

2025:PHHC:031575



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

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**CWP-3354-2025
Date of Decision: 03.03.2025**

SUNIL KUMAR

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana
for respondents No.1 to 3.

Mr. Balwinder Sangwan, Advocate and
Mr. Krishna Maurya, Advocate for respondent
No.4-Haryana Public Service Commission.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the result dated 23.01.2024 of the Subject Knowledge Test as well as final result dated 20.02.2024 (Annexure P-6) for the post of Deputy Superintendent of Jail (Male) (Group-B) in Jail Department, Haryana against Advertisement No.10 of 2023 dated 08.02.2023 for the General (ESM) Category. A further prayer has also been made for setting aside the speaking order dated 30.09.2024 (Annexure P-12) whereby the respondent-Haryana Public Service Commission (hereinafter to be

referred to as 'HPSC') rejected the claim of the petitioner for being called in for interview.

Learned counsel for the petitioner contends that the respondent-HPSC advertised the posts of Deputy Superintendent, Jail Department, Haryana vide Advertisement No.10 of 2023 dated 08.02.2023. Out of the total two posts advertised, one post was for General (ESM) category while the other was reserved for EWS category of Haryana. The opening date for submission of online application form was 13.02.2023 while the closing date for submission of online application form was 03.03.2023. The petitioner being eligible under the category 'General (ESM)' applied for the same and fulfilled all the prescribed formalities. The admit card was issued to the petitioner for appearing in the screening test to be held under Roll No.40070, which he qualified to be eligible to further participate in the Subject Knowledge Test, vide result declared on 13.12.2023. Another admit card was issued to the petitioner for appearing in the Subject Knowledge Test against Roll No.306. The petitioner also appeared in the said test held on 10.01.2024, however, the Roll Number of the petitioner did not figure in the result that was so declared. Eventually, final result of the selection was published by the respondent-HPSC on 20.02.2024 after holding interview on the same date in which the candidates at Roll No.302 and 304 were recommended. The roll number wise result was uploaded by the respondent-HPSC in July 2024, wherefrom it transpired that out of the total four candidates, the petitioner had secured 73 marks in Subject Knowledge Test and was hence in the overall grading at Sr. No.3. He contends that as per rule, two candidates (i.e. double of the vacancies advertised) were required to be called for interview hence only Paramjeet (89 marks) and Surjit (74 marks)

were called for interview under General (ESM) category. Surjit Singh, however, did not appear for the interview and only Paramjeet Singh appeared for the same. He submits that as per the equity and the rules, since two candidates were required to be called for one post and as the person at No.2 had chosen not to appear for the interview, the respondent-HPSC was required to invite the petitioner, but the needful was not done. Hence, a representation dated 19.07.2024 was submitted by the petitioner giving details of the aforesaid developments. He further submits that even the remaining candidate i.e. Paramjeet did not join the post in question since he was selected as A-Class Naib Tehsildar under Roll No.1059, pursuant to the result dated 18.06.2024 declared by the respondent-HPSC for the HCS (Executive Branch) and other Allied Services Examination – 2023. The post of Deputy Superintendent of Jail (Male) under General (ESM) thus remained vacant.

The petitioner hence approached this Court vide CWP No.20093 of 2024 for the said relief which was disposed of by this Court vide order dated 21.08.2024 directing the respondent-HPSC to decide his representation dated 19.07.2024. Pursuant thereto, a speaking order dated 30.09.2024 was passed rejecting the claim of the petitioner.

Aggrieved thereof, the present writ petition has been filed by the petitioner.

Notice of motion.

Ms. Tanisha Peshawaria, DAG, Haryana accepts notice on behalf of respondents No.1 to 3 and submits that she does not want to file any reply in the present case, as the main contesting respondent is respondent No.4- HPSC.

On the other hand, Mr. Balvinder Sangwan and Mr. Krishna Maurya, Advocates accept notice on behalf of respondent No.4-HPSC and submit that they also do not wish to file any separate reply and would argue the matter on the basis of material available on record itself.

Accordingly, with the consent of the parties, the matter is being taken up for final adjudication today itself.

Learned counsel for the petitioner contends that as per the past practice, a single candidate was not to be called for interview as it rules out selection of the best suitable candidate. The respondent-HPSC was in knowledge that out of two recommended candidates, only one had appeared for the interview, hence, the respondent-HPSC was duty bound to call the next candidate in the overall merit so as to have candidates atleast twice the number of posts advertised. He submits that the Hon'ble Apex Court has made it mandatory that a waiting list should ordinarily be prepared by the Public Service Commission(s) to avoid repetition of the lengthy selection process, in the event a process of selection gets frustrated on account of non-fulfillment of the vacancies, as has happened in the present case. He submits that the respondent-HPSC adopted a hyper-technical approach while declining the representation submitted by the petitioner and has acted contrary to the object behind providing reservation to the Ex-Serviceman. He further submits that it is undisputedly a case where none of the candidates, originally shortlisted for interview by the respondent-HPSC, chose to appear for the interview or opted to join.

He places reliance on the Division Bench Judgment of this Court passed in the matter of '*Rahul Vijay Singh Chugh Versus Punjab and*

Haryana High Court, Chandigarh and Others' bearing ***CWP No.2683 of 2016*** decided on ***09.08.2017[reported as (2017) 3 law Herald 2520]***, wherein the High Court had called thrice the number of candidates i.e. 12 candidates, as against the advertised 04 posts that were advertised. A direction was issued by the Division Bench of this Court to conduct viva-voce of the petitioner therein as also of two other candidates who fell later in the order of merit. The relevant extract of the said judgment reads thus: -

“1. The petitioner Rahul Vijay Singh Chugh has filed the present petition under Articles 226/227 of the Constitution of India seeking quashing of the selection of respondents No.3 to 7 for the posts of Additional District and Sessions Judges in the State of Punjab as there has been violation of the requisite/ mandatory condition of the Scheme of Selection inasmuch as three times the number of candidates were not called for viva-voce for consideration for selection for the five posts that were filled from the open General Category. A further prayer has been made for directing High Court of Punjab and Haryana, Chandigarh through its Registrar General and the Registrar Recruitment, High Court of Punjab and Haryana, Chandigarh (respondents No.1 and 2) to re-conduct the selection process of the Punjab Superior Judicial Services Examination, held in 2015 from the stage of viva-voce for the posts of Additional District and Sessions Judges in the State of Punjab after short listing requisite number of candidates as per the requisite condition provided in pursuance of notification dated 01.02.2016.

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5. The Registrar Recruitment, High Court of Punjab and Haryana, Chandigarh (respondent No.2) issued a notification dated 3.3.2015 (Annexure P1) inviting applications for filling up 11 vacancies to the Punjab Superior Judicial Services. The break-up of the vacancies given were that five were for the General

Category; three were for the members of the Scheduled Castes ('S.C.' – for short) Category (one for S.C. others Punjab, one for S.C.(Sportsman) and one for S.C. Balmikis/Mazhibi Sikhs), one for the members of the Backward Class Category and two for the Physically Handicapped (differently abled person) category.

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16. Therefore, the grievance of the petitioner is that in case five posts were to be filled from the open General Category, then three times the candidates from the open General Category i.e. fifteen candidates were liable to be called for the viva-voce in which case he would have been called as he was placed at the 13th position in order of merit of the written examinations and candidates up to serial No.15 in order of merit of the written examinations were liable to called. He has, in the said circumstances, filed the present petition for invalidating the selection that has been conducted and for re-conducting the selection process from the stage of viva-voce.

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34. The writ petition is, accordingly, disposed of with a direction to the official respondents No.1 and 2 to conduct the viva-voce of the petitioner as also of the candidates at serial No.14 and 15 in order of merit of the written examinations of the selection process for recruitment to Punjab Superior Judicial Service, 2015 and in case the petitioner or the candidates at serial Nos.14 and 15 in order of merit of the written examinations get more marks than the last selected candidate of the same selection process then he/they be offered appointment(s) against a vacancy/vacancies if available at the time of appointment from open General category and in case none is available, the official respondents No.1, 2 and 8 shall make appointments against other available vacancies by de-reserving them and adjusting them later and in accordance with any other permissible mode of law including that of creating supernumerary post(s), as the case may be. In case, none of the candidates gets more marks than the last selected candidate in the same selection process, then they would

have no claim for appointment to the Punjab Superior Judicial Service in the examinations conducted in 2015.”

Learned counsel for the petitioner further contends that since there was no embargo in the Advertisement as to what number of times candidates were to be called for interview since advertisement prescribed reasonable number of candidates to be called. He contends that in the specific facts scenario of the present case, it remains undisputed that the number of candidates who were called were neither sufficient nor reasonable. Hence, the person(s) next in the overall merit ought to have been called for the interview.

Learned counsel for the petitioner further contends that since there was no provision for preparation of a waiting list in the present case, the next person(s) in the order of seniority was/were required to be called for interview.

He places reliance upon the judgment of the Hon'ble Supreme Court passed in the matter of '**Manoj Manu and Another Versus Union of India and others**' reported as **(2013) 12 SCC 171**. The relevant extract of the same is reproduced hereinafter below: -

“15. In the present case, however, we find that after the UPSC sent the list of 184 persons/recommended by it, to the Government for appointment six persons out of the said list did not join. It is not a case where the Government decided not to fill up further vacancies. On the contrary DoP&T sent requisition to the UPSC to send six names so that the remaining vacancies are also filled up. This shows that in so far as Government is concerned, it wanted to fill up all the notified vacancies. The requisition dated 20th November 2009 in this behalf was in consonance with its Clause 4(c) of O.M. dated 14th July 1967. Even when the Government wanted to fill up the post, the UPSC chose to forward names of three candidates.

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18. *It is not the case of the UPSC that under no circumstances the names are sent by way of supplementary list, after sending the names of the candidates equal to the vacancies. As per the UPSC itself, names of “repeat/common” candidates are sent and in the present case itself, three names belonging to such category were sent. However, exclusion of the persons like the appellants has clearly resulted in discrimination as one of those three candidates Rajesh Kumar Yadav had also secured 305 marks and once he was appointed to the post in question, the appellants with same marks have been left out even when the vacancies were available.*

19. *We are, therefore, of the opinion in the facts of the present case, the decision of UPSC in forwarding three names against requisition of DoP&T for six vacancies was inappropriate. We, accordingly, allow the present appeal; set aside the order of the High Court as well as Tribunal and issue Mandamus to the UPSC to forward the names of the next three candidates to the DoP&T for appointment to the post of Section Officer’s Grade. They shall get the seniority from the date when Rajesh Kumar Yadav was appointed to the said post. Their pay shall notionally be fixed, without any arrears of the pay and other allowances.”*

He also places reliance on the judgment of Single Bench of this Court passed in the matter of '**Anshul Versus State of Haryana and another**' bearing **CWP No.15962 of 2020** decided on **08.03.2022**, wherein a direction was issued to the respondent-Department to ascertain and determine the claim of the petitioner as to whether he is the candidate next in merit, after the last selected candidate in the General Category (ESM), and if found to be so, thereafter proceed to consider his claim to be recommended the petitioner therein for post of Naib Tehsildar, in accordance with law.

Learned counsel for the petitioner further contends that since there was no minimum cut off marks to be called for the interview, hence, the opportunity of appearing for the interview could not have been denied to the petitioner. He further contends that the respondent-HPSC has not been following a uniform criterion since in many similar cases, the respondent-HPSC called three times the number of candidates as against the advertised posts.

Learned arguing counsel for the respondent-HPSC, however, contends that by way of a public announcement dated 13.09.2023, which was made prior to holding of the Screening Test, the process of selection including holding of Subject Knowledge Test was duly brought to the knowledge of all the prospective candidates. Clause 2(g) thereof specifically provided that number of candidates to be called for interview would be two times, including the bracketed candidates, if any, provided that they secure the minimum cut off marks of 35%. The relevant Clause 2(g) is extracted as under: -

"2(g) The number of the candidates called for interview will be two times, including bracketed candidates if any, of the number of category-wise advertised posts provided that they have secured the minimum cut-off marks of 35%."

He further submits that the petitioner participated in the Screening Test as well as the Subject Knowledge Test being fully aware of the aforesaid condition and now, after having failed in the selection process, is raising a challenge to the aforesaid condition that was made known by the respondent-HPSC to all the prospective candidates. He further submits that expression "reasonable number of candidates to be called for interview" had been clarified

vide the abovesaid public announcement to be two times the number of vacancies.

Learned arguing counsel for the respondent-HPSC further contends that the petitioner claims that he ought to have been called for interview on an assumed presumption that he was in the waiting list, whereas he was never shortlisted as a probable candidate to be called for interview. The order of merit, as per the marks secured, does not necessarily make an inference that every next person in the order of merit list would automatically fall in the waiting list of the respondent-HPSC even if no such waiting list is prepared for the interview. Since the respondent-HPSC had called two persons, which is twice the number of vacancy advertised, there was no right with the petitioner to be called for interview at all. The subsequent developments i.e. non-appearance of a candidate or non-joining of the second recommended candidate cannot create a fresh right in favour of the petitioner by assuming to himself to be a candidate in the waiting list to be called for the interview. Waiting list is prepared after the final recommendation and there is no waiting list of the candidates prepared for being called for interview.

He further contends that the respondent-HPSC does not call the candidates on the basis of contingencies. The total number of candidates called being twice the number of vacancies, hence, the prescribed process of selection had been followed. In case a suitable candidate is not found or is not shortlisted, the process of selection is nonetheless to be brought to an end.

He further contends that so far as the judgment of *Anshul (supra)* is concerned, the said judgment has already been distinguished by this Court and it has been held that in the absence of any waiting list being prepared, a

candidate does not get any right to seek a mandamus for recommendation of his name and claiming an offer of appointment.

While responding to the judgment of ***Rahul Vijay Singh Chugh (supra)***, learned counsel for the respondent-HPSC contends that the same is not an issue against the respondent-HPSC and the direction in the said case was issued only to the Registrar Recruitment of this Court. It is submitted that the grievance in the said case was entirely different. It was pointed out that in the said case, there was a reservation provided for General Category (Sports Person) and as no person could qualify in the written examination, hence, a decision was taken by the Court to fill the said vacancy from the General Category candidates. He submits that as the requirement was to call the candidates three times the number of vacancies and as the vacancies in the General Category increased to five due to addition of post, the persons who were next in the merit list and fell within the extended zone of three times of the total number of vacancies in the General Category, were required to be called for interview. It was thus in the said perspective that a direction was issued to call the next three candidates in the General Category for interview so as to call fifteen (15) candidates instead of twelve.

While responding to the judgment of ***Manoj Manu (supra)***, the arguing counsel for respondent-HPSC contends that the Government in the said case had sent a requisition to the UPSC to send six more names so that the vacancies that remained unfilled could be filled up. He submits that no such request/requisition has been received by the respondent-HPSC and as such, there was no occasion for making a recommendation in the absence of any request/demand being raised by the State Government.

He relies upon the **judgment dated 06.02.2025** passed by a Single Bench of this Court in a bunch of two writ petitions including **CWP No.2046 of 2020** titled as '**Balinder Singh Versus State of Haryana and Others**'. The relevant extract of the same is reproduced hereinafter below: -

“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 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.

(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 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 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.”

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file and have also perused the judgments cited, with their able assistance.

The claim of the petitioner is primarily based on invoking a sympathetic consideration since the post in question remained vacant on account of non-participation of one recommended person in the interview process and non-joining of the selected candidate, hence, he being next in order of merit, should have been called for interview by the respondent-HPSC and his

suitability for the post in question ought to have been tested before rejecting his representation. It has been emphatically submitted that in not doing so, the petitioner has been denied the fair opportunity of participation in the selection process and that the Government would be further burdened with the liability of undertaking the selection process afresh apart from defeating the object behind providing reservation.

The said argument, though claims equity, however, has little stance in law and cannot lay foundation for laying down a procedure which law does not prescribe for.

Undisputedly, the Advertisement did not provide for provision for preparation of any waiting list by the respondent-HPSC. Be that as it may, it was prescribed in the Advertisement that a reasonable number of candidates shall be called for interview after the written examination is conducted, which such "reasonable number" had been further clarified by the respondent-HPSC by way of a public announcement dated 13.09.2023, wherein it was informed that candidates double the number of advertised post shall be called for interview, subject to their obtaining the minimum cutoff marks of 35%. Since there was only one post under General (ESM) category, hence, two persons were recommended by the respondent-HPSC for interview. It could not have been anticipated by the respondent-HPSC as to whether any person would appear or not for the interview process or that the recommended candidate may or may not join despite the recommendations by the HPSC. The process of selection cannot be held contingent to the appearance/joining of the candidates. The petitioner having not been shortlisted amongst the candidates to be called for interview process, he cannot now contend that even though he may not be

within the zone of candidates within two times of number of vacancies shortlisted for being called for interview solely because the post remained vacant.

The selection process in the present case has been taken up in a phased manner. Each candidate had to clear each stage to move on to the second phase of the selection. Hence, only the candidates who cleared the first stage i.e. Screening Test and fell within the number of time the candidates who were to be called for the Subject Knowledge Test, being Stage-II of the selection process. Just as the candidates who do not qualify the Stage-I – Screening Test cannot later claim that since the candidates did not finally join, hence, they too should now be allowed to appear in the Subject Knowledge Test, the same principle applies for moving from Stage-II i.e. Subject Knowledge Test to Stage III i.e. Viva-Voce. The candidates who are unable to move to the next stage/phase get ejected from the process of selection and cannot be injected back whether finally nobody is recommended. The position would have been no different assuming that both candidates appeared for the interview and while one is recommended, the other is kept in the waiting list and none of them may join. The selection process comes to an end for a candidate who fails to clear a stage.

Undeniably, the petitioner was fully aware of the said process(es) as it was made known by the respondent-HPSC to all the participating candidates vide public announcement dated 13.09.2023 and notwithstanding the same, the petitioner participated in the process of selection. It was only after non-joining of the recommended candidate that the said representation dated 19.07.2024 had been submitted by the petitioner.

This Court would also deem it appropriate also to make a reference to the judgment of the Hon'ble Supreme Court in the matter of '**Vallampati Sathish Babu Versus State of Andhra Pradesh and others**' reported (2022) 13 SCC 193, wherein it is held by the Hon'ble Supreme Court that in the absence of provision for maintenance of waiting list/reserved list and the post remaining unfilled due to certain candidate not appearing for counselling, the next candidate cannot claim appointment as a matter of right as his name neither figured in the select list nor in the waiting list, for want of a provision in this regard. The relevant extract of the same is reproduced hereinafter below: -

“15. On a fair reading of Rule 16 of the 2012 Rules read with the Guidelines referred to hereinabove, once the final selection list is prepared, there shall be no waiting list and posts, if any, are unfilled for any reason whatsoever, shall be carried forward for future recruitment as per sub-rule (5) of Rule 16 of the 2012 Rules.

16. In the present case, the final selection list of 33 candidates was prepared. Thereafter all the selected candidates were called for counselling, but one of the candidates did not report for counselling. The aforesaid event took place after the final selection list was prepared and published. As there was no requirement of preparation of a waiting list, the appellant claiming to be the next in the merit cannot claim any appointment as his name neither figured in the list of the selected candidates nor in any waiting list as there was no provision at all for preparation of the waiting list. Sub-rule (5) of Rule 16 is very clear. Therefore, the post remained unfilled due to one of the candidates in the final list did not appear for counselling and/or accepted the employment. Hence, that post has to be carried forward for the next recruitment.

17. The appellant could have claimed the appointment to the post which remained unfilled provided there is a provision for waiting list as per the statutory provision. In absence of any

specific provision for waiting list and on the contrary, there being a specific provision that there shall not be any waiting list and that the post remaining unfilled on any ground shall have to be carried forward for the next recruitment. The appellant herein, thus, had no right to claim any appointment to the post which remained unfilled.

18. *In the present case, the first provisional list was published on 1-12-2012. Thereafter, a revised provisional list was published on 12-12-2012 and subsequently a final selection list was published on 25-12-2012 of 33 selected candidates and the candidate, who did not appear for counselling was one of the candidates in the final selection list dated 25-12-2012. Therefore, once there was no provision for waiting list, the post, which remained unfilled due to one of the candidates in the final selection list not appearing for counselling will have to be carried forward to the next recruitment as per sub-rule (5) of Rule 16.*

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20. *An identical question came to be considered by this Court in Suresh Prasad [Bihar SEB v. Suresh Prasad, (2004) 2 SCC 681: 2004 SCC (L&S) 438]. In the said decision, it is specifically observed 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 [State of A.P. v. Samiulla Shareef, 2013 SCC OnLine AP 482].”*

Later, the Hon'ble Supreme Court still reiterated the above principle in the judgment of '*Sudesh Kumar Goyal Vs. State of Haryana and Others*' reported as **(2023) 10 SCC 54**.

Even though the above judgment was in the context where a person had initially joined and then resigned, however, the principle laid down by the Hon'ble Supreme Court was that the selection process cannot be kept open ended on the contingencies that may occur later in point of time.

The entire case of the petitioner is seemingly founded on a premise as if it was an open ended merit list and every person who did not qualify the cutoff to be called for interview would automatically be deemed as a person in the waiting list of candidates to be called for interview. A waiting list, if any, is prepared from amongst the candidates who finally complete all the stages in a selection process. There is even otherwise no provision for preparation of a waiting list for each stage of selection process and to allow them an opportunity to re-enter the fray if sufficient number of candidates do not clear the net stage.

The respondent-HPSC has already concluded all the stages in the process of selection by calling candidates twice the number of vacancies. Thereafter, irrespective of any other candidate joining or not, no other person can claim that he too ought to be considered at a later stage for being called for interview, because the vacancy remained unfilled.

The submission of counsel for the petitioner that the petitioner has been denied a fair opportunity of participation in the selection process is a far outcry. The petitioner had duly participated in the process of selection and undisputedly, he does not figure in the cutoff merit list to the extent of twice the number of vacancies.

Further, so far as the judgment of ***Rahul Vijay Singh Chugh (supra)*** relied upon by the counsel for the petitioner is concerned, I find that the said judgment is not applicable to the facts of the present case since in the said case 12 candidates, being three times the number of vacancies originally advertised for the General Category were called, whereas the petitioner therein submitted that in view of the subsequent decision taken by the respondents increasing the total number of vacancies in the General Category to five, 15 candidates were to be called for interview. The same is not the case herein since the petitioner does not fall within the twice the number of candidates against the vacancies/posts advertised and there is no increase in the number of the vacancies. Thus, the facts of the said judgment would not be applicable to the facts and circumstances of the present case.

So far as the second judgment of ***Manoj Manu (supra)*** is concerned, in the said case a requisition had been sent by the Government to the UPSC to make further recommendations. Such instance does not exist in the present case. Hence, the said judgment would also not be able to advance the case of the petitioner. Rather, the ratio of law in the judgment of ***Vallampati Sathish Babu (supra)*** becomes applicable against the petitioner.

For the foregoing reasons, the present petition is hereby dismissed finding no merits therein.

MARCH 03, 2025.
Rajender

(VINOD S. BHARDWAJ)
JUDGE

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