

(2017) 04 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : 12715 of 2011 (O&M)

Tarsem Lal and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 21-04-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 04 P&H CK 0080

Hon'ble Judges : Jaishree Thakur

Bench : SINGLE BENCH

Advocate : Som Nath Saini, L.S. Virk

Final Decision : Allowed

Judgement

1. The petitioners herein are aggrieved against the action of the respondents herein denying appointment to them despite the fact their name was reflected in the waiting-list.

2. In brief, the facts are that the petitioners having the necessary qualification and experience as Multi Purpose Health Worker (Male), applied for the post of Block Extension Educators, pursuant to an advertisement issued by the Subordinates Service Selection Board, Punjab on 01.06.1999. The petitioners applied through proper channel and were interviewed by the selection board and the result was declared on 07.12.2001 and out of 40 candidates selected for the above posts, 22 candidates were belonging to General Category, 10 to Scheduled Castes, 4 to Backward Classes and 4 to Ex-servicemen. The petitioners were at Serial

No.6 and 8 respectively in the waiting list that was prepared for the Scheduled Castes category. There was a delay in issuing appointment letters, as there was a change in the political setup and eventually 37 appointment letters were issued only on 03.12.2007. 03 appointment letters were not issued to candidates belonging to the Defense Category, as they did not fulfill the qualifications. As all the selected candidates did not join, the petitioner made a representation in June, 2009 for considering his name against the post which was lying vacant. Several representations were made in this regard, but to no avail. Eventually, petitioner No.2 made a representation by letter dated 28.10.2010 to the Director, Scheduled Castes and Backward Classes, Social Welfare Department stating that 03 posts are still lying vacant and that appointment should be offered to them. The Director, Scheduled Castes and Backward Classes, Social Welfare Department further addressed a communication to Director, Health Services regarding offering appointment to the petitioners. In response to the said communication, the Director, Health Services Family and Welfare, Punjab informed that appointment letters had been issued and as per the instructions of the State Government, the waiting-list could not be kept pending for more than 6 months. Aggrieved against denial of appointment, despite the petitioners being on the waiting-list and vacancies existing, the instant writ petition has been filed.

3. Mr. Som Nath Saini, learned counsel appearing on behalf of the petitioners contends that the petitioners were in the waiting list and once vacancies were in existence, it became incumbent upon the State Government to have offered appointment to the next available candidate. Reliance has been placed upon a judgment rendered by a Coordinate Bench of this court in " Suman Rani vs State of Haryana ", 2016 (4) S.C.D.361 to contend that if some posts remain unfulfilled or some of the candidates offered appointment do not join in time, the appointing authority is expected to act promptly to cancel their appointment and offer the same to the

candidates next on the select list/waiting-list.

4. Per contra, Mr. L.S. Virk, learned AAG Punjab argues that the instant writ petition suffers from delay and laches, insofar as, the writ petition has been filed after a period of 3 years of the appointment letter having been offered and the waiting list period having expired, it would not be possible to offer appointment.

5. I have heard the counsel for the parties and with their assistance have perused the pleadings on record.

6. The short question that arises for consideration in the present case would be "whether the petitioners herein, who were on the waiting-list would be entitled to appointment, in case, selected candidates had not joined, after the wait listing had expired?"

7. From the facts as narrated above, it is noted that appointment letters were issued in 2007 to the selected candidates, with a stipulation that they must join service within a period of 15 days of issuance of letter of appointment, with a further stipulation that in case, they fail to join duties, their appointment shall stand cancelled. As per the information made available, several candidates of the Scheduled Castes category did not join, leaving vacancies to be filled up. Once vacancies exist and a suitable candidate is available in the waiting list, it is obligatory upon the appointing authority to have acted promptly and offer appointment to the next available candidate in order of merit. No doubt, it is true that the candidate has only a right to be considered for appointment, but it is equally true that the State cannot act arbitrarily by ignoring the claim of the selected candidate to be considered for appointment. In this regard reliance can be placed upon judgments rendered in the case of "R.S.Mittal Vs. Union Of India", (1995) 3 SCT 285, "Ritu D/O Sh. Nafe Singh Vs. State Of Haryana", 2013 (3) SCT 281 and "Suman Rani Versus State Of Haryana", 2016 (4) S.C.D.361, wherein it has been held that the State Government is expected to act with a sense of promptitude and offer appointment to the next

available candidate on the merit list, in case, selected candidates do not join, after appointment has been offered to them, which has not been done in the instant case. Moreover, there is no explanation also forthcoming, as to why the respondents did not follow the normal procedure of filling the vacancies, as required by offering appointment to the next meritorious candidate available in the select list.

8. Though an argument has been raised that the writ petition ought to be dismissed on account of delay and laches, which argument does have merit, but in the instant case a submission has been made in the written statement filed that "if at all any appointment letter is to be issued against the only one vacancy for the post of Block Extension Educator lying vacant under SC-II category, the same is required to be given to Tarsem Lal, whose name appears at Serial No. 6 of the said waiting-list". Meaning thereby that a vacancy is still available.

9. Therefore, in view of the above circumstances, while exercising discretionary powers under Article 226 of the Constitution of India, this court deems it appropriate to direct the respondents to offer appointment to petitioner No.1-Tarsem Lal within a period of 2 months from the date of receipt of certified copy of this order. Such appointment letter will relate back to the date, when other candidates from the waiting-list were appointed to the post in question. However, petitioner No.1-Tarsem Lal will not be entitled to the salary for the period, he has not worked against such post.

10. The writ petition stands partially allowed in the aforesaid terms.