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

Date of decision: 20th AUGUST, 2025

IN THE MATTER OF:

+ **LPA 527/2025**

SUMAN

.....Appellant

Through: Mr. Prabhat Kumar Rai and Mr.
Shailja Nanda Mishra, Advocates.

versus

BHARATI COLLEGE AND ORS

.....Respondents

Through: Ms. Monika Arora, Mr. Subhrodeep
Saha, Mr. Prabhat Kumar and Ms.
Anamika Thakur, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

CM APPL. 51192/2025 & CM APPL. 51193/2025 (Exemption)

Allowed, subject to all just exceptions.

LPA 527/2025 & CM APPL. 51191/2025, CM APPL. 51194/2025

1. The present Appeal has been filed by the Appellant challenging the Judgment dated 30.05.2025 passed by the learned Single Judge in W.P.(C) 8104/2025, dismissing the writ petition filed by the Appellant.
2. The said writ petition was filed by the Appellant challenging the Letter dated 28.01.2025 issued by the Respondent No. 1 herein, being Bharati College [*hereinafter referred to as "Respondent No.1/College"*], rejecting the representations of the Appellant for consideration of her



appointment to the post of Assistant Professor, Political Science (Scheduled Caste Category).

3. Shorn of unnecessary details, the facts leading to the filing of the present Appeal are as under:

- a) An advertisement bearing No. Bharati/Teaching/2023/1781 dated 16.02.2023 was issued by the Respondent No.1/College, inviting applications for filling up of several posts including the post of Assistant Professor (Political Science), wherein two posts were reserved for the candidates belonging to the SC category. The Appellant herein applied for the aforesaid post under SC category.
- b) On the basis of selection criteria, the Respondent No.1/College declared the results on 23.11.2023, filling up the two posts reserved for SC category candidates, while the Appellant was placed at Serial No.1 in the waitlist.
- c) One Ankita Kilsan, being the Respondent No. 8 herein, was one of the two candidates selected in the SC category to the post of Assistant Professor (Political Science).
- d) The Respondent No.8 joined at the post in the Respondent No.1/College, however, it was subsequently discovered that she did not fulfil the requisite eligibility criteria in terms of the advertisement and resultantly, the service of Respondent No.8 was terminated by an order dated 28.10.2024 passed by the Respondent No.1/College.
- e) Upon getting knowledge of Respondent No.8's termination, the Appellant made several representations to the Respondent No.1/College for being appointed to the post of Assistant Professor (Political Science), on the ground that she has been placed at Serial



No.1 in the waitlist.

- f) However, since the representations remained unanswered, the Appellant approached this Court by filing a writ petition being W.P. (C) 1219/2025, seeking appointment to the said post. The said writ petition was disposed of by this Court *vide* Order dated 31.01.2025, by observing that the termination of Respondent No.8 is under challenge by way of another writ petition being W.P.(C) 15780/2024 which is pending, and the Respondent No.1/College was directed to dispose of the representation of the Appellant by passing a speaking order, prior to commencement of any fresh selection process.
- g) It is pertinent to mention that before the Order dated 31.01.2025 was passed by this Court, the Respondent No.1/College had already disposed of the representation of the Appellant *vide* Letter dated 28.01.2025.
- h) The Letter dated 28.01.2025 reveals that the representation of the Appellant was placed before the Governing Body of the Respondent No.1/College, which rejected the representation of the Appellant by observing as under:

"xxx

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."

- i) The Appellant, thereafter, approached this Court by filing another writ petition being W.P.(C) 8104/2025, which is the subject writ petition in the present Appeal, challenging the aforesaid Letter dated



28.01.2025.

- j) It was the case of the Appellant before the learned Single Judge that since the Respondent No.8 does not fulfil the required eligibility criteria, making her selection to be *void ab initio* and the Appellant who is placed at Serial No.1 in the waitlist should be appointed. The Appellant relied upon a judgment passed by this Court in Raghunath Prasad Saket v. Satyawati College & Ors, **2009 SCC OnLine Del 3121** in support of her contention.
- k) *Per contra*, the stand of the Respondents before the learned Single Judge was that a candidate in the waitlist has no vested right in situations where the selected candidates have been appointed and vacated the posts subsequent to such appointment. It was contended by the Respondents that once the candidates are appointed and the period of waitlist panel gets exhausted, if any vacancy arises subsequent to the filling up of that posts, the same can be filled up only by commencing a fresh selection process.
- l) The learned Single Judge, after hearing both the parties, dismissed the writ petition filed by the Appellant *vide* the Impugned Judgment dated 30.05.2025 by placing reliance upon a judgment passed by a Co-ordinate Bench of this Court in Dr. Shashi Bhushan v. University of Delhi and Another, **2025 SCC OnLine Del 1319**, wherein the Co-ordinate Bench of this Court held that there is no indefeasible right of appointment to any waitlisted candidate once the posts gets filled up by the selected candidates. The learned Single Judge observed that the waitlisted candidates can be accommodated only if any of the selected candidates do not join the post within the given time frame.



m) Learned Single Judge was of the opinion that Respondent No.8 had joined the post and the fact that the ineligibility of Respondent No.8 was discovered at a later point of time is of no consequence, as once Respondent No.8 had joined the post, the waitlist automatically got exhausted.

4. It is this Judgment dated 30.05.2025 passed by the learned Single Judge which is under challenge in the present Appeal.

5. The facts of the case reveal that the Advertisement issued by Respondent No.1/College inviting applications for filling up of several posts, including the post of Assistant Professor (Political Science) does not provide for creation of any waiting list.

6. It is well settled that even a selected candidate included in the merit list has no indefeasible right to appointment [Refer: Shankarsan Dash v. Union of India, (1991) 3 SCC 47]. When a selected candidate has no indefeasible right to appointment, a waitlist candidate cannot have any indefeasible right to appointment.

7. It is apposite to recall the Judgment of the Apex Court in Sudesh Kumar Goyal v. State of Haryana, (2023) 10 SCC 54 wherein the Apex Court has observed as under:

“19. This takes us to the second argument that the appellant could have been easily adjusted against the vacancy caused due to resignation of one of the selected candidates. The argument per se is bereft of merit inasmuch as all the vacancies notified stood filled up initially. However, if one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process. The Division Bench has



rightly dealt with the above contention in the light of the precedent of the various decisions of this Court and we do not feel that any error has been committed in this context.”

8. It is also apposite to recall the Judgment of the Apex Court in Madan Lal v. State of J&K, (1995) 3 SCC 486 wherein the Apex Court has observed as under:

“24. It is now time to refer to Rule 41 as pointed out by the learned counsel for the petitioners. The said rule reads as under:

“Security of the list.— The list and the waiting list of the selected candidates shall remain in operation for a period of one year from the date of its publication in the Government Gazette or till it is exhausted by appointment of the candidates whichever is earlier, provided that nothing in this rule shall apply to the list and the waiting list prepared as a result of the examination held in 1981 which will remain in operation till the list or the waiting list is exhausted.”

A mere look at the rule shows that pursuant to the requisition to be forwarded by the Government to the Commission for initiating the recruitment process, if the Commission has prepared the merit list and the waiting list of selected candidates such list will have a life of one year from the date of publication in Government Gazette or till it is exhausted by the appointment of candidates, whichever is earlier. This means that if requisition is for filling up of 11 vacancies and it does not include any anticipated vacancies, the recruitment to be initiated by the Commission could be for selecting 11 suitable candidates. The Commission may by abundant caution prepare a merit list of 20 or even 30 candidates as per



their inter se ranking on merit. But such a merit list will have a maximum life of one year from the date of publication or till all the required appointments are made whichever event happened earlier. It means that if requisition for recruitment is for 11 vacancies and the merit list prepared is for 20 candidates, the moment 11 vacancies are filled in from the merit list the list gets exhausted, or if during the span of one year from the date of publication of such list all the 11 vacancies are not filled in, the moment the year is over the list gets exhausted. In either event, thereafter, if further vacancies are to be filled in or remaining vacancies are to be filled in, after one year, a fresh process of recruitment is to be initiated giving a fresh opportunity to all the open market candidates to compete. This is the thrust of Rule 41. It is in consonance with the settled legal position as we will presently see. We cannot agree with the learned counsel for respondents that during the period of one year even if all the 11 vacancies are filled in for which requisition is initiated by the State in the present case and if some more vacancies arise during one year, the present list can still be operated upon because the Commission has sent the list of 20 selected candidates. As discussed above, the candidates standing at Serial Nos. 12 to 20 in the list can be considered only in case within one year of its publication, all the 11 vacancies do not get filled up for any reason. In such a case only this additional list of selected candidates would serve as a reservoir from which meritorious suitable candidates can be drawn in order of merit to fill up the remaining requisitioned and advertised vacancies, out of the total 11 vacancies. If that cannot be done for any reason within one year of the publication of the list, even this reservoir will dry up and the entire list will get exhausted. We asked learned counsel for respondent-State to point out whether after the letter at page 87, there was any further communication by the State to the Commission to initiate the process for recruitment to additional anticipated



vacancies. He fairly stated that no further request was sent. That letter at page 87 is the only material for this purpose since that is the basis for the recruitment made by the Commission in the present case. In this connection, we may usefully refer to a decision of this Court in the case of State of Bihar v. Madan Mohan Singh [1994 Supp (3) SCC 308 : 1994 SCC (L&S) 1438 : (1994) 28 ATC 392 : AIR 1994 SC 765] . In that case appointments to the posts of Additional District and Sessions Judges were being questioned. The question was whether appointments could be made to more than 32 posts when the selection process was initiated for filling up 32 vacancies and whether the merit list of larger number of candidates would remain in operation after 32 vacancies were filled in. Negating the contention that such merit list for larger number of candidates could remain in operation after 32 advertised vacancies were filled in, K. Jayachandra Reddy, J. made the following pertinent observations: (AIR headnote)

“Where the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list of 129 candidates prepared in the ratio of 1 : 4 on the basis of the written test as well as viva voce will hold good only for the purpose of filling up those 32 vacancies and no further because said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process.”

9. It is pertinent to note that Rule 41 of the Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967, which is involved in the



judgment cited above, prescribes that the list and the waiting list of the selected candidates shall remain in operation for a period of one year from the date of its publication in the Government Gazette or till it is exhausted by appointment of the candidates whichever is earlier.

10. Similarly, in State of Punjab v. Raghubir Chand Sharma, (2002) 1 SCC 113, the Apex Court reads as under:

*“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.”

(emphasis supplied)

11. All the above judgments lead to only one conclusion that once a selected candidate has joined the service and then subsequently resigns or gets terminated, the same will not give any right to a waitlist candidate as the selection process comes to an end, the moment the selected candidate joins the post.

12. In view of the above, this Court is of the opinion that the Impugned Judgment passed by the Ld. Single Judge does not warrant any interference.

13. Resultantly, the Appeal is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

AUGUST 20, 2025

S. Zakir