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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 30.05.2025

+ W.P.(C) 8104/2025 & CM APPL. 35430/2025
SUMAN

.....Petitioner

Through: Ms. Shailja Nanda Mishra,
Advocate.

versus

BHARATI COLLEGE AND ORS

.....Respondents

Through: Ms. Monika Arora, Mr.
Subhrodeep Saha, Mr. Prabhat
Kumar, Ms. Anamika Thakur,
Advocates for R-1 and 2.

Mr. Mohinder Rupal, Mr. Hardik
Rupal, Ms. Aishwarya Malhotra,
Advocates for DU.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. This petition has been filed under Article 226 of the Constitution, seeking appointment to the post of Assistant Professor, Political Science (SC Category) in the respondent-Bharati College ["College"]. The petitioner also assails a letter dated 28.01.2025, by which the College has rejected her representation for this purpose.

2. The College issued an advertisement dated 16.02.2023, inviting candidates for several posts, including the post of Assistant Professor (Political Science). The petitioner applied for the said post under the Scheduled Caste ["SC"] category, for which two posts were reserved. The



result was declared on 23.11.2023, in which the petitioner was placed at serial No.1 in the waitlist. Respondent No. 8 herein was one of the two selected candidates.

3. Respondent No. 8 was appointed and joined the service of the College, but it was subsequently determined that she did not fulfil the eligibility criteria required in terms of the advertisement. Her services were, therefore, terminated by an order dated 28.10.2024.

4. Pursuant to the termination of respondent No. 8, the petitioner made several representations to the College for appointment to the said post as she was at serial No.1 in the waitlist, but the representations remained unanswered.

5. Thereafter, she filed W.P.(C) 1219/2025, seeking appointment to the said post, which was disposed of by order dated 31.01.2025. The Court noted that the termination of respondent No. 8 was under challenge by way of a writ petition [W.P.(C) 15780/2024], which is pending, and that the College had not commenced any fresh process of selection. It directed the respondents to consider the petitioner's representation by way of a speaking order, prior to commencement of any fresh selection.

6. In the meanwhile, the College passed the impugned order dated 28.01.2025, rejecting the petitioner's representation, stating as follows:

*"This is in reference to your representation dated 18th November 2024 regarding the appointment of a waitlisted candidate for the position of Assistant Professor in the Department of Political Science under the SC category. Your case was presented before the Governing Body during its meeting held on 8th January 2025. The Governing Body has agreed to take note of the communication from the University of Delhi, as referenced in **CB.II/Clari-Ord.XII/2024/121**, (clause-6) dated **03.04.2024**, which states:*



"The candidates on the waitlist can be given the offer of appointment if any of the selected candidates do not join within the given timeframe.

*Hence, your request **cannot** be considered."*

7. Ms. Shailja Nanda Mishra, learned counsel for the petitioner, submits that the petitioner is entitled to appointment to the said post, pursuant to termination of respondent No. 8's service, as she was first in the waitlist. She contends that the appointment of respondent No. 8 was *void ab inito*, as she did not meet the requisite eligibility criteria in terms with the advertisement, and it was the petitioner who ought to have been selected and appointed.

8. Ms. Mishra also relies on a communication dated 03.04.2024, issued by University of Delhi ["DU"], which laid down the circumstances in which a vacant post shall not be filled by the waitlist, as follows:

"6. The candidates in the waitlist can be given the offer of appointment if and only if the selected candidate did not join in the given timeframe. Thus, the post which has fallen vacant due to any of the reason(s) given below cannot be filled from the person in the waitlist.

(i) Resignation of selected candidate.

(ii) Death / VRS / Resignation of an employee

(iii) Post has fallen vacant due to the incumbent appointed at any other higher position / principal etc."¹

Ms. Mishra submits that the vacancy in question does not fall within the category of vacancies mentioned above, and therefore the post does not warrant a fresh advertisement. The vacancy ought to have been filled from the waitlist.

¹ Emphasis supplied.



9. In support of the petitioner's contention, Ms. Mishra relies upon a judgment of this Court in *Raghunath Prasad Saket v. Satyawati College & Ors*², which challenged the appointment of a candidate to the post of Lecturer in Economics (SC Category), as he did not possess the mandatory National Eligibility Test qualification at the time of interview. The petition was allowed, and the candidate's appointment was set aside as being *void ab initio*. The Court noted that the petitioner therein was placed second in the panel, and remanded the selection to the Selection Committee to finalise the appointment within a fixed time period.

10. On the other hand, Ms. Monika Arora, learned counsel for the College, and Mr. Mohinder J.S. Rupal, learned counsel for DU, submit that a candidate in the waitlist has no vested right in situations where selected candidates were appointed, but vacate their post subsequently. They contend that in such circumstances, the panel stands exhausted, and a fresh selection process has to be undertaken.

11. Ms. Arora contends that while rejecting the petitioner's representation, the Governing Body took note of the aforesaid communication by DU, and laid emphasis on the fact that it categorically mentions that the "*candidates on the waitlist can be given the offer of appointment if any of the selected candidates do not join within the given timeframe*". She further contends that in the present case, respondent No. 8 was selected and had joined the services of the College. She was terminated after almost 11 months of being selected. There is, therefore, no question that respondent No. 8 had not joined the services within the given timeframe.

² 2009 SCC OnLine Del 3121, [hereinafter, "*Raghunath Prasad Saket*"].



12. Having heard learned counsel for the parties, I am of the view that the legal position is indisputably against the petitioner. The Supreme Court has considered the question in several decisions including *Sudesh Kumar Goyal v State of Haryana & Ors*³, *Madan Lal v State of Jammu and Kashmir*⁴, and *State of Punjab v Raghbir Chand Sharma*⁵. These judgments have all been considered in a recent judgment by the Division Bench of this Court in *Dr. Shashi Bhushan v. University of Delhi*⁶.

13. The principles have been developed flowing from the judgment in *Shankarsan Dash v UOI*⁷, wherein the Supreme Court held that a selected candidate has no indefeasible right to appointment.

14. A detailed discussion on the earlier authorities is unnecessary, because they have been elaborately considered in *Dr. Shashi Bhushan*. The Division Bench was concerned, as in the present case, with recruitment for the post of Assistant Professor in a constituent college of DU. There also, the petitioner was first in the waitlist. He claimed a right to appointment upon resignation of one of the selected candidates. The Court, *inter-alia*, noticed the communication of DU dated 03.04.2024, which has been cited by Ms. Mishra in her arguments. However, upon a detailed consideration *inter-alia* of the aforesaid judgments of the Supreme Court, the Division Bench found against the writ petitioner.

15. In *Sudesh Kumar Goyal*, the Court found that being placed at the top of the waiting list did not confer any right to appointment upon the candidate. It held that the waitlist could not be operated after resignation

³ (2023) 10 SCC 54, [hereinafter, "*Sudesh Kumar Goyal*"].

⁴ (1995) 3 SCC 486, [hereinafter, "*Madan Lal*"].

⁵ (2002) 1 SCC 113, [hereinafter, "*Raghbir Chand Sharma*"].

⁶ 2025 SCC OnLine Del 1319, [hereinafter, "*Dr. Shashi Bhushan*"].



of the selected candidate who had joined service. In *Dr. Shashi Bhushan*, the Division Bench has made the following observations as to the ratio of *Sudesh Kumar Goyal*:

*“19.6 Simply put, the Supreme Court held that the resignation of a candidate after joining give rise to a fresh vacancy. In our considered opinion, in fact, this is but obvious. **So long as the candidates had not joined the posts to which they were appointed, following the selection, it might have been possible to contend that the panel – or the waiting list – survived.***

*19.7 Once the candidates had joined and the selection process had culminated in appointments, there could be no question of the panel, which was intended to be used for selection and appointment, surviving any further. Any vacancy which arose thereafter, even if it was by way of resignation of one of the appointed candidates was, therefore, a fresh vacancy. It had to be readvertised. **Candidates in the select panel or the wait list, relatable to the earlier selection, which had culminated in appointments having been made to all vacancies, could not maintain a right to appointment against the vacancies once they were filled. A vacancy which arose after a candidate had joined, owing to the candidate demitting the appointment for any reason, had necessarily to be thrown open to all aspirants to the posts, by way of a fresh advertisement.**”⁸*

16. In *Madan Lal*, the Court held that candidates, who are lower in merit than the number of vacancies advertised, can only be treated as waitlisted candidates, and can be appointed only if a selected candidate does not accept the offer of appointment. As far as *Madan Lal* and an earlier judgment in *State of Bihar v. Madan Mohan Singh*⁹ are concerned, the Division Bench in *Dr. Shashi Bhushan* held as follows:

*“20.3. Thus, even though, in *Madan Lal* case, there was a provision which specified that the waiting list would remain in operation only till it was exhausted by appointment of selected candidates, the Supreme Court, even while referring to the said clause, went on to observe that the clause was in consonance with the settled legal position as*

⁷ (1991) 3 SCC 47.

⁸ Emphasis supplied.

⁹ 1994 Supp (3) SCC 308.



enunciated in, inter alia, Madan Mohan Singh case. Madan Lal case and Madan Mohan Singh case, therefore, clearly enunciate the general principle that a panel, or a waiting list, remains in operation till the selected candidates are appointed and cannot survive thereafter.¹⁰

17. In Raghbir Chand Sharma, the principle has been explained thus:

“4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The circular order dated 22-3-1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the circular orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies.”¹¹

18. The conclusions of the Division Bench in Dr. Shashi Bhushan are recorded in the following terms:

“24. In view of the aforesaid, it is clear that the appellant had no indefeasible right to appointment merely because he was the first candidate in the waitlist. At the cost of repetition, had either Usha

¹⁰ Emphasis supplied.

¹¹ Emphasis supplied.



Rani or Jitendra Rishideo not joined, perhaps the situation may have been different. Once they were formally appointed and joined duty, however, no right would survive in the appellant to the post against which they have been appointed. If, therefore, either of them left the job after joining, it gave rise to a fresh vacancy which, applying the law as it stands, was required to be re-advertised.”¹²

19. The petitioner, in the present case, is in a position which is substantially similar; two posts of Assistant Professor - Political Science (SC category) were advertised, and two candidates were selected. Both accepted the offer and joined service. The services of respondent No.8 were, however, terminated approximately one year later.

20. The only distinction that can be drawn between the cases considered above and the present case, is that the services of respondent No. 8 were terminated by the College on the ground that she was ineligible for appointment. The consequence is that the petitioner would have been appointed if the ineligibility of respondent No. 8 had been discovered before she was appointed. This situation certainly raises an unfortunate predicament, but does not furnish a ground to distinguish the line of authority cited above. The judgments clearly hold that the waitlist or panel itself is exhausted, at the very latest, upon the appointed candidate joining service. The subsequent termination, like the case of resignation in *Dr Shashi Bhushan*, gives rise to a vacancy, but the vacancy arises only after the selection process in question was already concluded. These factors sustain, even if the vacancy arises due to the selected candidate's ineligibility, discovered subsequently. The appointment of respondent No. 8 unravelled in the present case within one year, but in another case, the true position may be discovered much

¹² Emphasis supplied.



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in future. In such a circumstance, it would cause an anomalous and impractical situation, to require an employer to go back to the waitlist to fill the resulting vacancy.

21. The judgment in *Raghunath Prasad Saket* also does not help the petitioner's case, as it involved a challenge to the selection of an ineligible candidate, which is substantially different from the facts of the present matter.

22. For the reasons aforesaid, I am unable to come to the aid of the petitioner in the present case. The writ petition is, therefore, dismissed, alongwith the pending application.

PRATEEK JALAN, J

MAY 30, 2025
"SS/AD"