking of fresh appointment process under new Rules, was not justified. Entire recruitment process in the said case had been concluded as per the extant Rules at the given point of time. It was found that Rules of game had been changed after entire selection process was completed. In the present matter, this is not the case. In the given factual matrix, mere issuance of public notice (Annexure P10) by itself, cannot in any manner vest writ petitioners with the right for appointment to the post in question.

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10. At this juncture, it is relevant to refer to judgment of Hon’ble the Supreme Court in **Tej Prakash Pathak vs. Rajasthan High Court 2024 SCC Online SC 3184** and **Shankarsan Dash vs. Union of India 1991 (3) SCC 47** wherein it has been specifically held that even a selected candidate does not have a vested right for appointment. It is not incumbent upon the employer to fill all the available vacancies. Decision of the Government in the instant case, to not fill up the vacancies from the candidates falling in the merit list of 3 to 5 times of advertised posts is justified and cannot be termed unreasonable or arbitrary, giving rise to cause of action to the writ petitioners. Employer is entitled to maintain a particular standard. In fact decision to call for candidates falling in 3 to 5 times merit remains inexplicable on record. It is reiterated that no rule, regulation or instruction has been pointed out which entails or calls for this course of action.

11. In the given factual matrix, in our considered opinion, impugned order dated 04.07.2019 is not sustainable and is liable to be set aside. Impugned order dated 04.07.2019 is, thus, set aside. Appeal is, accordingly, allowed. Writ petition filed by respondents (writ petitioners) is consequently dismissed.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

January 23, 2025
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No