

SUPREME COURT OF INDIA

Raj Rishi Mehra

Vs.

State of Punjab

Writ Petition (Civil) No.73 of 2013

(G.S.Singhvi and V.Gopala Gowda JJ.)

13.08.2013

ORDER

1. Whether the petitioners, whose names were included in the select list prepared for recruitment to Punjab Civil Service (Judicial Branch) are entitled to be appointed against the posts which became available due to the resignation of two of the appointees and the unfilled posts of reserved categories is the question which arises for consideration in these petitions filed under Article 32 of the Constitution. The Punjab Public Service Commission (for short, 'the Commission') issued Advertisement No.1 in the year 2011 for holding examination for recruitment to the Punjab Civil Service (Judicial Branch). The break up of the posts advertised by the Commission was as under:

||General |47 || | | |Scheduled Castes, Punjab.|09 || | | |Scheduled Castes, |02 || | | |Ex-servicemen/Lineal || | | |Descendent of || | | |Ex-servicemen, Punjab. || | | |Balmiki/Mazhbi Sikh, |18 |(Backlog 08) || |Punjab. || | | |Balmiki/Mazhbi Sikhs |04 |(Backlog 02) || |ESM/LDESM, Punjab. || | | |Backward Classes, Punjab.|09 || | | |Backward Classes, |03 |(Backlog 01) || | | |Ex-servicemen/Lineal || | | |Descendent of || | | |Ex-servicemen, Punjab. || | | |Ex-servicemen/Lineal |09 |(Backlog 03) || |Descendent of || | | |Ex-servicemen, Punjab. || | | |Physically Handicapped, |04 |(Backlog 02) || |Punjab. || | | |Freedom Fighter, Punjab.|01 || | | |Sports Person, Punjab. |04 |(Backlog 02) |

2. The petitioners, who belong to general category, applied for recruitment against the general category posts. In the select list prepared by the Commission, the names of the petitioners were shown at serial Nos. 49, 50, 51, 53 and 54. However, their names were not included in the register meant for appointment of the selected

candidates because 47 candidates, who were placed above them were appointed against the advertised posts of general category. From the reserved categories, only 27 candidates were selected and they were appointed against the posts earmarked for their respective categories.

3. Ms. Mohini (Serial No.31 in the select list), who was appointed against a general category post, did not join and in her place Ms. Parul (Serial No.48) was appointed. Shri Rakesh Kumar (Serial No.32), who was appointed against a general category post, joined the service but resigned with effect from 16.7.2012. Likewise, Ms. Shikha Thakur (Serial No.35), who was also appointed against a general category post, resigned with effect from 2.1.2013 and was relieved on 2.2.2013. The posts vacated by them were not filled and were included in the advertisement issued in 2012. In the meanwhile, the petitioners submitted representation dated 26.4.2012 to the Principal Secretary, Home Department, Punjab for de-reservation of the reserved category posts for facilitating their appointment. The concerned authority accepted their request and issued order dated 26.9.2012 for de-reservation of 5 posts. Of these, one post was from the category of ex-serviceman, two were from the category of physically handicapped and one was earmarked for sports persons. Immediately thereafter, the petitioners were sent for medical examination and all of them were found fit.

4. The Government of Punjab sent communications to the High Court for the petitioners' appointment against the vacant posts but the High Court did not agree and vide letter dated 10.12.2012, the Registrar General of the High Court informed the Home Department that the names of the petitioners cannot be entered in the register.

5. The petitioners have now sought intervention of this Court for issue of a mandamus to the High Court to enter their names in the relevant register and to the State Government to appoint them against the vacant posts. Their prayer is founded on the assertion that the State Government is the sole repository of power to decide whether or not the reserved category post should be de-reserved and the High Court cannot refuse to enter their names in the relevant register and deny them appointment against the de-reserved posts. They have pleaded that on the basis of examination conducted in 2007, 7 candidates of general category were appointed against the de-reserved posts and there is no reason for not giving similar treatment to them. Another plea taken by the petitioners is that they are entitled to be appointed against the two posts vacated by Shri Rakesh Kumar and Ms. Shikha Thakur.

6. The High Court has resisted the writ petitions. In the counter affidavit filed on its behalf, the rationale of making appointments against the posts which were de-reserved in 2007 has been spelt out in paragraphs 3 to 10, which read as under:

“3. It is submitted that in the year 2007, the Punjab Public Service Commission vide Advertisement No. 05 had issued advertisement for filling up the following vacancies of PCS(JB) :-

Sr.No.	Name of the	No. of Posts	Post/Category	General	27
	Ex-Servicemen, Punjab	3	Physically Handicapped	2	
	Scheduled Castes, Punjab	10	(Out of these 10 posts 50% posts reserved for Balmiki/Mazhbi Sikhs Punjab, if available)		
	Scheduled Castes, Punjab	3	Ex-Servicemen, Punjab		
	Backward Classes, Punjab	5	Backward Classes, Punjab		
	Ex-Servicemen, Punjab	1	Ex-Servicemen, Punjab		
	Sports Person, Punjab	1	Sports Person, Punjab		
	Total	52			

4. That vide letter dated 5.12.2007 by the Respondent No.2 the names of 42 candidates were recommended for appointment as PCS(JB), who were selected as a result of examination held in the year 2007.

5. That the State Government (Respondent No.1) vide its letter dated 11.1.2008 had requested the respondent No.2 to enter the names of 24 candidates, who were selected on the basis of abovesaid examination. The State Government (Respondent No.1) had not intimated the answering respondent the reasons behind not filling up the remaining vacancies lying vacant.

6. That under the order dated 17.1.2008 passed by the Hon'ble the Chief Justice of Punjab and Haryana High Court, the names of 24 candidates were entered in the High Court Register and vide Respondent No.2's letter dated 18.1.2008 the State Government was informed accordingly. The State Government was also requested to / forward the names of other candidates as per the recommendation of Respondent No.2 as 37 vacancies were available for appointment as PCS(JB) officers.

7. That thereafter, the State Government vide its letter dated 20.2.2008 had forwarded the names of 18 candidates with the request to enter the names of said candidates in the High Court Register so that further necessary action be taken.

8. That under the orders dated 25.2.2008 passed by the Hon'ble the Chief Justice of Punjab and Haryana High Court, the names of 18 candidates were entered in the High Court Register and the State Government was informed accordingly vide Respondent No.2's letter dated 27.2.2008.

9. That thereafter, Punjab Government vide letter dated 18.03.2008 had intimated the answering Respondent that the Government has decided to appoint 8 candidates from the waiting list against the reserve post and requested answering Respondent to enter the names of these candidates in the High Court Register.

10. That Under the orders dated 18.3.2008 of Hon'ble the Chief Justice of Punjab and Haryana High Court, the names of 8 candidates were entered in the High Court Register and the State Government was informed accordingly vide letter dated 19.3.2008.”

7. As regards the 2011 advertisement, the stand of the High Court is that even though the names of the petitioners were included in the waiting list for a period of one year commencing from 24.3.2012, they cannot claim appointment against the posts which became available due to resignation of the two general category candidates and the posts de-reserved by the State Government vide order dated 26.9.2012. It is also the pleaded case of the High Court that in the meeting of the Administrative Committee held on 21.1.2013, it was resolved not to make appointments from the waiting list because the State Government has already accorded approval for fresh recruitment against 71 posts including 6 reserved category posts. In a separate affidavit, the State Government has claimed exclusive privilege to decide the issue of de-reservation of unfilled posts of reserved categories.

8. Shri P.S.Patwalia, Senior Advocate and Shri Govind Goel, learned counsel appearing for the petitioners argued that their clients are entitled to be appointed against the unfilled posts including those belonging to reserved categories, which were de-reserved by the State Government. Shri Patwalia strongly relied upon note dated 24.3.2012 appended to the select list and argued that in view of the decision taken by the High Court to operate the waiting list, the petitioners cannot be denied appointment against two posts vacated by the general category candidates and 5 reserved category posts which were de-reserved by the State Government. Learned senior counsel pointed out that the petitioners had filed writ petitions in January, 2013 and argued that they cannot be denied appointment merely because tenure of the select list ended sometime in March, 2013. Shri Patwalia and Shri Goel

emphasised that if the waiting list prepared on the basis of examination of 2007 can be operated in the subsequent years, there is no reason why the select list prepared in 2011 is not being acted upon for making appointment against the vacant posts of general as well as the reserved categories.

9. Ms. Indu Malhotra, learned senior counsel appearing for the High Court argued that the petitioners are not entitled to be appointed against the vacant posts merely because their names were included in the waiting list. She submitted that the posts vacated by Shri Rakesh Kumar and Ms. Shikha Thakur will be deemed to have available in the next recruitment year and the same cannot be filled by appointing the candidates from the waiting list. Ms. Malhotra argued that the exercise undertaken in 2007-08 for filling up the unfilled reserved posts cannot be treated as a precedent for ordaining the High Court to include the names of the petitioners in the Register to facilitate their appointment against such posts. Learned senior counsel submitted that this Court should not issue a mandamus for filling up the posts which became available due to resignation of Shri Rakesh Kumar and Ms. Shikha Thakur and the posts which were de-reserved by the State Government because the Commission has already issued fresh advertisement.

10. We have considered the respective arguments. The rationale of making appointments against the de-reserved posts in 2007-08 is contained in paragraphs 3 to 10 of the affidavit filed on behalf of the High Court, which have been extracted hereinabove. In paragraphs 11 to 22 of the affidavit, which are extracted below, the High Court has explained the rationale of not following the same course.

“11. That in the year 2011, the Punjab Public Service Commission vide Advertisement No. 01 had issued advertisement for filling up the following vacancies of PCS(JB) :-

Sr.No.	Name of the Post/Category	No.of		Posts		Punjab Civil
	Services 110		(Judicial Branch)		General	47
	Punjab. 09		Scheduled Castes,	02		Ex-servicemen/Lineal
	Descendent of		Ex-servicemen, Punjab.		Balmiki/Mazhbi Sikh,	18
	(Backlog 08)		Punjab.		Balmiki/Mazhbi Sikhs	04
	ESM/LDESM, Punjab.		Backward Classes, Punjab.	09		Backward
	Classes, 03	(Backlog 01)		Ex-servicemen/Lineal		Descendent of
	Ex-servicemen, Punjab.		Ex-servicemen/Lineal	09	(Backlog 03)	
	Descendent of		Ex-servicemen, Punjab.		Physically Handicapped,	04
	(Backlog 02)		Punjab.		Freedom Fighter, Punjab.	01
	Sports		Person, Punjab.	04	(Backlog 02)	

12 That the Secretary, Punjab Public Service Commission, Patiala was informed by Respondent No.2 vide letter dated 27.3.2012 that as per the result the Committee of the High Court has been pleased to resolve that the first 47 candidates from merit list of General Category, the first 17 candidates from merit list of Schedule Caste Category (09 vacancies advertised against this category plus 08 unfilled vacancies of Balmiki/Mazhbi Sikh Category), the first 09 candidates from merit list of Backward Class Category, all 07 candidates appearing in merit list of Balmiki/Mazhbi Sikh Category, all candidates appearing in the merit list of Balmiki/Mazhbi Sikh-LDESM Category and Backward Class-LDESM Category Candidate and the first three candidates appearing in the merit list of LDESM Category be recommended to be appointed as Civil Judges (Junior Division)-cum-Judicial Magistrates in the State of Punjab. 16 candidates next in order of merit in General Category and 3 candidates next in order of merit in Backward Class Category shall remain in waiting list for one year from 24.3.2012. In the event of any vacancy occurring within one year on account of non-joining or resignation of any candidate or due to any other unforeseen circumstance, the resultant shortfall in the advertised vacancies shall be filled up from the next 16 candidates in order of merit appearing in General Category in case such vacancies belong to general category and from amongst the next 03 candidates in order of merit appearing in Backward Class Category in case such vacancy is of BC category. He was requested to prepare the consolidated merit list in accordance with Rule 8 (Part-C) of the Punjab Civil Service (Judicial Branch) Rules, 1951 and get it published in the Government Gazette as per provisions of Rule 10(i) of the said Rules.

13 That the State Government vide its letter dated 15.5.2012 had requested the Respondent No.2 to enter the names of 83 candidates, who were selected as a result of examination held in the year 2011.

14 That under the orders of the then Hon'ble the Acting Chief Justice, the names of 83 candidates were entered in the High Court Register and vide letter dated 24.5.2012 the State Government was informed accordingly.

15 That the State Government vide its letter dated 29.6.2012 had sought the views of this Court for de-reserving_17 vacancies of reserve categories.

16 That the above said letter dated 29.6.2012 was placed before Administrative Committee of the High Court of Punjab and Haryana in its meeting held on 31.7.2012, wherein it was resolved that the Government of Punjab be informed that the High Court of Punjab and Haryana does not agree with the proposal. However, the advertised vacancies may be filled up from amongst the candidates in the waiting list as per rules. Accordingly, vide letter dated 3.8.2012 the State Government was informed by the Respondent No.2.

17. That thereafter, the State Government vide letter dated 26.9.2012, had intimated that one post of Ex- serviceman/Lineal Descendent of Ex-Serviceman of Punjab Category, two posts of physically handicapped (General Category) and two posts of Sports Persons (General Category) have been de- reserved.

18. That thereafter, the Under Secretary Home, Department of Home Affairs and Justice (Judicial-I Branch), Government of Punjab, Chandigarh vide his letter dated 15.10.2012 has requested the High Court of Punjab and Haryana to enter the names of following candidates in the High Court Register under intimation to the State Government :-

Sr.No.	Roll No.	Name of the	Category		Candidate		1.	10643	Sh.Raj
		Rishi	General		Mehra		2.	10623	Ms.Pukhrajbir
					Kaur				Kaur
					3.	10642	Sh.Raj Kumar	General	4.
					10375	Ms.Kanchan Garg	General	5.	
					10592	Sh.Pawan Bishnoi	General		

19. That the abovesaid matter was placed before Judges in Administrative Committee meeting held on 5.12.2012, wherein it was resolved that the request of the Punjab Government is declined.

20. That accordingly, vide letter dated 10.12.2012, the State Government was informed that the request dated 3.9.2012 and 15.10.2012 with regard to entering the names of Sh.Munish Bansal, Sh.Raj Rishi Mehra, Sh.Pukhrajbir Kaur, Sh.Raj Kumar, Ms.Kanchan Garg and Sh.Pawan Bishnoi has been declined.

21. That the State Government vide letter dated 21.12.2012 had again requested this Court to enter the names of Sh.Munish Bansal, Sh.Raj Rishi Mehra, Ms.Pukhrajbir Kaur, Sh.Raj Kumar, Ms.Kanchan Garg and Sh.Pawan Bishnoi in the High Court Register.

22. That the matter was again placed before Judges in the Administrative Committee meeting held on 21.1.2013, wherein it was resolved that the Government of Punjab vide letter dated 3.11.2012 has already approved the recruitment for 71 posts of PCS(JB) by issuing fresh advertisement and these 71 posts includes the above mentioned 6 vacancies. The process of recruitment had already been initiated. Therefore, the Administrative Committee reiterated its earlier decision dated 5.12.2012.”

11. It is true that in response to the advertisement issued in 2007, the State Government and the High Court made appointments from the waiting list against the posts which were made available by de-reserving the unfilled posts of reserved categories but that decision cannot be cited as a binding precedent because the rules regulating the recruitment do not impose a duty on the appointing authority to make appointment from the waiting list. That apart, what is of immense significance is that the High Court has taken a conscious decision not to entertain the request made by the State Government for filling up the unfilled reserved posts by appointing the candidates of general category because fresh advertisement had already been issued.

12. The question whether the candidates whose names are included in the waiting list are entitled to be appointed against the unfilled posts as of right is no longer res integra and must be answered in negative in view of the judgments of this Court in *Union of India v. Ishwar Singh Khatri* 1992 Supp (3) SCC 84, *Gujarat State Dy. Executive Engineers’ Association v. State of Gujarat and others* 1994 Supp (2) SCC 591, *State of Bihar v. Secretariat Assistant Successful Examinees Union* 1986 and others (1994) 1 SCC 126, *Prem Singh and others v. Haryana SEB and others* 1996) 4 SCC 319, *Ashok Kumar and others v. Chairman, Banking Service Recruitment Board and others* (1996) 1 SCC 283, *Surinder Singh and others v. State of Punjab and another* (1997) 8 SCC 488, *Madan Lal and others v. State of J&K and others* (1995) 3 SCC 486, *Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and others* (1998) 3 SCC 45, *State of J&K and others v. Sanjeev Kumar and others* (2005) 4 SCC 148, *State of U.P. and others v. Rajkumar Sharma and others* (2006) 3 SCC 330, *Ram Avtar Patwari and others v. State of Haryana and others* 2007) 10 SCC 94 and *Rakhi Ray and others v. High Court of Delhi and others* (2010) 2 SCC 637.

13. In *Surinder Singh’s* case, this Court observed as under:

"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service

In Rakhi Ray's case, this Court referred to a number of judicial precedents and held:

"It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law."

In *State of Punjab v. Raghbir Chand Sharma* (2002) 1 SCC 113, a two Judge Bench considered the questions as to when the recruitment process can be

said to have come to an end and whether the select list can be operated qua the posts/vacancies which become available due to resignation of the existing incumbent and answered the same in negative by making the following observations:

“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.”

In *Mukul Saikia v. State of Assam* (2009) 1 SCC 386, this Court held that once the appointments are made against the advertised posts, the select list gets exhausted and those who are placed below the last appointee cannot claim appointment against the posts which subsequently become available. Paragraph 33 of the judgment which contains discussion on this issue is reproduced below:

“At the outset it should be noticed that the select list prepared by APSC could be used to fill the notified vacancies and not future vacancies. If the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised, even though APSC had prepared a select list of 64 candidates. The select list got exhausted when all the 27 posts were filled. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The fact that evidently and admittedly the names of the appellants appeared in the select list dated 17-7-2000 below the persons who have been appointed on merit against the said 27 vacancies, and as such they could not have been appointed in excess of the number of posts

advertised as the currency of select list had expired as soon as the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies meant for direct candidates in violation of quota rules. Therefore, the appellants are not entitled to claim any relief for themselves. The question that remains for consideration is whether there is any ground for challenging the regularisation of the private respondents.”

14. In view of the above noted legal position, the decision taken by the High Court not to enter the petitioners name in the register to facilitate their appointment against the de-reserved posts or the posts vacated by the general category candidates cannot be faulted, more so because the State Government had already approved fresh recruitment and the Commission issued advertisement for 71 posts including 6 reserved category posts. In the result, the writ petitions are dismissed.