

2025:PHHC:076104



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

105

CWP-28755-2024

Judgment Reserved on: 26.05.2025

Judgment Pronounced on: 29.05.2025

NARESH KUMAR AND ANR.

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Mukesh Kumar Verma, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 18.04.2024 (Annexure P-8) passed by Respondent no. 2 i.e. Principal Chief Conservator of Forest, Panchkula declining the claim of the petitioners for appointment as security guard on the ground that marks secured by the petitioners (117.40) are less than the last selected candidate (117.60) of BC 'B' category. A further prayer has also been made directing the respondents to revise the merit list dated 11.07.2014 and to thereafter appoint the petitioners on the post of Forest Guard under BC 'B' category.

Learned Counsel for the petitioners contends that Respondent Department vide Advertisement no. 1 dated 06.03.2013 advertised 471 posts of forest guards for different categories. Out of the above total posts, 86 posts were reserved for BC 'B' category. Petitioners being fully eligible, applied for the same under the BC 'B' category. The details of the Petitioners are as under: -

- i) *Naresh Kumar son of Pala Ram BC 'B' Category*
Roll No:2697, Marks: (117.40)
Waiting List Serial No.20
DOB (05.02.1991)
- ii) *Pushpender son of Jai Kumar BC 'B' Category*
Roll No: 2810 Marks: 117.40
DOB (15.07.1992)

The petitioners received letters from respondent department for interview and physical efficiency test. They appeared for the interview on the date fixed before the authorities along with all original documents. Department declared the result of successful candidates on 25.06.2014 and thereafter the merit list dated 11.07.2014 was prepared on the basis of percentage of marks in academics, marks awarded in interview and physical efficiency test. In the said merit list the names of the petitioners was not reflected.

The said result as well as merit list was challenged by the waiting list candidates by filing CWP no. 23762 of 2016 titled as Shambu and another v. State of Haryana and Ors. on the ground that many candidates belonging to reserved category had secured higher marks than the General category and therefore, as per Haryana government instructions issued vide notification no. 22/88/96-3 GS-III dated 25.06.1997, such candidates should have been given appointment against General category vacancies. If appropriate revision is undertaken, many persons in the waiting list of respective reserved categories shall become entitled to be appointed. The High Court directed the State to file an affidavit vide order dated 05.10.2018 whether such benefit of selection can be extended. In compliance thereto an affidavit was filed by Shri. M.L. Rajwanshi, Member Secretary, Department Selection Committee-cum-Conservator of

Forests (Legal) in this regard. Relevant extract of the said affidavit is reproduced as under: -

- “(a) That the Chief Secretary to Government of Haryana vide its letter no. 22/88/96-3-III dated 25th June, 1997 has issued instructions regarding the candidates belonging to SC and BC reservation Wherein it has been stated that if any member/members belonging to Schedule Castes Backward classes is/are selected in the open competition For direct recruitment on the basis of their own merit, they will not be counted against the quota for reserved for Scheduled Castes/Backward Classes, they will be treated as open competition candidates. However, such candidates should fulfill condition of eligibility regarding age etc.*
- (b) It is submitted that relaxation if any, which is to be provided to SC/BCB category candidates who have secured more marks than the last candidate in the general category can only be granted as per above mentioned letter of Chief Secretary to Government of Haryana dated 25th June, 1997.”*

CWP 23762 of 2016 was thus disposed of vide order dated 02.12.2019 by directing respondents to take action in terms of the above stand taken in the said affidavit.

Thereafter, a committee was constituted by the respondents for ensuring compliance of the order dated 02.12.2019 passed by this Court vide order dated 24.08.2020. The committee noticed that there are a total of 40 candidates from the reserved categories who should have been considered in Open/General Category. The final recommendation of the Committee is extracted as under: -

“There are 40 Forest Guards who were appointed against vacancies of reservation categories and will now be considered against vacancies of General Category. The candidates who will now be given appointment against reservation vacancies may be placed in accordance with their merit secured in the competitive exam.”

Following the above recommendations, the overall seniority (merit) of 471 Forest Guards for appointment was finally revised after a contempt petition. However, the waiting list was not revised.

Petitioners along with others had also filed CWP-3630 of 2021 for quashing the result dated 25.06.2014 as well as the merit list dated 11.07.2014. The said CWP was disposed of with a direction to consider the claim of petitioners for appointment on the post of Forest Guard vide order dated 28.11.2023 after the State submitted that claim of petitioners will be considered in accordance with law and appropriate orders will be passed. The writ petition was disposed of in view of the statement made by the State Counsel.

Claim of the petitioners was thereafter rejected by Principal Chief Conservator of Forests and HoFF, Haryana, Panchkula (Respondent No.2) vide order dated 18.04.2024. The said order is reproduced hereinafter below: -

“Before the above orders of the Hon’ble High Court as per revised merit list, appointment order has been issued to petitioner at Sr. No 3 namely Sh. Sandeep S/o Mokhram (BC-B) on the post of Forest Guard vide this office letter No 926- 30 dated 11.02.2022. Scores of petitioners at Sr No 1 ,2 and 4 are less than the last selected BCB category Forest Guard.

Due to which name of petitioners namely Sh. Harpal Saini, Sh. Naresh Kumar and Sh. Pushpender not covered in the revised merit.

Accordingly, petitioners namely Sh. Harpal Saini, Sh. Naresh Kumar and Sh. Pushpender cannot be appointed on the post of Forest Guard.”

Learned Counsel for Petitioners submits that 17 candidates from BC'B' category were shifted to General category. Thereafter, 17 candidates in waiting list of BC'B' category were offered appointment on the post of Forest Guard. However, some of them have not joined in service and 9 posts are still lying vacant.

The counsel further argues vehemently that when overall merit list was revised, the waiting list was also liable to be revised and the State is acting in an arbitrary manner by not filling the vacant posts despite the petitioners having undergone through the entire process of recruitment. Since 9 posts are vacant, respondents are duty bound to fill up the same. He has placed reliance on the judgment of this Court passed in a batch of petitions including **CWP No.25682 of 2014** decided on 13.11.2017 titled as **Arun Singh and Others Versus State of Haryana and Another** where the Court held that in the absence of selected candidates joining, Respondents can offer appointment to those next in line. The operative part of the said order is extracted as under: -

“Resultantly, this Court is of the opinion that the petitioners would be entitled for appointment against the vacant seats which were never consumed being in the zone of consideration and accordingly, the writ petitions are allowed. The petitioners shall be offered appointment letters and the State should operate the merit list in the respective categories in the subjects of English, Hindi, and Biology. In case there are persons senior in merit than the petitioners, they will firstly be offered the said posts and in case the vacancies still exist, the petitioners will be accommodated. The

necessary exercise be concluded within a period of two months from the date of receipt of certified copy of the judgment.”

The abovesaid judgment of the Single Judge was upheld in Letters Patent Appeals including **LPA No. 2435 of 2017** titled as **Haryana School Teachers Selection Board Versus Arun Singh and Others** decided on 23.08.2018.

It is thus prayed that the waiting list should also be ordered to be proportionately revised and offer of appointment be extended to the petitioners against the unfilled vacancies. It was also contended that five candidates were given appointment in October 2020; six persons were appointed in February 2022; three persons were appointed in May 2024 and five persons were appointed in June 2024. Hence, appointment has already been given to 19 persons. Once the petitioners are approaching this High Court after a period of nearly 10 years, there is no reason why even the primary and essential information germane to the case could not be collected. High Court is not the source of data collection or taking chances on lame petition bereft of *prima facie* satisfaction especially in matters where there is no urgency and a substantive time has been taken to approach a Court of law.

I have heard the learned Counsel for the petitioners and have gone through the documents available on the case file and have also perused the judgments cited, through his able assistance.

The claim of the petitioners is that after the merit list was revised, 17 posts became available in BC'B' category which were filled up by the Respondent Department. However, only 10 persons joined, 7 did not join and 2 persons selected in earlier merit list also did not join. Therefore, there are 9 posts

lying vacant and petitioners being in waiting list are seeking appointment for the post of Forest Guard.

The claim of the petitioners, however, lacks merit. The best case of the petitioners itself is that consequent upon revision of merit list, 17 posts in BC 'B' Category became available and 10 persons joined while a total of 09 posts were left vacant.

However, the petitioners have themselves stated that 19 more persons were given appointment. There is thus no subsisting force in the argument that 09 posts are still vacant as the pleaded facts counter the claim. The process is not open ended to eventually expand the zone of waiting list and revise the waiting list as well.

Insofar as the judgment of *Arun Singh (supra)* is concerned, the same would not apply to the facts of the present case as in that case no valid reason was given by the State not to fill the vacancies whereas, here the respondents have clearly denied the claim of the petitioners vide order dated 18.04.2024 by giving valid reasons that the marks of petitioners are less than the last selected candidate in BC 'B' category and their claim is not rejected in a mechanical manner but rather on merits. Just because now there are posts lying vacant, it does not create a right in favour of petitioners. There is no right in the petitioners to seek appointment against vacant posts since they were not amongst the candidates recommended for waiting list for appointment by the Commission.

The Supreme Court in *State of Karnataka and others v Smt. Bharathi S.*, bearing *Civil Appeal No. 3062 OF 2023* arising out of *SLP(C) No. 12635 of 2020* in somewhat similar factual background as that exists in the

present case held that Additional List neither creates a right nor a co-relative obligation for appointment. The relevant portion is extracted herein below: -

“9.Mere publication of the Additional List does not create any right to be appointed. There is no such mandate in the 6 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.”

This Court also places reliance on the judgment of **Shankarsan Dash v Union of India** reported as **(1991) 3 SCC 47** wherein a similar view was taken. The ratio of the judgment can be deciphered from paragraph 7 which is as under: -

“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. Subash Chander Marwaha [(1974) 3 SCC 220: 1973*

SCC (L&S) 488: (1974) 1 SCR 165] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268: 1986 SCC (L&S) 759] , or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122: 1985 SCC (L&S) 174: (1985) 1 SCR 899].”

In the judgment dated 06.02.2025 passed by Single Bench of this Court in a bunch of two writ petitions including **CWP no. 2046 of 2020** titled as **Balinder Singh v. State of Haryana and others** it was held that no person will be offered appointment even against advertised post if his/her name is not recommended by commission. The relevant extract of the same is extracted as under:

“A perusal of sub-section (3) of Section 4 provides that the Government is not competent to offer appointment to a candidate who is placed in the waiting list or claims himself/herself to be in the waiting list on the basis of common/ combined examination for a post for which he has not been recommended by the Commission. Sub-section (4) further provides that appointment can be offered only to the extent of number of posts advertised, and no candidate shall be offered appointment even against the advertised post in case his name has not been recommended by the Commission. The petitioners herein, having not been recommended by the Commission for appointment, claim themselves to be entitled to consideration against the vacant posts on the assumption of being in a waiting list/next below in merit. In view of clear stipulation in the statute mandating that no appointment can be made by the Government unless a candidate has been recommended by the Commission against the advertised post, the petitioners have no right to claim appointment against the vacant posts as it will be violative of the statutory provisions.”

The selection process cannot be kept open indefinitely. Keeping a selection process open-ended undermines the certainty and finality essential to public administration. An indefinite selection process also violates the principles of Article 14 of the Constitution as it allows unequal treatment of candidates and denies a level playing field to the future candidates.

The judgment of *Arun Singh (supra)* fails to take into consideration binding precedents laid down by the Hon'ble Apex Court and therefore is *per incuriam*. Besides, in the LPA filed against the said case, the Division Bench modified the order of Single Judge and held that there is only a right to be considered for appointment. Relevant extract of the same is reproduced hereunder: -

“Learned Single Judge committed a wrong in saying that the Respondents are entitled for appointment which binds the appellant to a mandate. Therefore, we only clarify the order of learned Single Judge to mean that the private respondents be considered for appointments in view of the existing vacancies.”

It must also be required to be kept in mind that the result pertains to the year 2014 and already a period of more than a decade has elapsed and the list itself is stale. A large number of persons already would have been appointed in the meanwhile in different selection processes. Besides, a mere disposal of petitions earlier does not mean that there is a judicial adjudication or acknowledgment of any right. An action taken by respondents cannot be equated to a direction by the High court. Such portrayal by the Government or claims by litigant are misconceived and not based on correct understanding of law pertaining to a precedent.

The position in law is well settled by the Hon'ble Supreme Court in the matter of *U.P. Jal Nigam Versus Jaswant Singh* reported as (2006) 11 SCC 464 that Court does not come to rescue of a fence sitter. Once a litigant has resiled to his fate, he cannot spring to action after a vigilant candidate succeeds and claim that ignoring all laws of limitation, he should be granted the same relief. Limitation flows from a cause of action and not from the date when a judgment/decreed is passed in favour of a vigilant litigant. Any other construction on sympathetic grounds gives rise to numerous unrequired disputes of service benefits, seniority, pay fixation, promotion etc. against all those persons who may have joined service in the meanwhile. A Constitutional Court thus needs to impose self-restraint in such cases where delay is not well explained.

In view of the above discussion, there is no merit in the present case, and, therefore, the same stands dismissed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 29, 2025.

Rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No