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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision: 09.05.2024

SANJEEV KUMAR

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Jawahar Lal Goyal, Advocate and
Mr. Parth Goyal, Advocate for the petitioner.

Mr. Suneel Ranga, DAG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed *inter alia* seeking a writ of *mandamus* directing the respondents to issue appointment letter to the petitioner for the post of Tabla Player being at sr. no.1 in the waiting list, against the post lying vacant, with all consequential benefits.

2. The third respondent/Haryana Staff Selection Commission advertised twenty-three posts of Tabla Player, Category No.03, vide advertisement 11/2017, dated 19.12.2017. The petitioner was an applicant for the post under general category, for which eight posts were advertised. He remained successful in the selection process as per final result/announcement dated 10.06.2019, Annexure P-5. The Commission, vide letter dated 18.06.2019, Annexure R-3/2, recommended eight selected candidates, and two waitlisted candidates, including the petitioner being at no.1 in the waiting list, for appointment against the general category posts.

2.1. Two of the recommended candidates did not join the post, and the Department was required to cancel their candidature soon thereafter.

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However, it was done after a period of over eight months vide public notice issued on 18.03.2020, Annexure P-13, by notifying that two candidates, namely, Mukesh Kumar and Manoj Pant, did not respond to the appointment orders despite adequate opportunities provided to them, hence, their candidature stood cancelled.

2.2. Pursuant thereto, the petitioner, along with another candidate, was called for verification of educational qualification/experience certificates in the office of second respondent/Department of Higher Education Haryana on 02.09.2020 vide memo dated 27.08.2020, Annexure P-14. The same were found in order, but the letter of appointment was not issued to the petitioner, presumably on the ground that validity of the main selection list as well as the waiting list had expired by that time.

2.3. Accordingly, the extension of validity period of these lists, which expired on 17.06.2020, was sought by the Department. Accepting the request, the General Administration Department vide notice dated 09.02.2021, extended the validity of these lists for another period of six months, i.e., upto 17.12.2020. In spite of that the petitioner was not offered the appointment, nor his representation to that effect dated 12.04.2021, Annexure P-16, was responded to. This led to filing of the instant petition.

3. Learned counsel for the petitioner has argued that no reasons have been cited by the Department for not giving appointment to the petitioner, despite his being in the merit/waiting list, and the certificates/documents having been duly verified. Besides, the validity of selection as well as waiting list also stood extended upto 17.12.2020. Accordingly, there was no reason not to offer the appointment. The petitioner cannot be blamed in case

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the respondents took more than eight months in cancelling the appointment of two candidates who did not accept the offer. In support of the contention, he has relied upon law laid down by a Division Bench of this Court in LPA No. 1767 of 2012, *Ritu v. State of Haryana and others*, decided on 04.03.2013.

4. Learned State counsel, on the contrary, has referred to the written statement filed on behalf of respondent nos. 1 and 2 that the petitioner was not entitled to be appointed since the validity of waiting list had expired by the time he was called for scrutiny of documents. Further, even the extended period of validity of the lists had expired on 17.12.2020, before the letter extending the same was received in the Department. Accordingly, it could not be acted upon by offering the appointment to him.

5. Heard.

6. It is apparent on record that the petitioner was duly selected and recommended for appointment pursuant to the advertisement in question vide letter dated 18.06.2019. Two of the selected candidates in general category did not accept the offer of appointment. The Department was, accordingly, required to cancel their appointments forthwith and proceed with offering the posts to the ones next in the order of merit. However, without any justification, it took more than eight months to do the same on 18.03.2020. Not only that, another five and a half months period was wasted before initiating the process of offering appointment to the petitioner and calling him for document verification, as it was done only on 02.09.2020. However, by that time the validity period of waiting list had expired which could not be blamed on the petitioner, nor could he be made to suffer on that account. It

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was only on account of the Departmental lethargy that the appointment could not be offered to him within time.

6.1. Law in this regard is well settled in *Ritu* case (*supra*) that a waitlisted candidate cannot be prevented from being appointed only on account of the Department's inability to promptly cancel the offer of appointment given to another candidate which was not accepted, resulting in validity of the waiting list being over. Relevant paragraphs of the judgment read as under:

(11) Adverting back to the facts of the present case, it was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere impanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt. Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations i.e. 27.1.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.

(12) Even otherwise, the very objective of preparing a waiting/ panel list and for such list to be kept operative for a specific period is that if a vacancy arises during such period for any reason, then the whole



process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period. A reference in this regard can usefully be made to the judgments of this Court in *Ajmer Singh v. State of Haryana and others, 1997(1) CLJ (Service) 86* and *Ragbir Chand Sharma v. State of Punjab, 1992 (1) S.C.T 53:1992(1) RSJ 195*.

(13) In the present case, the inaction on the part of the State Government in not having cancelled the offer of appointment made to Smt. Manju Rani within a period of 15 days as per stipulation contained in the offer of appointment itself has clearly defeated the very objective for which the waiting/panel list had been prepared in which the name of the appellant duly figured.

7. Further, in the instant case, validity period of the waiting list/select list stood extended by the Government themselves up to 17.12.2020, before that the petitioner's documents had already been verified on 02.09.2020, and the appointment offer to two of the selected candidates also stood cancelled on 18.03.2020. Being in the order of merit after the cancellation, the right to be appointed accrued to the petitioner on 18.03.2020, which could not have been taken away on account of any subsequent event, including delay in offering the appointment. Besides, the waiting list was valid till that time, and the period stood extended up to 17.12.2020 also. Therefore, it was incumbent upon the Department to offer appointment to him.

7.1. Still further, the receipt of letter conveying extension of validity after the extended period was over, cannot be a ground to deny appointment to the petitioner. The Department had ascertained petitioner's eligibility to be appointed by verifying all the particulars and certificates on 02.09.2020. It was evidently on account of the validity period of waiting list having expired by that time that extension was sought before offering the appointment. However, even after receiving the extension of validity, albeit late, the appointment was not offered. Undisputedly, the validity of select/waiting lists stood extended

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up to 17.12.2020, vide notice dated 09.02.2021. It was for the period during which appointment was required to be offered to the petitioner in recognition of his right, and consequently its having been granted/received after the period ended, was inconsequential. Otherwise also, in case the respondents plea is to be accepted, it is a double whammy for the petitioner firstly, delaying the offer of appointment and letting the validity period of waiting list expire; secondly, giving the extension of validity after the extended period itself got over. Both due to the respondents' inaction and insensitive approach to the petitioner's plight. Approving the same not only amounts to giving premium to the callous negligence but also closes the petitioner's right forever, that too for no fault of his. This cannot be countenanced being patently arbitrary.

8. For the reasons recorded above, this petition is allowed and the respondents are directed to offer appointment to the petitioner on the post of Tabla Player, from the date other selected candidates in the selection list were appointed, with all consequential benefits; he will be entitled to the benefits notionally from that date of appointment and actually from the date of joining. The direction is to be carried out within a period of two weeks from receiving a certified copy of the order.

9. At this stage, learned State counsel submits that the post might not be available with the respondents to offer appointment to the petitioner. There is no such assertion in the written statement, nor has any latest instruction to this effect been referred to by the learned counsel. Nevertheless, non-availability of post cannot be a ground to deny appointment to the petitioner who has been wronged only on account of arbitrary action of respondents. In case the post is not vacant, the first post getting vacant now



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onwards shall be offered to the petitioner within two weeks of its falling vacant.

10. Costs of the petition are quantified as Rs.50,000 (Rupees fifty thousand) which shall be paid by respondents no. 1 & 2 to the petitioner within two weeks.

**(TRIBHUVAN DAHIYA)
JUDGE**

09.05.2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No