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

+ W.P.(C) 2709/2023, CM APPL. 10435/2023, CM APPL. 26048-26049/2026

UTTAM KUMAR

.....Petitioner

Through: Mr. Kuldeep Rai, Ms. Diya,
Advocates

versus

NATIONAL INSTITUTE OF OPEN SCHOOLINGRespondent

Through: Mr. S. Rajappa, Mr. R. Gowrishankar
and Ms. G. Dhivyasri, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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21.04.2026

1. The Petitioner, who was serving as a Principal in Kendriya Vidyalaya Sangathan, applied for the post of Director (Evaluation) pursuant to an advertisement issued by the National Institute of Open Schooling [“NIO”] in September 2021, wherein the said post was notified as an unreserved vacancy to be filled by way of direct recruitment. He was called for interview *vide* communication dated 28th January, 2022.

2. It is the Petitioner’s case that despite participation in the selection process, the results of the interview were not declared in the public domain. Consequently, the Petitioner, on 28th October, 2022, sought information under the Right to Information Act, 2005. By way of response dated 28th November, 2022, he was informed that the selected candidate had been issued an offer of appointment on 16th April, 2022. Thereafter, upon further queries, NIOS, *vide* reply dated 24th January, 2023, disclosed that the



Petitioner had been placed at Serial No. 1 in the reserve panel/waitlist and that the selected candidate had not joined the post till that date.

3. On the basis of the aforesaid information, the Petitioner addressed a representation dated 30th January, 2023 to NIOS, requesting that he be considered for appointment, asserting that the offer issued to the selected candidate had lapsed on account of non-joining within the stipulated period. However, no action was taken on the said representation.

4. In the above background, the Petitioner, by way of this petition, seeks directions to NIOS to appoint him to the post of Director (Evaluation).

Petitioner's contentions

5. In support of the petition, Mr. Kuldeep Rai, counsel for the Petitioner, makes the following submissions:

5.1. The Petitioner, having been placed at Serial No. 1 in the reserve panel for the post of Director (Evaluation), acquired a legitimate right to be considered for appointment upon failure of the selected candidate to join within the stipulated time. NIOS has acted arbitrarily in not operating the reserve panel despite the vacancy having arisen.

5.2. Reliance is placed on Office Memorandum [“O.M.”] dated 13th June, 2000 issued by the Department of Personnel and Training [“DoPT”], to contend that where a selected candidate does not join, the vacancy is required to be filled from the reserve panel and cannot be treated as a fresh vacancy. The said instructions are binding and applicable to NIOS, particularly in view of the recruitment framework adopted by it.

5.3. As per the DoPT norms governing appointment and extension of joining time, a selected candidate is ordinarily required to join within one to two months, and even with extension, the outer limit cannot exceed six



months from the date of issuance of the offer of appointment. Upon expiry of this period, the offer is deemed to have lapsed automatically, without the need for any formal order of cancellation.

5.4. In the present case, the offer of appointment issued in April 2022 stood lapsed upon expiry of six months, as the selected candidate had not joined within the permissible period. Consequently, NIOS was bound to operate the reserve panel and offer appointment to the Petitioner.

5.5. NIOS has failed to disclose any valid or legally sustainable basis for granting repeated extensions of time to the selected candidate beyond the permissible limit. The RTI responses do not indicate the nature, duration, or authority for such extensions, thereby rendering the action arbitrary and non-transparent.

5.6. NIOS, being an autonomous body, is nonetheless bound by the instructions and guidelines issued by the Government of India, particularly where its own rules are silent. In this regard, reliance is placed on the applicable recruitment framework of NIOS, which adopts DoPT guidelines for residuary matters.

5.7. The subsequent appointment of the selected candidate, allegedly after prolonged and impermissible extensions, cannot defeat the Petitioner's right, which had crystallised upon lapse of the offer of appointment. The legality of such extensions is also assailed as being contrary to the governing norms and unsupported by any documented approval of the competent authority.

5.8. During the pendency of the present petition, NIOS has initiated a fresh recruitment process for the same post, which is an attempt to render the present proceedings infructuous and defeat the Petitioner's claim. Such action is arbitrary and constitutes a colourable exercise of power.



5.9. In support of the above submissions, reliance is placed on the decision of the Supreme Court in *State of U.P. v. Ram Swarup Saroj*¹, to contend that where a selected candidate does not join, the candidate in the waiting list is entitled to be considered for appointment.

Respondent's contentions

6. Mr. S. Rajappa, counsel for the NIOS, opposes the petition and submits as follows:

6.1. The reliance placed by the Petitioner on the DoPT Office Memorandum dated 13th June, 2000 is misconceived, as the said instructions pertain to recruitments conducted through agencies such as UPSC and are not *ipso facto* applicable to NIOS, which is an autonomous organisation governed by its own Memorandum of Association and recruitment regulations.

6.2. The selection process culminated in preparation of a panel comprising one candidate in the main list and candidates in the reserve panel. The candidate placed at the top of the main panel was duly issued an offer of appointment upon approval by the competent authority.

6.3. The selected candidate accepted the offer of appointment and, owing to administrative and personal circumstances, sought extension of time for joining. Such requests were considered and granted by the competent authority from time to time, in exercise of its discretion.

6.4. The Petitioner, being merely a waitlisted candidate, does not acquire any indefeasible right to appointment. Inclusion in a reserve panel does not confer an enforceable right unless the appointment of the selected candidate is cancelled in accordance with law.

¹ (2000) 3 SCC 699.



6.5. At no stage did the offer of appointment lapse, as the selected candidate continued to engage with NIOS and sought extensions which were duly considered. Consequently, no vacancy arose warranting operation of the reserve panel.

6.6. The Petitioner's representation dated 30th January, 2023 was duly considered and rejected by a reasoned order dated 9th March, 2023.

6.7. The selected candidate ultimately joined the post on 14th March, 2023, thereby concluding the recruitment process. In these circumstances, the Petitioner's claim does not survive.

Analysis

7. The controversy essentially centres around whether the Petitioner, being placed at Serial No. 1 in the reserve panel, acquired any enforceable right to appointment on account of the selected candidate not joining within the time initially stipulated in the offer of appointment.

8. The Petitioner's case is founded on the premise that the offer of appointment issued to the selected candidate in April 2022 stood automatically lapsed upon expiry of six months, and consequently, NIOS was obligated to operate the reserve panel. This submission is premised on the O.M. dated 13th June, 2000 issued by DoPT, as well as the general norms governing extension of joining time.

9. However, the aforesaid contention cannot be accepted. The material on record indicates that the selected candidate did not remain inactive or unresponsive to the offer of appointment. On the contrary, upon receipt of the offer, the candidate conveyed acceptance on 18th April, 2022 and thereafter sought extension of joining time on multiple occasions. The record reflects that an initial request for extension was made on 28th April,



2022, followed by a further request seeking extension up to 31st March, 2023, which were duly considered by the competent authority. Ultimately, by communication dated 3rd March, 2023, a final extension of seven days was granted, with a clear stipulation that failure to join within the said period would result in cancellation of the offer. Pursuant thereto, the candidate joined the post on 14th March, 2023. This sequence of events demonstrates continuous engagement on part of the selected candidate and conscious consideration by NIOS, negating the contention that the offer had lapsed by efflux of time.

10. In the above factual backdrop, it cannot be held that the offer of appointment had lapsed automatically. The contention that the offer stood automatically lapsed upon expiry of six months cannot be accepted as an inflexible rule. The grant of extension of joining time is an administrative decision within the domain of the employer, and where such discretion is exercised, the offer cannot be treated as having lapsed merely by efflux of time. In the absence of any arbitrariness, *mala fides*, or violation of a binding statutory provision, such decision does not warrant interference in exercise of jurisdiction under Article 226 of the Constitution of India.

11. Reliance placed by the Petitioner on the DoPT O.M. dated 13th June, 2000 is misplaced. A plain reading of the said O.M. indicates that it primarily governs the “*operation of reserve panels*” in situations where a vacancy arises on account of non-joining of a selected candidate within the stipulated time or upon subsequent resignation within a specified period. It provides that in such contingencies, the vacancy may be filled from the reserve panel and ought not to be treated as a “*fresh vacancy*”. For sake of convenience, the said O.M. is extracted as under:



“New Delhi, dated 13th June, 2000

OFFICE MEMORANDUM

Sub: Operation of reserve panels prepared on the basis of selections made by UPSC, Staff Selection Commission, other recruiting agencies and where selections are made by Ministries /Department etc. - acceptance of recommendations of Fifth Central Pay Commission - regarding.

*The undersigned is directed to invite attention to this Department's Office Memorandum quoted in the margin and to say that in terms of these Office Memorandum, it was informed that the Union Public Service Commission, wherever possible, maintains a reserve panel of candidates found suitable on the basis of selections made by them for appointment on direct recruitment, transfer on deputation, transfer basis and the reserve panel is operated by the UPSC on a request received from the Ministry/Department concerned when the candidate recommended by the UPSC either does not join, thereby causing a replacement vacancy or he joins but resigns or dies **within six months** of his joining. Ministries/Departments were advised that whenever such a contingency arises, they should first approach the UPSC for nomination of a candidate from the reserve panel, if any. The recruitment process be treated as completed only after hearing from the UPSC and the Ministry/Department concerned may resort to any alternative method of recruitment to fill up the vacancy thereafter.*

*2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies **within a period of one year** from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.*

3. It has also been decided that where selections for posts under the Central Government are made through other recruiting agencies such as Staff Selection Commission or by the Ministries/Departments directly and the reserve panels are similarly prepared, the procedure for operation of reserve panels maintained by UPSC as described in para 2 above will also be applicable for the reserve panels maintained by the other recruiting agencies/authorities.”

12. From the above, it is evident that the said O.M. does not prescribe any



inflexible rule regarding the outer limit for extension of joining time, nor does it mandate automatic lapse of an offer of appointment. The provisions relied upon by the Petitioner operate only upon the occurrence of a vacancy arising from non-joining or subsequent events. In the present case, as the selected candidate ultimately joined the post pursuant to extensions granted by the competent authority, no such vacancy arose so as to trigger the operation of the said O.M.

13. More fundamentally, the Petitioner, being a candidate placed in the reserve panel, does not acquire any indefeasible or vested right to appointment. As held by the Supreme Court in *State of Orissa & Anr. v. Rajkishore Nanda & Ors.*², a person whose name appears in a select list does not acquire any indefeasible right of appointment, and empanelment, at best, is a condition of eligibility for the purpose of appointment and does not create a vested right. A select list cannot be treated as a reservoir for the purpose of appointments to be drawn upon as and when vacancies arise. In the present case, no vacancy arose requiring operation of the reserve panel, as the selected candidate ultimately joined the post pursuant to extensions granted by NIOS. The Petitioner's expectation of appointment, therefore, does not crystallise into any enforceable right in law.

14. The Petitioner has sought to contend that the extensions granted to the selected candidate were arbitrary and without authority, placing reliance on the alleged non-disclosure of relevant details in the RTI responses furnished under the Right to Information Act. However, this contention is without merit. The mere absence of detailed particulars in RTI responses cannot, by itself, lead to an inference of arbitrariness or illegality. On the contrary, the



record demonstrates that the requests for extension were duly considered by the competent authority at each stage, culminating in a final conditional extension prior to the candidate joining the post. Thus, the challenge founded on alleged non-disclosure in RTI responses does not sustain.

15. The Petitioner's contention that initiation of a fresh recruitment process is arbitrary also does not advance his case. It has been pointed out that the selected candidate has since resigned on 16th December, 2025. However, such resignation cannot enure to the benefit of the Petitioner. The vacancy arising thereafter is required to be filled in accordance with the applicable recruitment rules through a fresh selection process, and not by reverting to an earlier reserve panel which has exhausted its utility. In this regard, it would be apposite to refer to *State of Punjab v. Ragbir Chand Sharma & Anr.*³, wherein the Supreme Court held that once the selected candidate for the notified post is appointed, the select panel ceases to exist and no candidate in the panel can claim appointment even against a vacancy arising subsequently on account of resignation.

16. The reliance placed on the decision in *Ram Swarup Saroj* is also of no assistance to the Petitioner. In that case, relief was granted in a situation where a vacancy had admittedly arisen and the claim was asserted during the currency of the select panel. The said principle is inapplicable here, as no vacancy arose requiring operation of the reserve panel, the selected candidate having ultimately joined the post. The foundational premise for application of the said decision is thus absent.

17. In view of the above, and in exercise of jurisdiction under Article 226

² (2010) 6 SCC 777.

³ (2002) 1 SCC 113.



of the Constitution of India, this Court finds no ground to exercise its writ jurisdiction so as to direct appointment of the Petitioner. The recruitment process in question has already been concluded, and a fresh recruitment cycle has also been initiated thereafter. Interference at this stage would, therefore, be unwarranted.

18. In light of the foregoing, the present petition is dismissed, along with the pending applications.

SANJEEV NARULA, J

APRIL 21, 2026

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