

2025.PHHC:179779



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

**CWP-20952-2025 (O&M)  
Reserved on:-30.09.2025  
Date of Decision: 06.11.2025  
Uploaded on:-18.02.2026**

Birendra Singh Rawat ...Petitioner(s)  
Vs.  
State of Punjab and another ...Respondent(s)

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Naveen Bhardwaj, Advocate with  
Mr. Kishore Bhardwaj, Advocate  
Ms. Nishtha, Advocate  
for the petitioner.

Mr. Animesh Sharma, Addl. A.G., Punjab.

**N.S.SHEKHAWAT, J. (Oral)**

1. The petitioner has filed the present petition with a prayer to issue a writ in the nature of *certiorari* for quashing the impugned advertisement DPR/PB/2668/12/2025-26/657 (Annexure P-7), whereby, the respondents had invited fresh applications for appointment to the post of Member, Punjab State Human Rights Commission (hereinafter to be referred to as 'PSHRC') as the duly constituted Selection Committee had already recommended the name of the petitioner for the said post in pursuance of an advertisement No. DPR/PB/18140 dated 29.10.2022 (Annexure P-1) and the Government had neither rejected nor accepted the said recommendations. A further prayer was made to issue a writ in the nature of *mandamus* directing the respondents to finalize the appointment process already initiated vide advertisement dated 29.10.2022 (Annexure P-

1) for the post of Member, PSHRC and to offer appointment to him forthwith.

2. Learned counsel for the petitioner vehemently argued that the PSHRC was constituted under Section 21 of the Protection of Human Rights Act 1993 (hereinafter to be referred to as '**the PHR Act 1993**'). Still further, Section 22 of the PHR Act 1993 deals with the appointment of the Chairperson and Members of the PSHRC and the same has been reproduced below:-

***Section 22 of the PHR Act 1993***

***"22. Appointment of Chairperson and Members of State Commission.-***

*(1) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal:*

*Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of,-*

*(a) the Chief Minister - Chairperson;*

*(b) Speaker of the Legislative Assembly - Member,*

*(c) Minister in-charge of the Department of Home in that State -Member,*

*d) Leader of the Opposition in the Legislative Assembly - Member."*

3. As per the aforesaid provisions of law, the appointment of Chairperson or the member is made on the recommendations of the Selection Committee. He further contended that vide advertisement No.DPR-/PB/ 18140 dated 29.10.2022 (Annexure P-1), the Government of Punjab invited the applications from various individuals for the post of Member (Non-Judicial) in the PSHRC. The petitioner, being a social-welfare oriented person, duly applied for the said post on 11.01.2023. The meeting of Selection Committee consisting of Chief Minister, Punjab,

Home Minister, Speaker of Legislative Assembly and Leader of Opposition was held for scrutinizing the applications for the post of the Member (Non-Judicial) at the residence of Chief Minister, Punjab. As per the knowledge of the petitioner, the file of the petitioner was sent to higher authorities on 07.08.2023 for further action. The petitioner also came to know that the police verification was conducted on 10.09.2024 and he had a reason to believe that he had been selected for the post of Member (Non-Judicial) PSHRC. However, the formal notification under the warrant and seal of the Governor of Punjab did not arrive even after the lapse of reasonable time period. The petitioner also made inquiries through the RTI Act with regard to the status of selection process, however, he was intimated that the matter was “under process” and the information would be shared once finalized. The petitioner filed an appeal under the Right to Information Act and the appellate authority also declined to disclose any further information, by referring to the provision of Section 8(1)(i) of the Right to Information Act. Even, the first appellate authority informed that the file of the petitioner was sent to higher authorities for further action on 07.08.2023, which had not been received by the appellate authority till date. Learned counsel further contended that despite the previous pendency of selection process, the respondent-department had issued a fresh advertisement process for the same post without deciding upon the recommendations of the petitioner for the appointment as Member (Non-Judicial), PSHRC. Still further, when a duly constituted Selection Committee had recommended the name of the petitioner for the post of Member (Non-Judicial), there was no discretion with the Governor and the petitioner was entitled to be appointed as the Member (Non-Judicial). Learned counsel for the petitioner also placed reliance on the judgment passed by the Hon’ble Supreme Court in the matter

of *R.S. Mittal Vs. Union of India, 1995 (3) SCT 284* and *Shankarsan Das Vs. Union of India, 1991 (2) SCT 194*.

4. On the other hand, learned State counsel submitted that the petitioner had submitted an application on 11.01.2023 and the same was considered by the Selection Committee. In terms of the powers conferred by Section 22 of the PHR Act 1993, the Selection Committee had recommended the name of the petitioner on 11.01.2024 for appointment of the Member (Non-Judicial), PSHRC. However, a letter dated 26.09.2024 was issued by the Under Secretary, Governor Secretariat, Punjab Raj Bhawan, to Special Chief Secretary, noting that the same was being returned. Thus, the recommendations of the Selection Committee pursuant to the advertisement dated 29.10.2022 were duly placed before the competent authority as required under Sections 21/22 of the PHR Act, 1993. However, as the matter did not fructify, it was decided at the appropriate level that the process of appointment of Member (Non-Judicial) in the PSHRC should be initiated de-novo. Since, the process which was initiated vide advertisement dated 29.10.2022 stood concluded, the petitioner was not entitled to seek a writ in the nature of *mandamus* to compel the issuance of an appointment order. Learned State counsel further argued that even a recommendation of the Selection Committee does not confer any enforceable right until an appointment is actually made by the competent authority. Even otherwise, the vacancy of Member (Non-Judicial), PSHRC could not have been kept unfilled, keeping in view the larger public interest and, therefore, the government had initiated a fresh selection process through a new advertisement dated 28.06.2025. Even then, no candidate from the earlier selection process had been appointed and there was no allegations of discrimination of any sort. Apart from that, since a new

selection process had been initiated by advertisement dated 10.07.2025 (Annexure P-7), the petitioner could have applied for the said post, however, he chose not to apply for the post. Still further, even, the petitioner could not base his claim on the principle of “legitimate expectation”, as earlier, the selection process never culminated into approval by the competent authority. Even, the “legitimate expectation” cannot override statutory discretion of the Government in the matters of appointment to public offices. Learned State counsel further submitted that apart from that, the appointment of Chairperson or the Member of the PSHRC is based on a mere recommendation of a Committee chaired by the Chief Minister and not by virtue of a formal examination, interview or a test. Consequently, in the absence of an approval by the Governor, the petitioner could not claim any “legitimate expectation” by overriding statutory discretion envisaged in the governing PHR Act 1993. Still further, the relief claimed by the petitioner would amount to directing the appointment of the petitioner, which would be contrary to the considered decision taken by the competent authority as laid down in the Act.

5. Learned State counsel also referred to the law laid down by the Hon’ble Bombay High Court in the matter of *Sunil Modi Vs. State of Maharashtra (2025:BHC-AS:1039-DB)*, wherein, the Cabinet of State of Maharashtra has made certain recommendations to the Governor of the State for the post of member of Maharashtra State Legislative Council. However, the Governor of Maharashtra had not acted by taking appropriate decision on the recommendations made and the Public Interest Litigation was decided by observing that the Governor was not answerable to the Court in view of the Article 361 of the Constitution of India and no directions could be issued to the Governor. Still further, the Hon’ble Supreme Court has held

in a number of judgements that mere inclusion of the name of the candidate in the select list does not confer any right of selection in his favour and if denied the appointment, the candidate cannot allege hostile discrimination. Even, the Hon'ble Supreme Court has held that a selectee as such has no legal right and the, superior Court, in exercise of its power of judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of *malafide* or arbitrariness on the part of the employer. Still further, the relief sought by the petitioner would amount to effectively compel the Government to make an appointment, contrary to the conscious and considered decision of the competent authority and as such a direction is impressible in exercise of writ jurisdiction under Article 226 of the Constitution of India.

6. I have heard the learned counsel for the parties and perused the record.

7. Certain admitted facts which emerge from the pleadings of the parties are that, vide advertisement dated 29.10.2022 (Annexure P-1), the Governor had invited applications for the post of Member (Non-Judicial) in PSHRC. The petitioner submitted his application form on 11.01.2023 and finally, meeting of Selection Committee was also held on 06.02.2023 for scrutinizing the application for the post of Member (Non-Judicial), PSHRC. The name of the petitioner was recommended on 11.01.2024 for appointment of Member (Non-Judicial). However, a letter dated 26.09.2024 (Anneuxre R-1) was issued by the Under Secretary, Governor's Secretariat, Punjab to Special Chief Secretary noting that the same was being returned. Noticing the said development, the respondents came to conclusion that the matter had not fructified, the process of appointment of Member (Non-Judicial) in PSHRC may be initiated de novo. At this stage, the main

grievance of the petitioner arose from the issuance of fresh advertisement for the post of Member (Non-Judicial) as the petitioner's name had been recommended by the Committee to the Governor, who was the competent authority as per the statutory provisions, who apparently, was designated as the Appointing Authority. Since the Governor had returned the file and the candidature of the petitioner was virtually rejected, in that eventuality, the failure to challenge the foundational decision is fatal and no substantive relief can be granted in the absence of challenge to the operative administrative decision, which formed the basis of a subsequent action. A fresh advertisement issued pursuant to the competent authority's directions cannot be impugned indirectly, especially when the principal decision remains unchallenged. Thus, the instant petition suffers from a defective and incomplete prayer and is liable to be dismissed on this ground alone. Still further, the advertisement in question following the lapse of time and administrative reconsideration squarely falls within the executive domain. Still further, the challenge in the instant writ petition proceeds on the assumption that such a recommendation made by the Committee had created an enforceable right to appointment in favour of the petitioner. In fact, under the governing statutory framework, the Governor alone was the competent appointing authority and any recommendation made by the Selection Committee, irrespective of its stature or composition, is merely recommendatory in nature and does not culminate in appointment, unless approved and notified by the competent authority. Even, the law is well settled that mere inclusion in a select list or recommendation for appointment does not confer an indefeasible or vested right to appointment. The candidate acquires only a right to fair and non-arbitrary consideration. Further, the State is under no legal obligation to fill up any advertised

vacancy under the statutory rules. In the present case also, the recommendations by the Committee were merely recommendatory, whereas, the statute vested the final power in the Governor and absence of such approval negates any crystallized right in favour of the petitioner.

8. The Hon'ble Supreme Court in the matter of *Baitarani Gramiya Bank Vs. Pallab Kumar and Ors 2003(4) SCT 321 : 2003 AIR Supreme Court 4248*, observed that the employer was under no obligation or legal duty to fill up any or all the vacancies and made the following observations:-

*24. In our view, the respondents/writ petitioners had not acquired any indefeasible right to be appointed to the post in question when the Bank has taken a decision not to fill up all the vacancies which is based on sound bonafides and appropriate reasons. The Bank is also under no obligation or legal duty to fill up any or all of the vacancies and that the basis indicated by the appellant-Bank for pruning the indents cannot at all be characterised to be mala fide or unreasonable. The law is well-settled. This Court has taken the same view in the following judgments.*

*25. In State of Andhra Pradesh and Another v. Sadanandam and Others etc. etc., AIR 1989 Supreme Court 2060, this Court has observed as under :*

*"The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. The question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the*

*policy of transfer adopted by the Government cannot be struck down."*

26. *This Court, in a judgment rendered by a Constitution Bench in Shankarsan Dash v. Union of India, (1991) 3 SCC 47, observed as under :*

*"Even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. 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 bonafide 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.*

*" 27. In Union Territory of Chandigarh v. Dilbagh Singh and Others, (1993) 1 SCC 154, this Court has observed as follows :*

*"A candidate who finds a place in the select list as a candidate selected for appointment to a civil post does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. He could be aggrieved by his non- appointment only when the Administration does so either arbitrarily or for no bonafide reasons. Hence such candidate, even if he has a legitimate expectation of being appointed due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bonafide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration accepted the complaints and cancelled the select list it cannot be said to have acted either arbitrarily or without bonafide and valid reasons."*

28. In *Babita Prasad and Others v. State of Bihar and Others*, 1993 Supp. (3) SCC 268, this Court held that a panel, as prepared in the said case, cannot be treated as conferring any vested or indefeasible right to the teachers to be appointed. This Court further held as follows :

"The mere fact that the candidates who had been brought on the panel had been sent for training at the Government expense, would also not imply that any right had been created in their favour for appointment after they had completed their training because training was intended to confer eligibility on the candidates for being brought on the list."

29. In the case of *the State of Haryana v. Subash Chander Marwaha & Ors.*, (1974) 3 SCC 220, this Court has observed as under :

"The existence of vacancies does not give a legal right to candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the Rules in this respect.

In order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance.

Since there was no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition was clearly misconceived."

9. Still further, a similar matter came up for consideration before the Hon'ble Supreme Court in ***Employees State Insurance Corporation and another Vs. Dr. Vinajy Kumar and others, 202(2) SCC 9L&S) 807*** and the Hon'ble Supreme Court had held as follows:-

*“6. The cardinal principle we must bear in mind is that this is a case of direct recruitment. A candidate who has applied does not have a legal right to insist that the recruitment process set in motion be carried to its logical end. Even inclusion of a candidate in the select list may not clothe the candidate with such a right. This is, however, different, no doubt, from holding that the employer is free to act in an arbitrary manner. But, at the same time, in the first place, direction which is given by the High Court to conclude the recruitment within 45 days is clearly untenable. This is for the reason that, as noticed, the advertisement dated 01.03.2018 was put on hold on 21.03.2018 before the last date indicated for filing the application by advertisement dated 01.03.2018. As the very advertisement was put on hold, it is quite likely that any candidate who may have been desirous of applying, may not have applied being discouraged by the fact that the advertisement has been put on hold. Therefore, the direction to conclude the proceedings within 45 days is unsupportable.”*

10. Even during the course of arguments, learned counsel for the petitioner had placed reliance on the law laid down by the Hon'ble Supreme Court in the matter of ***R.S. Mittal Vs. Union of India (supra)***, however, the said judgment is not applicable to the facts of the present case. In fact, first of all, the petitioner had not laid any substantive challenge to the decision of the competent authority, i.e., the Governor and he cannot be permitted to indirectly assail the consequential steps taken in furtherance thereof. Still further, the employer always retains the discretion to abandon or reinstate any recruitment provided, such decision is not vitiated in arbitrariness or

perversity. During the course of arguments, no such infirmity has been pointed out by the petitioner. Even otherwise, in the present case, the matter remained pending for almost 03 years and the initiation of a fresh recruitment process, after passage of considerable time, constitutes a legitimate administrative response aimed at ensuring efficacy in public administration. Even, no arbitrariness, discrimination or malafide has been pleaded or proved by the petitioner. In the end now, this Court can also not overlook the fact that the posts of public importance cannot remain unfilled for an indefinite duration, particularly, where the earlier process had not culminated in lawful appointment and a substantial period of time had elapsed. The administrative necessity and public interest justify the de novo recruitment, where earlier process becomes stale or inconclusive.

11. In view of the above discussion, I find no merit in the present petition and the same is ordered to be dismissed.

06.11.2025  
amit rana

(N.S.SHEKHAWAT)  
JUDGE

Whether reasoned/speaking : Yes/No  
Whether reportable : Yes/No