



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

**Reserved on : 13.02.2025
CWP-21789-2019 (O&M)
Pronounced on: 11.03.2025**

Dr. Sucheta and another

...Petitioners

VERSUS

Union of India and another

...Respondents

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

Present :- Mr. D.S. Malik, Advocate with
Mr. Amit Boken, Advocate for the petitioner(s).

Mr. Sudhir Nar, Sr. Panel Counsel and
Mr. Rishikant Singh, Sr. Panel Counsel,
for the respondent(s)-UOI.

VINOD S. BHARDWAJ, J.

1. Whether a candidate acquires a right to claim declaration once the selection process is completed and only the final result is not declared or the employer has a right to cancel the selection process at any stage is the issue which comes up for consideration in the present petition.

2. The present petition has been filed seeking quashing of the impugned advertisement dated 04/06/2019 and the impugned notice dated 27.06.2019 by which the Advertisement No. 1/15 published in the Employment News dated 7th -13th March, 2015 issued by Respondent No. 2 has been declared null and void. A further direction has been sought for declaring the results of the candidates who had already cleared the preliminary and main examination held on 14.05.2017 and 20.08.2017 respectively.



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3. Succinctly and tersely the germane facts and material relevant for deciding the instant petition and emanating from the record are that respondent No. 2 issued Vacancy Circular/Advertisement No. 1/15 in Employment News (07-13 March 2015) for the recruitment of Scientific Officers. The petitioners, fulfilling the eligibility criteria, applied for the same.

4. Initially, all nine posts were advertised as Unreserved (General category). However, before issuing admit cards, Respondent No. 2 reclassified the posts-six for General, two for OBC, and one for SC. The petitioners were allotted roll numbers and they also submitted the requisite documents, including caste certificates.

5. The petitioners appeared for the preliminary qualifying test on 14 May 2017 and qualified the same by securing ranks 1 and 63. They subsequently also appeared for the Final Written Examination on 20 August 2017 and were included in the merit list, securing ranks 16 and 23.

6. Following the written examination, the petitioners were called for an interview scheduled on 9 December 2017. However, despite the lapse of more than an year and a half, the final selection results were not declared, however, on 4 June 2019, Respondent No. 2 issued a fresh advertisement for the same posts with revised vacancy categories i.e. three Unreserved, one for OBC, and six on deputation basis. The previous advertisement (No. 1/15) was formally canceled on 27 June 2019, except for the Pharmacopoeia Editor post. Asserting that the failure to declare selection results and



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cancellation of vacancies is illegal, unconstitutional, and violative of natural justice, the present writ has been filed.

Arguments of the Petitioner

7. The counsel for the petitioner contends that Respondent No. 2 initially advertised all nine posts of Scientific Officer as Unreserved but later, without justification, bifurcated them into different categories (six for General, two for OBC, and one for SC). This unilateral change after the issuance of the advertisement is arbitrary and contrary to established recruitment procedures.

8. He further contends that despite the petitioners successfully qualifying at every stage of the selection process—including the preliminary test, final written examination, and interview held on 9 December 2017—the results were not declared for over 1.5 years. Such an unexplained delay is unreasonable and violates the petitioners' legitimate expectation of fair selection.

9. The counsel also submits that the cancellation of Advertisement No. 1/15 on 27 June 2019—after issuing a fresh advertisement on 4 June 2019—raises serious doubts about the fairness of the recruitment process. The selective cancellation, wherein only the post of Pharmacopoeia Editor was retained, suggests arbitrary decision-making influenced by extraneous considerations.

10. The counsel further contends that the fresh advertisement altered the vacancy distribution, reducing the General category posts to three and completely eliminating the SC category post. Consequently, Petitioner No.



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2, belonging to the SC category, has been unjustly deprived of any opportunity to apply. Additionally, both petitioners have now crossed the upper age limit of 35 years, rendering them ineligible under the revised advertisement. The recruitment process is being conducted in a manner that lacks transparency and procedural fairness. The respondents not only failed to provide any valid reason for withholding the results for over 1.5 years but also did not afford the petitioners any opportunity to be heard before canceling the previous advertisement.

11. The counsel vehemently contends that the actions of Respondent No. 2—failing to declare results, issuing a fresh advertisement without resolving the prior recruitment, and unfairly altering vacancy distribution—are unconstitutional, arbitrary, and violative of the fundamental rights of the petitioners. The entire process should be set aside in the interest of justice and fair play.

Arguments of the Respondent

12. The counsel for the respondents contend that there are 15 sanctioned posts for the position of Scientific Officer, governed by the established Recruitment Rules. These rules mandate that 75% of posts must be filled through promotion, failing which by deputation/absorption, and only 25% posts are to be filled through direct recruitment. In 2015, 9 out of 15 sanctioned posts were vacant. However, no eligible candidates were available in the feeder cadre for promotion. To prevent these vacancies from lapsing, the Respondents opted for direct recruitment, leading to the advertisement published on March 7-13, 2015.



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13. He further contends that in response to the advertisement, 1,539 candidates applied. Due to the high volume of applicants, a multi-stage selection process was conducted, including a Preliminary Written Test (PQWT), Final Written Examination, and Personal Interview. The recruitment process was later reviewed by the Ministry of Health and Family Welfare (Respondent No. 1), which raised concerns that direct recruitment was conducted without first exhausting the mandatory deputation/absorption route, violating Recruitment Rules. Consequently, Respondent No. 2 was directed to ensure compliance, leading to the cancellation of the 2015 recruitment process.

14. The counsel argues that in accordance with the Ministry's directive, Respondent No. 2 took corrective steps, including:

1. Cancelling the 2015 recruitment process and publicly announcing the cancellation.
2. Issuing a fresh advertisement in June 2019 for four posts under the direct recruitment quota (three for UR, one for OBC).
3. Reserving six posts for deputation, as mandated by Recruitment Rules.

15. The counsel submits that accordingly, the fresh advertisement was necessary to align with recruitment guidelines. Out of the 15 total posts:

1. Two posts are already filled through promotion.
2. Three posts have been processed for promotion via Departmental Promotion Committee (DPC).
3. Six posts will be filled through deputation, as no candidates are currently available in the feeder cadre.



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4. Four posts are allocated for direct recruitment (three UR, one OBC) as per the 13-point roster system.

16. The counsel emphasizes that the cancellation of the previous recruitment was not arbitrary but based on legal and regulatory compliance. The fact that the post of Pharmacopeia Editor was not cancelled is immaterial, as different posts were assessed separately.

17. He further argues that the Petitioners have no inherent right to claim selection, as a mere participation in a recruitment process does not create an entitlement to appointment. The Respondents acted within their authority to modify or cancel a selection process when irregularities were identified. He thus prays that the writ petition be dismissed.

18. No other arguments has been raised by the counsel for the parties.

19. I have heard the learned counsel appearing on behalf of the parties and have gone through the pleadings as well as the documents appended as also the judgments relied upon by the counsel for the parties.

Consideration

20. The question which thus arises for consideration is whether the Govt./employer have any right to cancel the selection process or a candidate shall acquire a right for completion of the selection process wherein he has participated.

21. The legal position regarding the rights of candidates who participate in a selection process and are even included in the selection list is well established. It is settled law that merely taking part in a recruitment



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process does not confer an absolute right to claim appointment. While the authorities have the discretion to cancel or abandon the selection process, such a decision must be supported by valid reasons and justification and cannot be exercised arbitrarily.

22. The Supreme Court, in **Neelima Shangla v. State of Haryana & Others, (1986) 4 SCC 268**, held that even upon completion of a selection process, the Government still has the discretion not to fill all the advertised vacancies, provided there is a valid justification. Similarly, in **Shankarsan Dash v. Union of India & Others, (1991) 3 SCC 47**, the Court held that merely qualifying in a selection process does not confer an indefeasible right to claim appointment. However, any decision not to fill the vacancies must be made in good faith and for legitimate reasons. The observations of the Apex Court are as under:

"7.....Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as



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reflected at the recruitment test, and no discrimination can be permitted.”

23. Before proceeding further with the second issue, it is important also to examine the rules governing the said recruitment. The same are extracted hereunder:

1	Name of post	Scientific Officer
2	Number of posts	15
3	Classification	Group ‘A’
4	Scale of pay	Pay Band – Rs.15600-39100+ Grade Pay Rs.5400.
5	Whether Selection Post or non-selection post	Selection
6	Age limit for direct recruitment	Not exceeding 35 years
7	Educational and other qualification required for direct recruitment	<u>Essential:-</u> Post Graduate degree in Pharmaceutical Sciences/Bio-Chemistry/ Biotechnology/Pharmacology/ Microbiology Chemistry or equivalent Associate-ship diploma of the Institution of Chemists (India)/ from a recognized University, Experience:- Five years' experience in the related field i.e. Pharmaceutical Sciences/Bio-Chemistry/Biotechnology/Chemistry/



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		Pharmacology/Microbiology particularly in the analysis/research of drugs and pharmaceuticals. Desirable:- (1) Ph.D. in Pharmaceutical Sciences/Bio-Chemistry/Biotechnology/Chemistry/Pharmacology/Microbiology/ (2) Post qualification research experience in the relevant field with support of paper(s) published/ drug analysis experience. (3) Good Knowledge of Computer application.
8	Whether age and Educational Qualification prescribed for direct recruits will apply in the case of promotees.	Educational qualifications: No Age limit: No
9	Probation period	One Year
10	Method of recruitment	(i) 75% promotion failing which by deputation (ISTC)/absorption and failing both by direct recruitment; and (ii)25% by Direct Recruitment.



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11	Grade from which promotion/deputation is to be made	(i) Promotion:- Scientific Assistant in Pay band-2 (Rs.9300-34800) plus Grade Pay Rs.4200 with 8 years regular service in the grade. NOTE The qualifying service for consideration of the existing incumbents holding the post of Scientific Assistant on the date of notification of the revised rules shall, however, remain to be 5 years for promotion to the post of Scientific Officer. (ii) Deputation (ISTC)/ absorption:- Officers under the Central Government/State Govt./ Union Territories/ Central Public Sector Undertakings/Autonomous Bodies/ Statutory Organizations/Recognised Research Councils or Institutions holding analogous post or with 2 years regular service in Pay band-2 (Rs.9300-34800) plus Grade pay Rs.4800 or with 3 years regular service in Pay band-2
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		(Rs.9300-34800) plus Grade pay Rs.4600 or with 8 years regular service in Pay band-2 (Rs.9300-34800) plus Grade pay Rs.4200 in the parent department/cadre and possessing the qualification(s) and experience prescribed for the post. (ii) Absorption:- Officers under the Central Government/ State Govt. / Union Territories holding analogous posts on a regular basis in the parent department or cadre and possessing the qualification(s) and experience prescribed for the post.
12	Selection departmental/ Promotion Committee	As per the bye-laws.
13	Job requirements	To perform and/or assist in the performance of all duties that may be required or assigned by that department unit wing in the matters of drugs analysis, drugs standardization, validation and certification of analytical/testing methods, quality



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		certification, determination of stability of drugs and their shelf life, certification of the quality of reference substances, rendering all supports and performing all works required in developing/ acquiring/ compiling data for the preparation of the Indian Pharmacopoeia, its Addenda, The National Formulary of India and all other publications as may be decided from time to time by the Commission. Also to prepare and/or revise/update /reissue/modify standard operative procedures material management, pest control, prevention and management of health hazards etc., It will be the responsibility of the incumbent to comply with the Good Laboratory Practices (GLP) norms or other norms and requirements of accreditations.
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24. Moreover, it is also important to apprise ourselves with the vacancy as advertised vide the Advertisement dt. 7-13/03/2015. The same is extracted hereunder:



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S.No	Name of Post	Pay Band & Grade Pay	No. of Post.	Category	Age Limits*
	By direct recruitment				
1	Senior Principal Scientific Officer	Rs.37400-67000 + G.P. Rs.8700	02	Unreserved	Up to 50 years
2	Principal Scientific Officer	Rs.15600-39100 + G.P. Rs. 7600	01	Unreserved	Up to 50 years
3	Business and Marketing Development Officer	Rs.15600-39100 + G.P. Rs. 5400	01	Unreserved	Up to 35 years
4	Publication and Documentation Officer	Rs.15600-39100 + G.P. Rs. 5400	01	Unreserved	Up to 35 years
5	Marketing Assistant	Rs.9300-34800 + G.P. Rs.4600	01	Unreserved	Up to 30 years
6	Pharmacopoeia Editor	Rs.9300-34800 + G.P. Rs.4600	01	Unreserved	Up to 35 years
7	Scientific Officer	Rs.9300-34800 + G.P. Rs.5400	09	Unreserved	Up to 35 years
	By deputation				
8	Administrative Officer	Rs.9300-34800 + G.P. Rs.4600	01	---	---

25. A perusal of the aforesaid rules make it clear that said post of scientific officer, the method of recruitment for 75% of the post was by promotion failing which by deputation/absorption and failing both by direct recruitment. For the remaining 25% of the post, the method of recruitment was by direct recruitment. However, the commission vide the impugned advertisement, has invited applications for 9 posts of Scientific Officers, which in itself is in violation of the relevant rules. Not to mention that the said rules came into force on 15/12/2014, i.e. before the impugned advertisement and were in force at the time the impugned advertisement were issued.



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26. It is a well-established principle of law that in the event of a contradiction between an advertisement and the recruitment rules, the latter shall prevail. The Hon'ble Supreme Court, in **The Employees' Insurance Corporation v. Union of India, (2022) 11 SCC 392**, reaffirmed this position, holding that where there is any inconsistency between the terms of an advertisement and the recruitment rules, the recruitment rules shall take precedence. Hon'ble the Supreme Court in paragraph 20 & 21 has held as under:-

20. The advertisements issued by the appellant mentioned that the DACP scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail. In Malik Mazhar Sultan v. U.P. Public Service Commission [Malik Mazhar Sultan v. U.P. Public Service Commission, (2006) 9 SCC 507 : 2006 SCC (L&S) 1870] ("Malik Mazhar Sultan") a two-Judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held : (SCC p. 512, para 21)



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“21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

27. The petitioners have further contended that the respondents’ decision to cancel the selection process violates the principles of natural justice. However, the Supreme Court has recognized that these principles cannot be applied in a rigid, one-size-fits-all manner.

28. The legal position regarding compliance with the principles of natural justice is well established in both administrative and judicial spheres. It is a settled principle that natural justice cannot be applied through a rigid, one-size-fits-all approach, and there are recognized exceptions to its applicability. In this regard, reference may be made to the decision of this



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Court in **Dharampal Satyapal Ltd. v. CCE (2015) 8 SCC 519**, wherein it was held that:

“38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full- fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing



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is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

...

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of “prejudice”. The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.”

(emphasis supplied)

29. In my view, since the very advertisement and the following selection process was a nullity in the eyes of law, being violative of the recruitment rules, the commission has committed no error in issuing a fresh



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advertisement and abandoning the earlier advertisement without following the principles of natural justice.

30. In this context, the decision of this Court in **Union of India v. Raghuwar Pal Singh (2018) 15 SCC 463** has provided valuable guidance. It was held that when the appointment of candidates is legally void, rendering them ineligible to hold the posts, compliance with the principles of natural justice is not necessary, especially when doing so would serve no practical purpose and amount to a futile exercise. The relevant portion is extracted herein below:

“20. For taking this contention forward, we may assume, for the time being, that the then Director Incharge H.S. Rathore, Agriculture Officer had the authority to issue a letter of appointment. Nevertheless, he could do so only upon obtaining prior written approval of the competent authority. No case has been made out in the original application that due approval was granted by the competent authority before issuance of the letter of appointment to the respondent. Thus, it is indisputable that no prior approval of the competent authority was given for the appointment of the respondent. In such a case, the next logical issue that arises for consideration is : whether the appointment letter issued to the respondent, would be a case of nullity or a mere irregularity? If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non-grant of opportunity may not vitiate the final decision of



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termination of his services. The Tribunal has rightly held that in absence of prior approval of the competent authority, the Director Incharge could not have hastened issuance of the appointment letter. The act of commission and omission of the then Director Incharge would, therefore, suffer from the vice of lack of authority and nullity in law.

...

23. In State of Manipur [State of Manipur v. Y. Token Singh, (2007) 5 SCC 65 (2007) 2 SCC (L&S) 107], the appointment letters were cancelled on the ground that the same were issued without the knowledge of the department of the State. The Court after adverting to the reported decisions concluded that the candidates were not entitled to hold the posts and in a case of such nature, principles of natural justice were not required to be complied with, particularly when the same would result in futility. ...

(emphasis supplied)

31. In the present petition, the respondent authorities have exercised their discretion to not proceed with the recruitment process due to lack of departmental approval, which is based on sound application of the law. Applying the aforesaid principle, as laid down by the Apex Court, to the present case, it is evident that the mere fact that the petitioner's name appeared in the list of candidates who appeared for interview, it does not create an enforceable right to claim appointment, in his favor.



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32. Since the advertisement was in violation of the recruitment rules, the respondents were legally justified in disregarding the flawed selection process, after seeking approval from the department.

33. Thus, it is evident that once the appointment process is deemed legally void, any action taken in pursuance of such a process is also rendered unlawful. The claim made by the petitioners for declaration of the final result in a cancelled selection process and for consequential offer of appointment is declined and the writ petition **deserves to be dismissed** to the said extent.

34. The question which consequently arises for consideration before this Court is as to whether the petitioners herein are entitled to any relief whatsoever.

35. Before examining that question, it is pertinent to draw a leaf from the observations of the Hon'ble Supreme Court in the case of **D.M. Prem Kumari versus The Divisional Commissioner, Mysore Division and others** reported as **2009 AIR SCW 2236** held as follows:-

"15) "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This, in our view, is a mis-understanding. Judiciary has a very strong sense of justice and it works to maintain



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social justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy.”

36. If the petitioners have paid any application fees for the now-invalidated recruitment process, the respondent-commission is directed to process and refund such amounts to the petitioners within four months of receipt of certified copy of this order.
37. Ordered accordingly.

11.03.2025

Mangal Singh

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

(VINOD S. BHARDWAJ)
JUDGE