

(2024) 09 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : LPA No. 253 Of 2023

Basant Kumar & Another

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 23-09-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2024) 09 SHI CK 0014

Hon'ble Judges : M. S. Ramachandra Rao, CJ; Satyen Vaidya, J

Bench : Division Bench

Advocate : Rakesh Kumar Sharma, Sidharth Jalta

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. By way of this Letter Patent Appeal, the appellants have assailed the judgment dated 15.12.2023, passed by the learned Single Judge of this Court

in CWP No. 10317 of 2023, whereby the writ petition filed by the appellants under Article 226 of the Constitution of India has been dismissed.

2. Brief facts necessary for adjudication of the appeal are as under:-

i) A requisition dated 6.6.2022 was made by the office of Principal CCF (HoFF) Himachal Pradesh to the Director Information and Public Relation Department,

Himachal Pradesh to get published advertisement for inviting applications for 11 posts of Junior Office Assistants (IT) under physically handicapped quota.

ii) The advertisement was accordingly published.

ii) 3 out of 11 posts were reserved for visually impaired category.

iv) Petitioners also submitted their respective applications under visually impaired category.

v) The evaluation of documents was done and the interviews were conducted. The petitioners were interviewed by the Selection Committee on 11.7.2022 and 13.7.2022 respectively.

vi) The result was declared on 30.6.2023.

vii) In the visually impaired category, petitioners were placed at Sr. No. 6th and 7th in the merit list.

viii) The offer of appointment under visually impaired category was made to the first three candidates in the merit on 11.7.2023. However, none of them joined as they

had been appointed in the Department of Education in September, 2022.

ix) The petitioners were shown at Sr. No. 3rd and 4th in the waiting list.

x) The candidate shown 2nd in the waiting list had also joined the Education Department in September, 2022.

3. In the aforesaid factual background, the petitioners claimed themselves entitled for offer of appointment having been upgraded to 2nd and 3rd

position respectively in the waiting list. It is contended by the petitioners that since the result was declared on 30.6.2023, the waiting panel was to

remain in existence for one year thereafter, but the respondents instead of offering appointments to the petitioners, issued fresh advertisement on

21.11.2023, forcing the petitioners to approach this Court by way of CWP No. 10317 of 2023 for the following relief:-

â??That the respondents may kindly be directed by way of issuance the appropriate writ and order that the respondents be directed to fill up the vacancies from

the waiting list as prepared by them contained as Annexure P-4 for the posts of Junior Office Assistant (IT) under visual impaired category and the fresh

advertisement dated 21.11.2023 contained as Annexure P-7 may kindly be quashed and set aside qua to the visual impaired persons.â??

4. The learned Single Judge has dismissed the petition of the appellants by holding that the waiting panel was drawn by the Department Selection

Committee on 11.7.2022 and, therefore, the impugned advertisement having been issued in November, 2023 after lapse of one year from the date

when the waiting list was drawn, was not valid.

5. We have heard learned counsel for the parties and have also gone through the record carefully.

6. Learned counsel for the appellants contended that the waiting panel had to remain alive for one year w.e.f. 30.6.2023, on which date, the result was declared. He submitted that though a specific averment with respect to declaration of result on 30.6.2023 was made by the petitioners in para-4 of the petition but the same was not taken into consideration by the learned Single Judge. He further submitted that the date i.e. 11.7.2022 considered by the learned Single Judge to be the date on which the waiting panel was drawn might be the date of preparation of selection list but since the result was not declared till 30.6.2023, the very purpose of keeping the waiting list alive for twelve months is rendered otiose.

7. On 9.7.2024, the following order was passed by this Court:-

“The State shall explain why when the Department Selection Committee selected the candidates on 05.07.2022, the publication of selection list was allegedly done only on 30.06.2023 and offer letters were issued to the selected candidates on 11.0.7.2023 more than a year after the Department Selection Committee finalized their names.”

8. In compliance to the order dated 9.7.2024, respondent No.1 issued instructions, whereby it is clearly admitted that the result was declared on 30.6.2023. In order to explain the delay, it is submitted that the Department Selection Committee had made its recommendations with respect to the selected candidates under visually impaired category and other candidates on 5.7.2022, 11.7.2022, 12.7.2022 and 13.7.2022. It has also been submitted that the Model Code of Conduct was imposed on 14.10.2022 and the result of the selected candidates could not be declared. After the Model Code of Conduct was lifted, the State Government issued letter dated 12.12.2022 specifying as under:-

“All recruitment processes underway in the department, boards, corporations and autonomous bodies of the State Government including different universities, except those being undertaken through H.P. Public Service Commission and H.P. Subordinate Service Selection Board, to be kept in abeyance.”

9. It is further submitted that respondent No.1 referred the matter to Government on 13.1.2023 and thereafter, reminders were also sent on 27.2.2023 and 23.5.2023 for declaration of result of selected candidates, the Government conveyed its approval on 30.6.2023 to declare the result and accordingly, the result was declared.

10. As regards the validity of waiting list, it has been submitted that Clauses 16.6 and 16.8 of Department of Personnel Notification dated 28.1.2004

holds field, which reads as under:-

16.6:

While preparing the final result a category wise waiting list (Panel) shall be prepared. The candidates placed in the waiting list/panel shall have the right to be

appointed except when a selected/recommended candidate does not join and the waiting list is still in operation.

16.8:

The recommendations of the Board will be valid till the appointments are offered to the candidates by the Appointing Authority or for a period of one year from the date of recommendations which ever are earliest.

11. Reliance has also been placed on Rule 16.17 (iii) as contained in Volume-I of Hand Book on Personnel Matters, which reads as under:-

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The panel drawn by the DPC will be effective for a period of one year and will come into operation from the date of the DPC meeting.

In case of validity of the panel drawn by the DRC, the procedure outlined at (iii) above will also be applicable.

12. The respondents have not denied that the first three candidates in the merit of selected list did not accept the offer. Similarly, remain the position

with respect to the candidate finding place at Sr. No.5 of the select list/Sr. No.2 of the waiting panel. In this factual background, the assertion of the

petitioners that they got upgraded to Sr. Nos. 2 and 3 of waiting panel is established.

13. Noticeably, the learned Single Judge had not sought any response or reply from the respondents and for such reason, the stand of the respondents,

as noticed above, appearing from the instructions dated 2.9.2024 is being taken into consideration. In our considered view, the respondents have

adopted a very doctrinaire approach in interpreting Clauses 16.6 and 16.8 of DoP notification dated 28.1.2004 and the Rule 16.17 (iii) from Volume-I

of Hand Book on Personnel Matters.

14. As per Rule 16.17 (iii) Volume-I of Hand Book on Personnel Matters, the panel drawn by the DRC remained valid for one year. The above

provision primarily has been drawn for the panel to be prepared by the Departmental Promotion Committee, which essentially deals with consideration of candidates for the purpose of promotion. By literally applying said procedure to the Departmental Recruitment Committee analogically may prove counter productive in given situation. There is a difference in panel drawn of the candidates for the purpose of promotion and for recruitment. In the case of proceeding drawn by the DRC is not made public before a period of one year that too without any justifiable reason, the very purpose of preparation of panel and consequently the selection process is defeated. Similarly, the reference to validity of recommendations of the Selection Committee (Board) till the offer of appointment is made by the appointing authority or for a period of one year from the date of recommendations whichever are earliest, cannot be given a meaning antithetical to Clauses 16.6 and 16.8 of DoP notification dated 28.1.2004. In case the appointments are not offered to the candidates for more than a period one year from the date of recommendations, as has been done in this case by the respondents, the purpose of preparation of waiting panel will be rendered useless.

15. In our considered view, the reference to the panel drawn by the DRC in Rule 16.17 (iii) of Volume-I of Hand Book on Personnel Matters and recommendations of the Board referred to in Clause 16.8 of DoP Notification dated 28.1.2004 means the date when such proceeding or recommendations is made by declaration of result. The appointing authority may for justifiable reasons offer the appointment to the selected candidates immediately after lapse of a considerable time and in case like one in hand, where the result itself has been declared after lapse of more than eleven months from the date when the panel was drawn by the DRC, hardly any time is left to offer appointment to the candidates in waiting panel on refusal of selected candidates to accept the appointment. The powers and discretions with the authorities in the matters of public appointments cannot be exercised but for objective considerations and in case the interpretation rendered by the respondents is sustained, it will be providing a handle to such authorities to act arbitrarily.

16. Even otherwise also, no justification has been rendered by the respondents for not declaring the result between 13.7.2022 to 14.10.2022. In the same manner, no justification has been shown as to why the State Government

had put all the recruitment process on hold vide letter dated 12.12.2022

and further why the approval to declare the result was withheld till 30.6.2023. The respondents cannot be allowed to take the benefit of their own

wrongs.

17. In *Sheo Shyam & others vs. State of U.P. & others* (2005) 10 SCC 314, the Honâ??ble Supreme Court noticed the facts of that case as

under:-

â??Background facts are as follows:-

3. The Commission issued an advertisement for filling up 218 posts of Assistant Prosecuting Officer (in short the 'APO'). The appellants applied for appointment.

On the basis of recommendations made by the Commission, appointments were made by the State Government in installments since the Commission itself appears

to have been sending proposals also in installments, after due verification of the credentials and fitness of candidates. The first batch of appointment orders was

issued on 20.8.2001 requiring selected candidates to join by 10.9.2001. Thereafter, appointments were made in two further batches and the joining dates were

indicated to be 3.10.2001 and 20.4.2002. It is undisputed that about 30 candidates who were selected did not join.

4. On 26.11.2001, the State Government sent communication to the Commission pointing out that the candidatures of 7 candidates have been cancelled as they

had refused to join and a request was made for seven additional names. Grievance of the writ petitioners (appellants herein) was that when 30 posts were vacant

and the period of currency of the waiting list was not over, the State Government should have required the Commission to send 30 names.

5. Response of the Commission to the letter of the State Government was that the additional names called for were not to be sent, as two and half years had

elapsed from the date when the first recommendation was sent by the Commission. Writ petitions were filed questioning the view taken by the Commission. The

High Court by the impugned judgment held that the period of validity of the waiting list was over.â??

18. After noticing the above facts, the Honâ??ble Supreme Court proceeded to hold as under:-

10. In the aforesaid background, in a case of this nature and in view of the peculiar nature of the fact situation noted above, it would be inequitable and

unjust to compute the one year period from the date when the first recommendation was made by the Commission. Undisputedly, appointments were made till the

end of 2001. Therefore, it would be proper to reckon the period from the last date when the recommendation was made. But another situation has developed

subsequently. The State Government itself had requisitioned for 56 posts including the unfilled posts of the previous selection and examinations are stated to have

been already held. The fate of present 11 appellants has suffered a setback on account of the action of both the Commission and the State Government. If the

Commission's stand is that the validity period of the waiting list is one year, it should have sought for clarification from State Government as to why unfilled posts

were included in the requisition, when its specific stand in the office memorandums referred to above was to the contrary. At the same time, the State Government

having taken a positive stand all through that the date of reckoning would be the last date on which the recommendation was made, it should not have included

the unfilled posts in its requisition. The career of 11 candidates cannot be jeopardized in this battle of inconsistent and varying stands taken and moves adopted

by the State Government and the Commission at different stages for different purposes.

11. Had the Commission on receipt of the office memorandum dated 14.1.1999 pointed out to the State Government that its view was not in line with the

Commission's view that would have sorted out the areas of differences. Interestingly, in a particular case referred to by the appellants, Commission accepted that

the period was to be from the last date of recommendation. Though there cannot be any estoppel in law, yet a statutory body like the Commission cannot blow hot

and cold at the same breath. There has to be consistency in its view. To rule out unfortunate situations like the present one being allowed recurring again, both

the State Government and the Commission are required to be more vigilant and constructive in their approach. When dealing with the careers of large number of

candidates, their stands have to be consistent and not varying to avoid giving

room for unsavoury suspicions and ensuring the systems to work more transparently to add to its reputation and strength.â??

19. Thus, the respondents cannot be allowed the benefit of their own wrongs, more particularly when a serious prejudice to the right of the appellants is the consequence.

20. In result, the appeal is allowed. The judgment dated 15.12.2023, passed by the learned Single Judge of this Court in CWP No. 10317 of 2023 is set

aside; Advertisement dated 21.11.2023 (Annexure P-7 in the writ petition) is quashed qua the visually impaired category; the respondents are directed

to fill up the vacancies from the waiting list, as prepared by them (Annexure P-4 in the writ petition) for the posts of Junior Office Assistants (IT)

under visually impaired category. Pending applications, if any, also stand disposed of.