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

% **Date of Decision: 24.07.2024**

+ **W.P.(C) 10105/2024**

DSSSB AND ANR

....Petitioners

Through: Mrs. Avnish Ahlawat, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushit, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates

versus

PAWAN KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

CM APPL. 41389/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 10105/2024 & CM APPL. 41388/2024

3. The present petition has been filed under Article 226 read with Article 227 of the Constitution of India seeking the following prayer:

“(a) quash and set aside the per-se perverse judgment and order dated 16.04.2024 passed by Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2153 of 2019”.



4. The facts of the present case are that upon requisition received from the user Department (Directorate of Education) vide advertisement No. 02/12, the DSSSB advertised a total of 74 vacancies (UR-40, OBC-22, SC-12, ST-00, OH-01, VH-2) for the post of PGT (Political Science) (Male). The respondent applied for the said post under ST Category and qualified Tier I examination and thereafter, appeared in Tier II examination in which he obtained 131.5 marks and was placed as candidate no. 1 in the waitlist. Since he could not get the place, he filed OA No. 4457/2018 which was disposed of on 05.12.2018 with the following directions :-

“3. Learned counsel for applicant submits that the applicant has sent Annexure A-11 legal notice dated 22.11.2018 to 05558 as well as to the user Department, which has not elicited any response from them. He submits that the applicant would be satisfied, at this stage, if a time bound direction is given to 05558 to respond to Annexure A-11 legal notice. 4. Having regards to the submissions made by the learned counsel for the applicant and without going into merits of the case, we dispose of this OA with a direction to respondent No. 3 to decide and response to the Annexure A-11 legal notice of the applicant within a period of three months from the date of receipt of a copy of this order. Needless to say that the response of respondent No. 3 shall be a reasoned one. The applicant shall have liberty to take recourse to appropriate remedy, as available to him under law in case he remains dissatisfied with the order to be passed by respondents No. 3. 5. In view of the disposal of the OA, no separate order is required to be passed in MA No. 5059/2018. The MA accordingly stands disposed of. There shall be no order as to costs.”

5. Complying with the said order dated 05.12.2018 of the Tribunal, DSSSB passed a speaking order No. F.1(280)/CCII/DSSSB/2017/2499 dated 03.05.2019 vide which candidature of the respondent was considered and cancelled.



6. Being aggrieved, the respondent filed Contempt Petition No. 159/2019 which was closed on 15.07.2019, thereafter, the petitioners filed the OA No. 2153/2019 and the same was allowed vide impugned order dated 16.04.2024 which is impugned before this Court.

7. It is not in dispute that for the post mentioned above, 12 vacancies were reserved for SC candidates, however, 14 SC candidates obtained more marks than the respondent and out of those 14 candidates, 2 were selected against the unreserved category and the rest of 12 candidates were selected against the vacancies reserved for SC candidates. However, the respondent was kept as a waitlisted candidate. Vide result notice No. 487 dated 17.03.2017, candidature of one candidate, namely Durgesh Kumar (Roll No. 39000086), who was selected against the SC category, was kept pending for want of requisite documents. Though various opportunities were provided to said Durgesh Kumar to submit requisite documents, he failed to do so. Hence, his candidature was finally rejected on 27.09.2018 vide notice No. 720.

8. The case of respondent before the learned Tribunal was that the result for the post code 149/12 was declared on 17.03.2017 and as per DSSSB notification no. F.1(192)/DSSSB/P&P/13/5363-72 dated 13.06.2013, the reserve panel/waiting list was valid for a period of one year from the date of declaration of result. Thus, the waiting list was valid upto 16.03.2018 only and after expiry of the waiting panel, no candidate could be nominated against cancelled candidature of Durgesh Kumar. Consequently, the unfilled vacancies for the post of PGT (Pol. Science) under post code 149/12 have already been returned to the user department with a request to include the unfilled vacancy



in their next requisition and the selection process for the said post code was closed due to which the respondent could not be selected.

9. Learned counsel for the respondent before the learned Tribunal submitted that the OA is squarely covered by the decision rendered by this Court in Writ Petition No. 4021/2024 decided on 18.03.2024 titled as ***Delhi Subordinate Services Selection Board & Ors. vs. Mohd Vaquar Khan***. Para 11 of the said order reads as under:-

“11. In the light of the aforesaid findings of the learned Tribunal, we have considered the submissions of the learned counsel for the parties and are of the view that there is no infirmity to the approach adopted by the learned Tribunal. We find that, as noted by the learned Tribunal, despite the candidate who was placed at serial nos.1 not coming forward for verification of his documents, the petitioners continued to issue notices to him till as late as 22.03.2018 and it was only on 29.06.2018 that his candidature was cancelled. In our view, once it is the petitioners' own stand that the select list and the wait list were to expire on 07.06.2017, there was no reason as to why communications were being sent to the candidate placed at serial no.1 till as late as March 2018 to furnish his documents for verification.”

10. Case of the petitioners before the learned Tribunal was that once as per the rule position and policy, the waitlist panel has been exhausted, no right accrues to the applicant/respondent for seeking the relief as a right. Even the selected candidate or the short listed candidate does not have a right to be appointed, let alone about the case of the waitlisted candidates.

11. It is not in dispute that result of the present case was declared on 17.03.2017 and the life of the waitlisted candidate should have been only upto 16.03.2018 whereas they continued to ask the documents from Durgesh Kumar and when he failed submit the documents, finally the petitioners herein



cancelled his candidature on 27.09.2018, therefore, the respondent herein continued to accept this waitlist candidature upto 27.09.2018. In that situation, the petitioners should have offered to the next waitlist candidate, who is respondent herein at Serial No.1, however, failed to do so. Therefore, he challenged the same before the learned Tribunal, and thereafter, filed the Contempt Petition and finally again approached the learned Tribunal as mentioned above which was allowed and the same is impugned by the petitioners herein.

12. It is not in dispute and has been settled by the Hon'ble Supreme Court in a catena of decisions that waiting list/reserve panel candidates who are in waiting list have no vested right to be appointed. The petitioners themselves should have complied with the terms and conditions stipulated in the advertisement i.e., the operation of the reserve panel would not have been by virtue of the artificial fiction which has been created by the petitioners by inviting Durgesh Kumar from time to time, without any reasonable cause beyond the period of waiting panel as specified. Rather, the respondent could have been granted an opportunity to come and accept the offer of appointment timely which the petitioner failed to do so.

13. It is a fact that the final result notice was sent as early as on 27.09.2018, as noted by the learned Tribunal and as evident from the page 93 of the paper book before the learned Tribunal and the same has been reproduced in the order as under:-

“Candidatures of the candidate having Roll number 34003867, 34003999, 34004505, 34000092 in UR Category; 34000086 in are hereby cancelled as these candidates have not provided requisite documents inspite of final notice dated 17.04.2018.”



14. Similar issue as noted above was involved in the case of *Mohd Vaquar Khan* (supra), and in that case also the result was declared on 08.06.2016 and the candidature of the selected candidate was cancelled on 29.06.2018. In the same situation, the said OA was allowed by the Tribunal and the same was impugned before this Court in WP(C) 4021/2024 and dismissed vide decision passed on 18.03.2024. The said order has attained finality.

15. In view of parity with the said waitlisted candidature and the fact that the candidature of the said Durgesh Kumar was cancelled on 27.09.2018, thus, the petitioners have themselves enlarged the life of the waitlist upto the said date.

16. In view of the above, we find no error and perversity in the order passed by the learned Tribunal, the same is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 24, 2024/as