

(2023) 06 CHH CK 0057

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 1554, 1693, 3615, 3616 Of 2020

Mohd. Ershad Khan

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Chhattisgarh Armed Executive Force (CAF), Constable (General Duty) and Trade Constable (Trained/Untrained) (Recruitment and Conditions of Service) Rules, 2008 — Rule 13(2)
Right to Information Act, 2005 — Section 27(2)(b), 27(2)(g)

Citation : (2023) 06 CHH CK 0057

Hon'ble Judges : Rakesh Mohan Pandey, J

Bench : Single Bench

Advocate : Naushina Afrin Ali, Nitansh Kumar Jaiswal, Ajay Kumarani, Ravi Bhagat

Final Decision : Dismissed

Judgement

1) As the issues raised in all the captioned writ petitions are common, those were taken up for hearing analogously and are being disposed of by this common order.

2) These batch of writ petitions have been preferred by the petitioners whose names appeared in the waiting list published on 28.08.2018 and by way of these writ petitions, the petitioners have prayed for following relief(s):-

"10.1 That the Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioners.

10.2 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and quash the impugned communication/order dated 31.1.2020 (Annexure P/1).

10.3 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and direct the Respondent no.2, to consider the case of the

petitioners for appointment on the vacant posts of Constable (GD) in the Chhattisgarh Armed Forces from the waiting list.

10.4 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and direct the respondent authorities i.e. Respondent No.3 to send the candidates selected from the waiting for training at the earliest.

10.5 Any other relief/reliefs which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also kindly be granted."

3) The facts of the case are that on 25.01.2018, an advertisement was issued by the respondent authorities for filling up of 1786 posts of Constable (GD), Constable MT (Driver) and Constable Trade (Unskilled) in Chhattisgarh Armed forces (hereinafter 'CAF').

4) The scheme of the examination consisted of physical efficiency test followed by written test and the selection was to be finalized on merits on the basis of aggregate marks of both the tests. The physical efficiency test was to be conducted under six different heads i.e. 100 and 1500 meters race, shot put, long jump, high jump which carried 16 marks each, and 100 meters race carrying 25 kg. weight which carried 20 marks, total 100 marks. As per advertisement, the applicants were required to submit online application which commenced from 26.01.2018 and its last date was 15.02.2018. The petitioners along with other suitable candidates submitted their application forms and participated in the physical efficiency test and after being qualified in the said test, they appeared for written test held on 24.06.2018 and 08.07.2018 respectively, for candidates belonging to different districts. Thereafter, on 28.08.2018 result/select list was published containing names of successful candidates, merit wise and a list of waitlisted candidates was also published. Later on, owing to model code of conduct for the Chhattisgarh State Legislative Assembly Elections which was scheduled in the month of November, 2018 the said list was not acted upon. An order dated 20.12.2018 was issued for the first time for conducting medical test of successful candidates and different units of CAF. The petitioners held their breath for their turn but after passing of considerable time, they approached the respondent authorities for appointment out of the waiting list and also made representation in this regard but they got no response in turn from the respondent authorities. Thereafter, the petitioners filed application under Right to Information (RTI) Act and the authorities concerned refused to divulge any information citing it as being barred under Section 27(2)(b) and (g) of the RTI Act, 2005.

5) Having lost all hopes, some of the petitioners preferred WP(S) No. 10558 of 2019 before this Court which was disposed of on 16.12.2019, thereby granting liberty to the petitioners to make representation within a period of 15 days canvassing entire grievance and the authorities concerned were directed to decide the same within a period of 30 days from the date of receipt of the representation. Thereafter, the petitioners preferred representation in pursuance

of the order passed in WP(S) No. 10558 of 2019 by this Court whereby the respondent no. 3 herein vide order dated 31.01.2020 rejected the representation of the petitioners on the ground since the period of one year has already expired from the date of issuance of select/wait list which was effective till 27.08.2019, no appointment could be granted on the basis of that wait list after 27.08.2019.

6) Learned counsel for the petitioners would submit that the State being employer is supposed to follow and implement procedures and policies which are fair, transparent, and reasonable. It is further argued that in conformity with the Rule 13(2) of the Chhattisgarh Armed Executive Force (CAF), Constable (General Duty) and Trade Constable (Trained/Untrained) (Recruitment and Conditions of Service) Rules, 2008 (hereinafter referred as 'the Rules, 2008') the validity of the waiting list was for a period of one year from the date of the publication of select list and thus the waiting list was valid till 27.08.2019 and representations were made to the authorities concerned in this regard, therefore, the authorities are under obligation to consider the claim of the petitioners.

7) It is also submitted that cause of action for the petitioners arose when they were not considered for appointment from the waiting list despite availability of vacant posts as many candidates did not join the services and the vacancy arose during the validity period of the waiting list. It is also contended that Rule 13(2) of the Rules, 2008 has been worded very loosely and is flexible enough to extension. It is lastly asserted that model code of conduct was in operation owing to State legislative Assembly Elections in the State of Chhattisgarh since 06.10.2018 and the select list was published on 28.08.2018, however for the first time same was acted upon 20.12.2018 therefore, validity of waiting list would commence from the date when select list was acted upon. The learned counsel for the petitioners would place reliance upon the judgments of the Hon'ble Supreme Court rendered in the matter of State of Uttar Pradesh v. Ram Swarup Saroj (2000) 3 SCC 699; Virender S. Hooda and others v. State of Haryana and another [(1999) 3 SCC 696]; State of Jammu & Kashmir and others v. Sat Pal [(2013) 11 SCC 737]; and judgments passed by the Division Bench of this Court in Writ Appeal No. 490 of 2015 in the matter of Uttam Kumar Bareth v. State of Chhattisgarh; Writ Appeal No.92 of 2013 (Ishwar Sharan Gupta v. State of Chhattisgarh), and in the matter of Shivshankar Prasad Pandey v. State of Chhattisgarh passed in WPS No.355 of 2016, to buttress their submission.

8) On the other hand, learned counsel for the State would oppose the submission advanced on behalf of the petitioners and submit that representation of the petitioners has been rejected on the ground that the wait list/select list was effective till 27.08.2019 and since the normal validity period already got expired, the same could not be acted upon, therefore the petitioners could not be granted appointments on the basis of the said waiting list. It is further submitted that period of select list cannot be proportionally extended on pretext of enforcement of model code of conduct, in fact the petitioners slept over their rights. It is further argued that the petitioners have not raised any legal ground or come

forward with any proper submission to establish their claim for extension of the validity period. The learned Counsel for State would submit that the petitions preferred by the petitioners deserve to be dismissed.

9) I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also perused the documents annexed with the petitions.

10) It would be advantageous to go through Rule 13(2) of the Rules, 2008 and same is reproduced herein below:-

"13. List of candidates, as recommended by Committee.-

(2) Subject to the provisions of these rules, and of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961, candidates will be considered for appointment to the available vacancies in the order in which their names appear in the list. A waiting list of 25% of total posts shall also be prepared apart from the real vacancies by following the Rules of Reservation, which shall be effective from the date of publication till the commencement of next selection procedure or for one year or whichever is earlier. During this period, the recruitment permission on the sanction of new posts or the posts fallen vacant due to promotion, retirement, death or cadre change, termination or due to other reasons, will be fulfilled from this waiting list."

11) From bare reading of Rule 13(2) of the Rules, 2008, it emerges that - (i) A waiting list of 25% of total posts shall also be prepared apart from the real vacancies by following the rules of reservation, which shall be effective from the date of publication till the commencement of next selection procedure or for one year, whichever is earlier; (ii) During the above stated period, if new posts fallen vacant due to promotion, retirement, death or cadre change, termination or due to other reasons, same shall be filled up from the waiting list.

12) In the instant case, the advertisement was issued on 25.01.2018, thereafter; on 28.08.2018 select list was published along with waiting list. The petitioners are candidates belonging to various categories, whose names appeared in the waiting list. From the pleading, it emerges that some of the selected candidates who were in the merit list did not join the services on account of some reasons; therefore, the petitioners became eligible to be considered for appointment from the waiting list. It is apparent from pleading and documents annexed with the petition that no representation was made prior to 27.08.2019. The representation was made to Additional Director General of Police (CAF), State of Chhattisgarh on 19.09.2019 thereafter another representation was made to the Hon'ble Governor of the State on 05.10.2019, and last one to Home Minister of State of Chhattisgarh on 12.10.2019. Eventually, these petitions have been preferred in the month of March, 2020.

13) In the matter of Ram Swarup Saroj (supra), their Lordships of the Supreme Court have held that "claim of a candidate included in the panel was not defeated

because currency of panel expired during pendency of litigation, when the candidate had staked his claim during the currency of the panel.” However, in the present case though select list/waiting list was published on 28.08.2018 but no claim was made by the petitioners to exhaust the said waiting list till 27.08.2019; therefore the present case is distinguishable from the facts of the cited case.

14) The decisions as relied upon by learned counsel for the petitioners rendered by the Hon’ble Supreme Court in the matters of Virendra S. Hooda (supra), Sat Pal (supra), Manoj Manu and another (supra), and Uttam Kumar Bareth (supra), the sum and substance of these judgments is that a waiting list would start to operate from issuance of select list or when appointment is made. A person, whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. The purpose of the waiting list is to ensure that if any post of the category fall vacant during the prescribed period they should be filled up from amongst the persons on the waiting list and fresh selection process is not required.

15) Now coming to the facts of the present case in the light of above judgments and proposition of law laid down by the Hon’ble Supreme Court, it is quite vivid that the petitioners submitted their applications against advertised posts; they participated in the physical efficiency test and after being qualified in the said test, they participated in written examination. Thereafter, the results were declared and select list along with the waiting list was published.

16) The petitioners who are in waiting list were well aware of the fact that there were only 1786 vacancies of Constable. The select list was prepared against the advertised posts according to Rule 13(2) of the Rules, 2008; similarly, waiting list was also prepared and 25% candidates from select list were kept in the waiting list; the petitioners kept mum till September, 2019, thereafter they filed representations and also preferred WPS No. 10558 of 2019 before this Court, which was disposed of on 16.12.2019, thus it is quite vivid from pleading and documents annexed along with writ petitions that the petitioners slept over their rights for a considerable period.

17) The argument of learned counsel for the petitioners that for the first time the select/waiting list was acted upon on 20.12.2018 therefore, validity of waiting list would commence from the date when select list was acted upon is not tenable. In this regard submission of learned counsel for State has some force that period of select list cannot be proportionally extended on pretext of enforcement of model code of conduct, in fact the petitioners slept over their rights. Further, the petitioners have not come forward with any legal ground to claim extension of validity of the select/waiting list.

18) The statutory provisions providing for preparation of waiting list specify that it shall remain valid till the commencement of next selection procedure or for one year, whichever is earlier. The select list was published on 28.08.2018; therefore, the validity of the waiting list came to an end on 27.08.2019. From the documents annexed along with petitions, it emerges that representations were made before the authorities concerned in the month of September 2019 and October 2019 i.e. after the expiry of the waiting list. In this regard the maxim 'Vigilantibus Non Dormientibus Jura Subveniunt' becomes applicable which says law does not come to the rescue of indolent. It is the obligation of the individual to not only be aware of their rights under the law, but also to be vigilant while exercising the same. The legal process only benefits those who have been careful enough with their rights.

19) Considering the totality of the circumstances, this Court is of the considered opinion that no case is made out warranting interference in the matter. Resultantly, all the Writ Petitions fail and are hereby dismissed. No cost(s).