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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19 December 2024
Pronounced on: 04 March 2025

\+ LPA 491/2024

DR SHASHI BHUSHAN .....Appellant
Through: Mr. Abhik Chimni, Mr. Pranjal Abrol, Mr. Gurupal Singh & Mr. Maaroof, Advs.

versus

UNIVERSITY OF DELHI & ANR. .....Respondents
Through: Mr. Mohinder J.S. Rupal, Mr. Hardik Rupal and Ms. Aishwarya Malhotra, Advs. for R-1
Mr. Anurag Mathur, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT

% 04.03.2025

C. HARI SHANKAR, J.

1. The issue for consideration before us, in the present Letters Patent Appeal preferred against judgment dated 5 April 2024 passed by a learned Single Judge of this Court, is whether the appellant, who

is a Scheduled Caste[1] candidate, was entitled to permanent appointment as Assistant Professor in the Kalindi College[2], University of Delhi[3]. The learned Single Judge has held that he was not so entitled. The appellant is now before us.

Facts

2. The appellant served as *ad hoc* Assistant Professor with the College from 21 July 2017 to 29 October 2023. During that period, the College released an advertisement on 10 December 2022, inviting applications from candidates seeking permanent appointment as Assistant Professor. The appellant applied, and was interviewed on 27 October 2023, for the post of Assistant Professor in Geography. Two SC seats were advertised. The results were announced on 30 October 2023. Ms Usha Rani and Mr Jitendra Rishideo were selected. The appellant was the first candidate in the waiting list.

3. Within a week of her recommendation, Usha Rani joined Shivaji College as Assistant Professor (Geography). The seat against which she had selected was thereby rendered vacant.

4. The appellant stakes his claim for the said seat.

[1] "SC" hereinafter
[2] "the College" hereinafter
[3] "the University" hereinafter

5. To sustain his claim, the appellant places reliance on Office Memorandum[4] dated 13 June 2000 issued by the Department of Personnel & Training[5], which reads as under:

"**North Block, New Delhi**
Dated 13 June, 2000

OFFICE MEMORANDUM

Sub: Operation of reserve panels prepared on the basis of selections made by UPSC. Staff Selection Commission, other recruiting agencies and where selections are made by Ministries /Department etc. — acceptance of recommendations of Fifth Central Pay Commission - regarding.

The undersigned is directed to invite attention to this Department's Office Memorandum quoted in the margin and to say that in terms of these Office Memorandum, it was informed that the Union Public Service Commission, wherever possible, maintains a reserve panel of candidates found suitable on the basis of selections made by them for appointment on direct recruitment, transfer on deputation, transfer basis and the reserve panel is operated by the UPSC on a request received from the Ministry/Department concerned when the candidate recommended by the UPSC either does not join, thereby causing a replacement vacancy or he joins but resigns or dies **within six months** of his joining. Ministries/Departments were advised that whenever such a contingency arises, they should first approach the UPSC for nomination of a candidate from the reserve panel, if any. The recruitment process be treated as completed only after hearing from the UPSC and the Ministry/Department concerned may resort to any alternative method of recruitment to fill up the vacancy thereafter.

2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduces delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a

[4] "OM" hereinafter
[5] "DOPT" hereinafter

> fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC , a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.
>
> 3. It has also been decided that where selections for posts under the Central Government are made through other recruiting agencies such as Staff Selection Commission or by the Ministries/Departments directly and the reserve panels are similarly prepared, the procedure for operation of reserve panels maintained by UPSC as described in para 2 above will also be applicable for the reserve panels maintained by the other recruiting agencies/authorites.
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> **(Harinder Singh)**
> **Joint Secretary to the Government of India**"
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> (Emphasis in original; underscoring supplied)

This OM, submits the appellant, applies *mutatis mutandis* to the University, in view of Ordinance XI of the University which reads:

> "All other Central Government rules on probation and confirmation shall be applicable *mutatis mutandis*."

6. Having represented to various authorities with the request that he be selected against the vacancy which arose as a consequence of the resignation of Usha Rani, to no avail, the appellant instituted WP (C) 4949/2024 before this Court, praying for a writ of mandamus,

directing the University to appoint him to the vacant post of Assistant Professor in the College, before expiry of the wait listed panel.

7. The day after the writ petition was filed, on 3 April 2024, the following Circular was issued by the University:

> **"No.CB.II/Clari-Ord.XII/2024/121 03.04.2024**
>
> **The Principal(s)/Director(s)**
> **Colleges/Institutions,**
> **University of Delhi,**
> **Delhi/New Delhi**
>
> Sir/Madam,
>
> *****
>
> 4. *Secondly, it has also been observed that some of the Colleges/Institutions while operating the panel for appointment of teaching staff in Colleges/Institutions drawn by the Selection Committee under Clause 7(4-a) of Ordinance XVIII of the University issue offer of appointment to the post of Assistant Professor to the waitlisted candidate against the vacancy created on resignation of the candidate who joined the post and later resigned. In such cases, it mandates issuance of fresh advertisement following due processes and procedure envisaged under Ordinances of the University.*
>
> 5. *In this regard, reference is invited to the judgement of Hon'ble Supreme Court of India in Civil Appeal No.10861 of 2013 titled* ***Sudesh Kumar Goyal v State of Haryana & Ors***[6] *wherein it has been pronounced that if one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process.*

[6] **(2023) 10 SCC 54**

6. The candidates in the waitlist can be given the offer of appointment if and only if the selected candidate did not join in the given timeframe. Thus, the post which has fallen vacant due to any of the reason(s) given below cannot be filled from the person in the waitlist.

(i) Resignation of selected candidate.
(ii) Death/VRS/Resignation of an employee
(iii) Post has fallen vacant due to the incumbent appointed at any other higher position/principal etc.

7. *Therefore, if the post has fallen vacant due to any of the above cited reason(s), it results into a fresh vacancy, which can only be filled through fresh advertisement to be issued by the Colleges/Institutions for filling up the post after following due processes & procedure envisaged under Ordinances of the University for selection to fill the post(s).*

8. The Principal(s)/Director(s) of the Colleges/Institutions are required to comply with the above directives in spirit and shall not violate the provisions of Ordinances of the University.

9. This issues with the approval of the Competent Authority.

Yours faithfully.

Deputy Registrar (Colleges)"

The Impugned Judgment

8. By the impugned judgment, the learned Single Judge has dismissed WP (C) 4949/2024. Having reproduced paras 4 to 6 of the Circular dated 3 April 2024 issued by the University, the learned Single Judge has held as under:

"8. It is apparent that the University after having examined the ratio laid down by the Supreme Court in ***Sudesh Kumar***

Goyal (supra) issued the communication/clarification as to under what circumstances a waitlisted candidate can be offered appointment and sufficiently clarified that resignation of previous incumbent would not give any right of appointment to such waitlist candidate.

9. *It is not disputed by Mr. Chimni that in the present case, the said Ms. Usha Rani who was originally figuring at Sl. No. 1 of the final list of selected candidate had in fact joined the services. For whatever reason, not germane to the issue at hand, the said Ms. Usha Rani had resigned from the services, which was accepted and she moved further*. The said resignation of Ms. Usha Rani had created the vacancy which cannot be disputed. *The issue arisen in the present case appears to be clearly covered by the conditions in para 6 of the communication dated 03.04.2024 issued by respondent no. 2 University. That apart, it is trite that no candidate, even in the final select list has an indefeasible right to appointment. It is only the consideration which is a right flowing from the judgments of the Hon'ble Supreme Court.* The Supreme Court in the case of ***Shankarsan Dash v UOI***[7] has held that:—

> "7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in ***State of Haryana v Subhash Chander***

[7] **(1991) 3 SCC 47**

> ***Marwaha***[8]***, Neelima Shangla v State of Haryana***[9], or ***Jatinder Kumar v State of Punjab***[10].”

10. *That apart, it is trite that no mandamus can be issued to direct the Government or the State to fill up certain or all vacancies. The discretion to fill up vacancies or not, is with the Eminent Domain*. Admittedly, the petitioner figures at Sl. No. 1 of the waitlist. The issue with respect to the status of a candidate in the waitlist need not be restated. When a selected candidate in the final selection list himself has no more than a right of consideration, those candidates who would fall in the wait list would not even have that right, subject to any rules or notification in that context. The petitioner has been unable to demonstrate any right obtaining from any rule or a statute or an ordinance of the University or the college whereby the petitioner could agitate such grievances.

11. To that effect it would be apposite also to refer to the judgment of the Supreme Court in ***State of Karnataka v Bharthi S.***[11]. The relevant paragraphs are quoted hereunder:

> 10. It is true that Proceedings dated 11.04.2003 is only an executive instruction and cannot override the application of Rules that govern services. The Rules that govern the services are the Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967 as amended in 2001. On a close reading of the relevant rule applicable to the services i.e. Entry 66, it is clear that there is no obligation on the State to make appointments. Mere publication of the Additional List does not create any right to be appointed. There is no such mandate in the Rule. Entry 66 of the Rules merely provides that the Selection authority shall prepare and publish an Additional List of candidates not exceeding ten percent of the vacancies and the said list shall cease to operate from the date of publication of notification for subsequent recruitments.

[8] **(1974) 3 SCC 220**
[9] **(1986) 4 SCC 268**
[10] **(1985) 1 SCC 122**
[11] **2023 SCC OnLine SC 665**

11. The position of law is also clear. In ***Subha B. Nair v State of Kerala***[12] which has also been relied upon by the State, it has been held that:

> "8. A decision on the part of an employer whether to fill up the existing vacancies or not is within its domain. On this limited ground in the absence of discrimination or arbitrariness, a writ court ordinarily would not interfere in such matters.
>
> 9. Similar view has also been expressed by this Court in ***K. Thulaseedharan v Kerala State Public Service Commission***[13].
>
> *****
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> 19. The question as to whether there existed 7 vacancies or 16 vacancies in the aforementioned situation loses all significance. We would assume that as per the requisition, 9 more vacancies could be filled up but it is trite that if the employer takes a policy decision not to fill up any existing vacancy, only because a person's name is found in the select list, the same by itself would be a ground to compel the Bank to fill them up."
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> *****
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> 13. The position that emerges from the above decisions is that the duty to fill up vacancies from the Additional List (waiting list) can arise only on the basis of a mandatory rule. In the absence of such a mandate, the decision to fill all the vacancies from the Additional List, is left to the wisdom of the State. We will however add that State cannot act arbitrarily and its action will be subject to judicial review.

12. Mr. Chimni had argued that in the absence of rules to the contrary, the DoPT Notification dated 13.06.2000 would come into effect and the petitioner would have a right under such Notification. The said argument is noted only to be rejected. The

[12] **(2008) 7 SCC 210**
[13] **(2007) 6 SCC 190**

> question of whether the Notification is applicable or not, is not primary to the present case. The overwhelming judgment of the Supreme Court in that regard as also considered by the University of Delhi in its communication dated 03.04.2024 would sufficiently propel this Court to conclude that there is no right with the waitlisted candidate to seek any such appointment. The other issue which would also come up for consideration in this case would be that the petitioner does not dispute that Ms. Usha Rani, consequent upon her selection was in fact offered appointment, had accepted and subsequently resigned from the said post. The said process would indicate that the original advertisement regarding such post was already exhausted by virtue of her mere joining the post itself. Consequent thereto the question of consideration of operating the wait list would not arise unless rules prescribe any such procedure. The respondents would obviously have no choice other than filling up said post by issuance of fresh advertisement.
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> 13. Having regard to the aforesaid, it is clear that the petitioner has no ground even to maintain the writ petition. Consequently, the writ petition is dismissed *in limine*."

Pleadings and Submissions in appeal

9. The College and University have filed counter-affidavits to the appeal filed by the appellant. Written submissions have been filed by the appellant and the University. Mr Abhik Chimni and Mr Mohinder J.S. Rupal have been heard for the rival parties.

Case set up by the appellant

10. In the LPA, the appellant has contended that the University issued the Circular dated 3 April 2024 maliciously, so as to prejudice the writ petition filed by the petitioner. It is further submitted that the

University had not provided any reason for not appointing the petitioner against the vacancy which had arisen on the resignation of Usha Rani. In the absence of any Rule or instruction to the contrary issued by the University or contained in its Ordinances, the appeal contends that the DOPT OM dated 13 June 2000 would be binding on it. The Circular dated 3 April 2024, of the University, cannot be given retrospective effect, to the selection process in which the appellant participated, which was initiated on 10 December 2022.

11. The decision in ***Sudesh Kumar Goyal***, it is submitted, was distinguishable, as no wait list was operated in that case. The appellant Sudesh Kumar Goyal[14], in that case, was "merely ranked 14th in the merit list, whereas in the present case, the Appellant was the top-ranked candidate on the wait list/reserve panel specifically maintained to fill any vacancies that may arise after the initial appointments from the merit list". Besides, ***Sudesh Kumar Goyal*** was rendered in the context of the Rules applicable to the appointment of higher judicial service offices in Haryana, which allowed for adjustment of vacancies by absorbed Fast Track Court judges and merging new vacancies.

12. Mr Chimni, arguing at the Bar, essentially reiterated the above submissions. He also placed reliance on the judgments of the

[14] "Sudesh" hereinafter

Supreme Court in ***Sant Ram Sharma v State of Rajasthan***[15] and ***Sudhi Kumar Atrey v UOI***[16], for the proposition that executive instructions could supplement statutory rules on issues regarding which the rules were silent, and ***Inturi Rama Rao v UOI***[17] for the proposition that, "if the Rules applicable to the selection process remained unamended, then the appointments of the selected as well as wait list candidates have to be made as per rules existing at the time of the initiation of the selection process".

Submissions of the College

13. The College has, in its counter-affidavit filed in response to the appeal, essentially placed reliance on the Circular dated 3 April 2024 issued by the University and the judgment of the Supreme Court in ***Sudesh Kumar Goyal***. It is further contended that the DOPT OM dated 13 June 2000 deals with selections being carried out by the UPSC[18], SSC[19], etc., whereas the University and its constituent colleges follow the selection procedure prescribed in the Rules and Ordinances of the University and the Circulars issued by the University from time to time. Ergo, it is submitted that the appeal deserves to be dismissed.

[15] **AIR 1967 SC 1910**
[16] **(2022) 1 SCC 352**
[17] **(2015) 13 SCC 374**
[18] Union Public Selection Commission
[19] Staff Selection Commission

Submissions of the University

14. The University, in its written submissions as well as oral submissions advanced through Counsel, places reliance on the judgments of the Supreme Court in ***Sudesh Kumar Goyal v State of Haryana, Madan Lal v State of Jammu and Kashmir***[20], ***State of Punjab v Raghbir Chand Sharma***[21] and ***Sanjoy Bhattacharjee v UOI***[22]. The University refutes Mr. Chimni's submissions that ***Sudesh Kumar Goyal*** is distinguishable on facts. The other judgments cited *supra*, it is submitted, clearly indicate that, on the selection and appointment of a candidate, the waiting list perishes. Moreover, a candidate on a waiting list, it is submitted, has no right to appointment.

Analysis

15. The learned Single Judge has relied on the judgment of the Supreme Court in ***Sudesh Kumar Goyal*** and the Circular dated 3 April 2024 issued by the University on the basis of the said judgment. Mr. Chimni submits, on the other hand, that ***Sudesh Kumar Goyal*** is distinguishable, as it did not involve any waiting list. According to Mr. Chimni, once a waitlist was created, its obvious intent was to

[20] **(1995) 3 SCC 486**
[21] **(2002) 1 SCC 113**
[22] **(1997) 4 SCC 283**

provide candidates to fill up vacancies which could arise even after the selection had taken place.

16. Mr. Chimni has not shown us any Rule or Ordinance or other statutory provision which could make the DOPT OM dated 13 June 2000 applicable to the University. Ordinance XI, on which Mr. Chimni places reliance, obviously does not apply. Ordinance XI entirely deals with probation and confirmation. The clause in Ordinance XI, on which Mr. Chimni places reliance, stipulates that Central Government rules on probation and confirmation, which do not deal with situations covered by Ordinance XI, would apply *mutatis mutandis* to the University. The DOPT OM dated 13 June 2000 is, in the first place, not a rule and, in the second place, does not deal with probation and confirmation. Ordinance XI of the Ordinances governing the University cannot, therefore, *ipso facto* make the said OM applicable to the University.

17. The University, for its part, has categorically disowned the applicability of the DOPT OM dated 13 June 2000. It is clearly stated by the University as well as by the College, in their counter-affidavits, that the said OM is not applicable and that the University, and its constituent Colleges, operate on the basis of the Statutes, Rules and Ordinances governing the University and on the basis of Circulars issued by the University from time to time. It is also pointed out, in the counter-affidavit, that the DOPT OM dated 13 June 2000 related

to selections by the UPSC, SSC, etc and could not be automatically applied to selections carried out by the University, in which these agencies played no part.

18. In these circumstances, the onus was on the appellant to establish, positively, that the DOPT OM dated 13 June 2000 applied to the selection in dispute. We are constrained to say that the appellant has failed to discharge this onus.

19. *Sudesh Kumar Goyal*

19.1 That apart, we are unable to accept Mr. Chimni's contention that the decision in ***Sudesh Kumar Goyal*** is distinguishable. The mere fact that, in the said case, there may not have been any formal waiting list, cannot make out a difference. ***Sudesh Kumar Goyal***, the appellant before the Supreme Court, was an aspirant to the Haryana Superior Judicial Service, by direct recruitment from the Bar. He qualified the written examination. There were, however, 13 vacancies, and Sudesh was 14th in merit. Effectively, therefore, as in the case of the present appellant, Sudesh was the first candidate on merit after the last candidate who was selected against the notified vacancies.

19.2 Of the 13 candidates selected and appointed against the notified vacancies, one of the candidates, Jitender Kumar Sinha[23], who had joined later resigned – as did Usha Rani in the present case. Like the present appellant, Sudesh petitioned the High Court under Article 226 of the Constitution of India, pointing out that he was the next candidate on merit, and had a right to be appointed against the vacancies which had been arisen consequent on the resignation of Sinha.

19.3 The Supreme Court first addressed the contention of Sudesh that the respondent before the Supreme Court had acted arbitrarily in not appointing Sudesh. On this, the Supreme Court held, in para 18 of the report, that there was no arbitrariness in the way in which the respondent before it had acted. It was also noted by the Supreme Court, in this context, that mere qualification in the selection process did not confer, on Sudesh, any defeasible right to appointment.

19.4 The Supreme Court, thereafter, addressed the submission of Sudesh that he could have been adjusted against the vacancy which had arisen on Sinha's resignation. In that regard, the Supreme Court held thus, in para 19 of the report:

> "19**.** This takes us to the second argument that the appellant could have been easily adjusted against the vacancy caused due to resignation of one of the selected candidates. The argument per se is bereft of merit inasmuch as all the vacancies notified stood filled

[23] "Sinha" hereinafter

> up initially. *However, if one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process*. The Division Bench has rightly dealt with the above contention in the light of the precedent of the various decisions of this Court and we do not feel that any error has been committed in this context."
>
> (Emphasis supplied)

19.5 The attempt of Mr. Chimni to distinguish ***Sudesh Kumar Goyal*** solely on the ground that the nature of the vacancies with which the Supreme Court was concerned was different from the nature of the vacancies in the present case, cannot be accepted. The reasoning of the Supreme Court, in para 19 of the report in ***Sudesh Kumar Goyal,*** is clearly independent and *dehors* the nature of the vacancies with which the Supreme Court was concerned.

19.6 Simply put, the Supreme Court held that the resignation of a candidate after joining give rise to a fresh vacancy. In our considered opinion, in fact, this is but obvious. So long as the candidates had not joined the posts to which they were appointed, following the selection, it might have been possible to contend that the panel – or the waiting list – survived.

19.7 Once the candidates had joined and the selection process had culminated in appointments, there could be no question of the panel, which was intended to be used for selection and appointment, surviving any further. Any vacancy which arose thereafter, even if it

was by way of resignation of one of the appointed candidates was, therefore, a fresh vacancy. It had to be readvertised. Candidates in the select panel or the wait list, relatable to the earlier selection, which had culminated in appointments having been made to all vacancies, could not maintain a right to appointment against the vacancies once they were filled. A vacancy which arose after a candidate had joined, owing to the candidate demitting the appointment for any reason, had necessarily to be thrown open to all aspirants to the posts, by way of a fresh advertisement.

20. ***Madan Lal***

20.1 This legal position has been emphasised with even greater clarity in the judgment of the Supreme Court in ***Madan Lal,*** on which Mr. Rupal sought to rely. Before referring to the passages from ***Madan Lal*** which exposit the law in this regard, one may reproduce, in the context of Mr Chimni's attempt to distinguish ***Sudesh Kumar Goyal***, para 23 of the report:

> "23. It is no doubt true that even if requisition is made by the Government for 11 posts the Public Service Commission may send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out

> from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently, the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. *In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait-listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate* ***not being available*** *to fill the 11 vacancies, for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose.*"
>
> (Emphasis supplied)

Thus, Mr. Chimni's contention that ***Sudesh Kumar Goyal*** is distinguishable as it did not involve any wait list, is misconceived. Once candidates have been selected against the available vacancies, the remaining candidates, lower in merit, can, as per ***Madan Lal***, "only be treated as wait-listed candidates".

20.2 Paras 24 to 27 of ***Madan Lal*** may be reproduced thus:

> "24. It is now time to refer to Rule 41 as pointed out by the learned counsel for the petitioners. The said rule reads as under:
>
> > "*Security of the list.*— The list and the waiting list of the selected candidates shall remain in operation for a period of one year from the date of its publication in the Government Gazette or till it is exhausted by appointment of the candidates whichever is earlier, provided that nothing in this rule shall apply to the list and the waiting list prepared as a result of the examination held in 1981 which will

remain in operation till the list or the waiting list is exhausted."

A mere look at the rule shows that pursuant to the requisition to be forwarded by the Government to the Commission for initiating the recruitment process, if the Commission has prepared the merit list and the waiting list of selected candidates such list will have a life of one year from the date of publication in Government Gazette or till it is exhausted by the appointment of candidates, whichever is earlier. This means that if requisition is for filling up of 11 vacancies and it does not include any anticipated vacancies, the recruitment to be initiated by the Commission could be for selecting 11 suitable candidates. The Commission may by abundant caution prepare a merit list of 20 or even 30 candidates as per their inter se ranking on merit. But such a merit list will have a maximum life of one year from the date of publication or till all the required appointments are made whichever event happened earlier. It means that if requisition for recruitment is for 11 vacancies and the merit list prepared is for 20 candidates, the moment 11 vacancies are filled in from the merit list the list gets exhausted, or if during the span of one year from the date of publication of such list all the 11 vacancies are not filled in, the moment the year is over the list gets exhausted. In either event, thereafter, if further vacancies are to be filled in or remaining vacancies are to be filled in, after one year, a fresh process of recruitment is to be initiated giving a fresh opportunity to all the open market candidates to compete. This is the thrust of Rule 41. *It is in consonance with the settled legal position as we will presently see.* We cannot agree with the learned counsel for respondents that during the period of one year even if all the 11 vacancies are filled in for which requisition is initiated by the State in the present case and if some more vacancies arise during one year, the present list can still be operated upon because the Commission has sent the list of 20 selected candidates. As discussed above, *the candidates standing at Serial Nos. 12 to 20 in the list can be considered only in case within one year of its publication, all the 11 vacancies do not get filled up for any reason. In such a case only this additional list of selected candidates would serve as a reservoir from which meritorious suitable candidates can be drawn in order of merit to fill up the remaining requisitioned and advertised vacancies, out of the total 11 vacancies. If that cannot be done for any reason within one year of the publication of the list, even this reservoir will dry up and the entire list will get exhausted*. We asked learned counsel for respondent-State to point out whether after the letter at page 87,

there was any further communication by the State to the Commission to initiate the process for recruitment to additional anticipated vacancies. He fairly stated that no further request was sent. That letter at page 87 is the only material for this purpose since that is the basis for the recruitment made by the Commission in the present case. In this connection, we may usefully refer to a decision of this Court in the case of ***State of Bihar v Madan Mohan Singh***[24]. In that case appointments to the posts of Additional District and Sessions Judges were being questioned. The question was whether appointments could be made to more than 32 posts when the selection process was initiated for filling up 32 vacancies and whether the merit list of larger number of candidates would remain in operation after 32 vacancies were filled in. Negativing the contention that such merit list for larger number of candidates could remain in operation after 32 advertised vacancies were filled in, K. Jayachandra Reddy, J. made the following pertinent observations:

> "*Where the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list of 129 candidates prepared in the ratio of 1 : 4 on the basis of the written test as well as viva voce will hold good only for the purpose of filling up those 32 vacancies and no further because said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process*."

25. Reliance placed by the learned counsel for respondents in the case of ***Asha Kaul (Mrs) v State of J & K***[25] is of no avail. In that case the very same Jammu and Kashmir Government had sent a requisition to the Public Service Commission to select 20 candidates for the posts of Munsif in accordance with the High Court requirement. Therefore, the Commission advertised for recruitment to the said posts and held written test and oral interview. The Commission having selected 20 candidates in the order of merit and also having prepared a waiting list of candidates,

[24] **1994 Supp (3) SCC 308**
[25] **(1993) 2 SCC 573**

the State of Jammu and Kashmir did not appoint even selected 20 candidates on these advertised posts. The High Court rejected the writ petition praying for a suitable writ of mandamus to the State to fill up the remaining vacancies out of 20 for which recruitment was made. The petitioners approached this Court in appeal by way of special leave. This Court speaking through Jeevan Reddy, J. took the view that though inclusion in the select list does not confer any indefeasible right to appointment, there was an obligation on the Government to fill up all the posts for which requisition and advertisement were given. However on the peculiar facts of the case, the court did not think it fit to interfere. This Court in para 10 of the report clearly observed that by merely approving the list of 20 there was no obligation on the Government to appoint them forthwith. The appointment depends upon the availability of the vacancies. The list remains valid for one year from the date of its approval and date of publication and if within such one year any of the candidates therein is not appointed, the list lapses and a fresh list has to be prepared. Though a number of complaints had been received by the Government about the selection process, if the Government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that and having approved the list partly (13 out of 20 names), they cannot put forward any ground for not approving the remaining list. It is difficult to appreciate how this judgment can be of any avail to the respondents. *In the case aforesaid before this Court, there was a clear requisition and recruitment for 20 posts. The State had however chosen to appoint only 13 out of 20. The list had a life of one year till all the 20 posts were filled up. This was in consonance with Rule 41*. In the present case the facts are different. The requisition is not for 20 vacancies as in ***Asha Kaul*** but for 11 posts. There is no requisition to fill up any more anticipated vacancies. *Once the list is approved even though it may contain names of 20 candidates, the list in the present case will get exhausted once 11 vacancies, for which advertisement had been issued and recruitment is made, are filled up.*

26. At this stage we may profitably refer to one more decision of this Court in ***Hoshiar Singh v State of Haryana***[26]. In that case the requisition for recruitment as sent by the Director General of Police to the Haryana Subordinate Services Selection Board was for appointment of 8 posts of Inspector of Police. The Board

[26] **1993 Supp (4) SCC 377**

however sent a list of 19 selected candidates, out of them 18 persons were given appointments. The appointments on posts beyond the 8 posts for which requisition was made by the Director General of Police were brought in challenge before the High Court. The High Court accepted the challenge and held that appointments beyond 8 posts were illegal. This Court while upholding the decision of High Court speaking through Agrawal, J. observed in para 10 of the report as under:

> "The learned counsel for these appellants have not been able to show that after the revised requisition dated 24-1-1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable."

27. *In the present case as the requisition is for 11 posts and even though the Commission might have sent list of 20 selected candidates, appointments to be effected out of the said list would be on 11 posts and not beyond 11 posts, as discussed by us earlier.* This contention will stand accepted to the extent indicated hereinabove."

(Emphasis supplied)

20.3 Thus, even though, in ***Madan Lal***, there was a provision which specified that the waiting list would remain in operation only till it was exhausted by appointment of selected candidates, the Supreme Court, even while referring to the said clause, went on to observe that the clause was in consonance with the settled legal position as enunciated in, *inter alia*, ***Madan Mohan Singh***. ***Madan Lal*** and ***Madan Mohan Singh***, therefore, clearly enunciate the general principle that a panel, or a waiting list, remains in operation till the selected candidates are appointed and cannot survive thereafter.

21. *Raghbir Chand Sharma*

21.1 If there was any doubt about this proposition, it stands laid to rest by para 4 of the report in ***Raghbir Chand Sharma***, which reads as under :

> **"**4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. *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."
>
> (Emphasis supplied)

21.2 The Supreme Court clearly held in the said decision that once a candidate had been appointed, consequent on selection, to the single vacancy of Additional Advocate General for which the selection had taken place, "the panel ceased to exist and it has outlived its utility and, at any rate, no one else in the panel could legitimately contend that he should have been offered appointment either in the vacancy arising on account of a subsequent resignation of a person appointed from the panel."

22. The position may have been different if there was any provision in the Ordinances or statutes governing the University, providing that even after the selected candidate had been appointed to the post for which the selection had been conducted, if an appointed candidate subsequently resigned, the waiting list could be operated. There is unfortunately for the petitioner, no such provision. The DOPT OM dated 13 June 2000 clearly does not apply.

23. ***Shankarsan Dash*** enunciated more than 30 years ago the principle that a selected candidate has no right to appointment. Selection only confers on a candidate a consideration for appointment. Ofcourse, the Appointing Authority cannot keep vacancies unfilled without due justification. That principle, however, would apply only where no appointment was made against the number of vacancies advertised or notified. Once appointments had been made, the responsibility of the Appointing Authority to continue to operate the select panel or the waiting list ceases, in the absence of any binding rule, ordinance or instruction to the contrary. If a vacancy arises thereafter, on account of, for example, one of the appointed candidates resigning, that vacancy would have to be re-advertised.

24. In view of the aforesaid, it is clear that the appellant had no indefeasible right to appointment merely because he was the first candidate in the waitlist. At the cost of repetition, had either Usha Rani or Jitendra Rishideo not joined, perhaps the situation may have been different. Once they were formally appointed and joined duty, however, no right would survive in the appellant to the post against which they have been appointed. If, therefore, either of them left the job after joining, it gave rise to a fresh vacancy which, applying the law as its stands, was required to be re-advertised.

Conclusion

25. We, therefore, find no error in the judgment of the learned Single Judge. No occasion arises for us to interfere therewith.

26. The appeal is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

MARCH 04, 2025
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Click here to check corrigendum, if any