

Before Tejinder Singh Dhindsa, J.

NAVDEEP GARG—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.14460 of 2014

March 07, 2018

Constitution of India, 1950—Art. 14 and 16—Appointment to the post of Vocational Master in respect of vacant seats—Petitioner claim not as a waiting list candidate—Claim against advertised post not filled up—Once post duly advertised and not consumed after final selection—Next suitable candidate in order of merit be invited for filling up the vacancy—Petition Allowed.

Held that, the Apex Court in Shankarsan Dash Vs. Union of India, 1991 (2) S.L.R, 779. Held that the Supreme Court further observed that the decision not to fill up the vacancies has to be taken bonafide, for valid reasons and the State would not have the license of acting in an arbitrary manner in choosing not to fill up the vacancies from amongst the selected candidates.

(Para 9)

Further held that, once a post duly advertised has not been consumed, then a candidate next in order of merit as determined in a regular process of selection, if available, has to be invited for filling up such vacancy.

(Para 10)

Further held that, State while rejecting the claim of the petitioner for appointment as Vocational Master (Civil) general category has proceeded on an erroneous premise. Petitioner is not staking his claim as a wait listed candidate. Decision to cancel/scrap a waiting list would be of no consequence. State counsel has during the course of arguments also conceded that no waiting list was prepared in the stream in which the petitioner had applied. Claim of the petitioner is against the advertised posts and which have not been filled up. This Court is of the considered view that the advertisement dated 23.9.2009 clearly reflected an intent of the concerned State department to fill up 39 posts of Vocational Masters/Mistresses (Civil) from amongst the general category. Present petitioner is a selected candidate and his merit has been determined as per criteria. In the absence of any conscious

decision of affixing the bench mark and below which the advertised posts were not to be filled up, the action of the State Govt. not to offer the post in question to the candidate next in order of merit would be seen as arbitrary and violative of Articles 14 and 16 of the Constitution of India.

(Para 14)

Pawan Kumar, Sr. Advocate with
Vipin Kumar, Advocate
for the petitioner.

Avinit Avasthi, A.A.G., Punjab.

C.M. Chopra, Advocate
for respondent no.4.

TEJINDER SINGH DHINDSA.J (Oral)

(1) Challenge in the instant writ petition is to the order dated 6.6.2014 (Annexure P-10), passed by the Director of Public Instructions (S.E.), Punjab rejecting the claim of the petitioner seeking appointment to the post of Vocational Master (Civil).

(2) Briefly, it may be noticed that the Department of School Education, State of Punjab issued advertisement dated 23.9.2009 inviting applications for recruitment as Vocational Masters/Mistresses in various trades. 78 posts of Vocational Masters/Mistresses (Civil) were also advertised out of which 39 posts were to be filled up from amongst the general category candidates.

(3) The essential qualification prescribed for the post was as under:-

“Three Years Diploma from Punjab Technical Education Board in the concerned branch of Engineering along with three years experience of teaching/practical working from a Govt./Govt. aided or registered institutions.”

(4) Petitioner belongs to the general category and applied for the post of Vocational Master (Civil). Upon scrutiny of documents, a provisional merit list of 100 candidates was released in which the name of the petitioner figured at Sr. No.77 and his merit was determined as 54.11. A process of counseling was conducted in which candidates from Sr. No.1 to 60 were called. Petitioner in the light of his merit position determined was not eligible to participate in the first process of counseling. Thereafter, on 10.7.2011 second counseling took place in

which the petitioner duly participated.

(5) Precise case set up on behalf of the petitioner is that against 39 posts advertised of Vocational Masters (Civil) in the general category, 7 posts have not been filled up and inspite of the petitioner being eligible, having participated in a process of counseling and consequently being a selected candidate, is being denied appointment.

(6) Per contra, claim of the petitioner is being resisted by the State by submitting that petitioner had passed his Three Years Diploma in Civil Engineering in May, 2001. There was a specific condition in the advertisement dated 23.9.2009 that the experience which a candidate possesses after passing the requisite qualification for the post, will be considered. Learned State counsel submits that experience of the petitioner after passing the essential qualification has been taken into consideration and as per criteria formulated merit of the petitioner has been reckoned as 50.11 by the Chairman, Departmental Selection Committee (Teaching). Merit of the last selected candidate in the category of the petitioner i.e. general category for the post of Vocational Master (Civil) is 50.13. Passing of the impugned order dated 6.6.2014 (Annexure P-10) is sought to be justified on the basis that no candidate lower in merit to the petitioner has been selected and appointed.

(7) Counsel for the parties have been heard at length and pleadings on record have been perused.

(8) The factum as regards petitioner being eligible and having participated in the process of counseling for the post of Vocational Master (Civil) is not in dispute. Merit of the petitioner stands determined as 50.11. Out of the total 39 posts of Vocational Master/Mistresses (Civil), 7 still lying vacant is conceded by learned State counsel.

(9) The Apex Court in *Shankarsan Dash* versus *Union of India*¹ had crystalized the position that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed. A notice/advertisement was held to be merely an invitation to the qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. State was held to be under no legal duty to fill up all or any of the vacancies. Having so

¹ 1991 (2) S.L.R, 779

held, the Supreme Court further observed that the decision not to fill up the vacancies has to be taken bonafide, for valid reasons and the State would not have the license of acting in an arbitrary manner in choosing not to fill up the vacancies from amongst the selected candidates.

(10) It is by now well settled that once a post duly advertised has not been consumed, then a candidate next in order of merit as determined in a regular process of selection, if available, has to be invited for filling up such vacancy.

(11) This Court on a previous date of hearing i.e. on 20.7.2017 taking notice of the admitted position of fact that 7 posts out of the 39 advertised posts of Vocational Masters (Civil) general category are still lying vacant and the petitioner inspite of being eligible and his merit having been assessed had been denied the offer of appointment had called upon the State to complete instructions as regards any conscious decision having been taken by the competent authority with regard to fixation of a bench mark and below which no candidate was to be appointed so as to justify not filling up the 7 unfilled posts.

(12) The order dated 20.7.2017 was in the following terms:-

“Arguments heard in part.

List for further arguments on 26.7.2017.

In the meanwhile, learned State counsel is directed to complete instructions as regards any conscious decision having been taken by the competent authority with regard to fixation of a bench mark in terms of marks/percentage and below which no candidate was to be appointed on the post in question and by being considered unsuitable for the post. Such clarification is sought in the admitted position of fact against 39 posts advertised of Vocational Masters (Civil), General Category, 7 posts are still lying vacant and inspite of the petitioner being eligible and his merit having been assessed, he has been denied the offer of appointment.

To be taken up immediately after the urgent motion list.”

(13) In purported compliance of the direction issued by this Court an additional affidavit dated 5.9.2017 of the Director, Public Instructions (S.E), Punjab along with Annexure R-2 dated 9.8.2013 was placed on record. Perusal of the additional affidavit does not reveal any conscious decision taken by the competent authority as regards fixation

of a bench mark/percentage and below which candidates inspite of having participated in the process of counseling were to be seen as unsuitable for appointment. During the course of hearing learned State counsel has conceded that in fact no such decision has been taken. Curiously additional affidavit dated 5.9.2017 refers to an order dated 9.8.2013 appended along with the affidavit as Annexure R-2 and as per which a decision was taken by the Principal Secretary, Govt. of Punjab, Department of School Education to cancel the waiting list prepared in pursuance to the recruitment process initiated vide advertisement dated 23.9.2009.

(14) Clearly, State while rejecting the claim of the petitioner for appointment as Vocational Master (Civil) general category has proceeded on an erroneous premise. Petitioner is not staking his claim as a wait listed candidate. Decision to cancel/scrapp a waiting list would be of no consequence. State counsel has during the course of arguments also conceded that no waiting list was prepared in the stream in which the petitioner had applied. Claim of the petitioner is against the advertised posts and which have not been filled up. This Court is of the considered view that the advertisement dated 23.9.2009 clearly reflected an intent of the concerned State department to fill up 39 posts of Vocational Masters/Mistresses (Civil) from amongst the general category. Present petitioner is a selected candidate and his merit has been determined as per criteria. In the absence of any conscious decision of affixing the bench mark and below which the advertised posts were not to be filled up, the action of the State Govt. not to offer the post in question to the candidate next in order of merit would be seen as arbitrary and violative of Articles 14 and 16 of the Constitution of India.

(15) Learned State counsel has opposed the prayer of the petitioner seeking appointment to the post in question by contending that there were allegations that certain candidates lower in merit in the recruitment process emanating from advertisement dated 23.9.2009 had been selected and a decision was taken to refer the matter to the Department of Vigilance Punjab for inquiry. Even if that be so, there would be no embargo in the matter being inquired into by the Vigilance Department and based on any findings returned, the necessary corrective, remedial measures would be taken strictly in accordance with law. Admittedly, as of date the selection process has not been scrapped. Rather candidates have been appointed and are working. Even if the petitioner were to be appointed, the consequences of an

inquiry entrusted to the Vigilance Department would apply equally to him along with other selected and appointed candidates. Merely referring the matter to the Vigilance Department for inquiry cannot be construed as a justifiable basis for denying consideration for appointment to the petitioner on the post in question strictly in terms of his merit position.

(16) As a matter of last resort, learned State counsel has raised the objection of delay. It is submitted that the recruitment process was initiated in terms of issuance of an advertisement dated 23.9.2009. It is contended that it would be too late in the day for directions to be issued by this Court for the petitioner to be appointed to the post in question.

(17) Even such objection of delay has been noticed only to be rejected.

(18) In the writ petition there are specific averments that after the petitioner had participated in the process of counseling and his merit having been determined, a number of representations were submitted to the competent authority starting from 23.9.2011 onwards seeking appointment. The copies of representations/appeals stand appended as Annexures P-5 and P-6 along with the writ petition. Filing of such representations and the contents there of have not been denied in the written statement filed on behalf of the State. Having evoked no positive response, petitioner got served upon the respondent authorities a legal notice dated 9.7.2013 (Annexure P-8). Even such fact has not been rebutted. Petitioner thereafter filed CWP No.25479 of 2013 before this Court raising his claim for appointment to the post of Vocational Master (Civil) in the general category. On 20.11.2013, this Court disposed of the writ petition with a direction to the respondents to look into the grievance of the petitioner and to take a final decision on the legal notice dated 9.7.2013 within a period of three months. State having slept over the matter, petitioner was constrained to file COCP No.935 of 2014 and in which this Court on 9.4.2014 called for a status report. It is only thereafter that the impugned order dated 6.6.2014 (Annexure P-10) has been passed and which has been impugned in the instant writ petition without any delay.

(19) The afore-noticed sequence of facts and circumstances clearly show that the petitioner has been vigilant as regards his rights and has been agitating his claim continuously. Claim of the petitioner, as such, cannot be denied on the ground of delay.

(20) For the reasons recorded above, writ petition is allowed.

Order dated 6.6.2014 (Annexure P-10) is set aside.

(21) Directions are issued to appoint the petitioner on the post of Vocational Master (Civil), general category, against one of the vacant post that was advertised vide advertisement dated 23.9.2009. Such appointment would relate back to the date when other candidates, who had participated in the same very selection process were so appointed. Appointment letter be issued within a period of two months from the date of receipt of a certified copy of this order.

(22) It is, however, clarified that the petitioner would not be entitled to arrears of salary for the period in question.

(23) Petition is allowed in the aforesaid terms.

Payel Mehta