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

+ W.P.(C) 3606/2019

SMT. JYOTI

.....Petitioner

Through: Mr. Yashpal Rangi with Mr. M. K. Bhardwaj, Mr. M. D. Sajid and Mr. Praveen Kaushik, Advs.

versus

DELHI SUBORDINATE SERVICES

SELECTION BOARD

.....Respondent

Through: Mrs. Avnish Ahlawat, SC for GNCT with Mr. Uday Singh Ahlawat, Ms. Tania Ahlawat and Mr. Nitish Kumar Singh S K, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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06.04.2026

OM PRAKASH SHUKLA, J.

1. Through the present petition, the Petitioner has assailed the correctness of the order dated 08.01.2019¹, passed in O.A. No. 4309/2016, whereby the learned Central Administrative Tribunal² rejected the Petitioner's prayer for appointment on the post of assistant teacher in OBC Category against the 37 unfilled vacancies.

2. Shorn of unnecessary details, the relevant facts for disposal of the present petition would show that the Delhi Subordinate Services Selection Board (hereinafter referred to as the "Respondent") issued

¹ "impugned order" hereinafter

² "Tribunal" hereinafter



Advertisement No. 02/2012 inviting applications for the post of Assistant Teacher (Primary), Post Code 101/12. A total of 554 vacancies were notified, out of which 226 were reserved for the Other Backward Classes³ category.

3. The Petitioner, belonging to the OBC category, participated in the selection process. The result was declared on 24.06.2015. The Petitioner secured 131.75 marks, whereas the cut-off for the OBC category was fixed at 132.25 marks by the Respondent.

4. Out of the 226 vacancies reserved for the OBC category, 220 candidates were initially selected. Subsequently, *vide* notice dated 05.04.2016, the selection of 10 candidates were cancelled due to not reporting for document verification. Some candidates were also shifted to the unreserved category, leading to further vacancies. However, no fresh cut-off list was issued by the Respondent.

5. Being aggrieved by the non-issuance of a fresh cut-off, the Petitioner herein filed O.A. No. 4309/2016 before the learned Tribunal, seeking a direction to the Respondent to issue a revised cut-off list for the remaining vacancies.

6. During the pendency of the said O.A., the results were revised, *vide* notice dated 30.12.2016, and a candidate with identical marks to the Petitioner was called for document verification. The Petitioner thereafter amended the O.A., alleging discrimination in the selection process and seeking a direction for appointment against the unfilled

³ “OBC” hereinafter



vacancy.

7. As per the notification dated 13.06.2013 issued by the Government of NCT of Delhi, Delhi Subordinate Services Selection Board, a waitlist was prepared to the extent of 10% of the notified vacancies. The Petitioner secured 131.75 marks and notably, the last candidate in the OBC waitlist secured 131.75 marks.

8. However, the Petitioner was not included in the waitlist on account of her lower position in the merit ranking, determined on the basis of date of birth, as older candidates with identical marks were ranked above her.

9. Thereafter, the final result was declared *vide* notice dated 30.06.2018, and the recruitment process for Post Code 101/12 was closed on 04.07.2018.

10. Upon such closure, admittedly, 37 seats in the OBC category remained unfilled as the waitlist was exhausted. Before the learned Tribunal, the Petitioner sought appointment against the said unfilled vacancies. The Respondent, however, stated that the waiting list had been prepared up to 10% of the notified vacancies in terms of the governing notification and stood exhausted. It was further stated that the Petitioner, though securing the same marks, was placed below the last selected candidate in the OBC waiting panel on account of her date of birth and, therefore, did not find place in the waiting list.

11. The learned Tribunal, after considering the material on record,



held that the existence of unfilled vacancies does not give any right to appointment, as mere inclusion in a merit list does not confer an indefeasible right, in terms of the law laid down in ***Shankarsan Dash v. Union of India***⁴. Accordingly, finding no arbitrariness or discrimination on the part of the Respondent, the learned Tribunal dismissed the O.A.

12. Aggrieved by the aforesaid, the Petitioner has approached this Court by way of the present petition.

13. Mr. M.K. Bhardwaj, learned counsel for the Petitioner contends that the Respondent's action in not filling the remaining 37 vacancies is arbitrary and contrary to settled law. It is submitted that the purpose of preparing a waiting list is not to restrict appointments only to those candidates included therein, and where notified vacancies remain unfilled, the selection process ought to be extended to all eligible candidates in the merit list rather than being confined to the waiting list alone. On this basis, it was submitted that the Petitioner is entitled to be considered for appointment against the unfilled vacancies.

14. Reliance is placed on ***Delhi Subordinate Services Selection Board v. Rajni***⁵, and decisions of the Hon'ble Supreme Court in ***Prem Prakash v. Union of India***⁶, ***Sheo Shyam v. State of U.P.***⁷, ***State of J&K v. Sat Pal***⁸, ***Dinesh Kumar Kashyap v. South East***

⁴ 1991 (3) SCC 47

⁵ 2013 SCC OnLine Del 903

⁶ AIR 1984 SC 1831

⁷ (2005) 10 SCC 314

⁸ (2013) 11 SCC 737



Central Railway⁹, Ors. and Jai Narain Ram v. State of U.P.¹⁰, to contend that the State cannot leave notified vacancies unfilled.

15. *Per contra*, learned Counsel for the Respondent submits that the Petitioner is not entitled to any relief, as she did not find place in the waiting list prepared in accordance with the Notification dated 13.06.2013. It is further submitted that a waiting list does not constitute a source of recruitment and can be operated only in limited contingencies, such as when selected candidates do not join. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***State of Punjab v. Raghubir Chand Sharma¹¹***, to contend that Petitioner has no enforceable right to seek appointment merely on the basis of her position in the merit list, and the decision of the learned Tribunal warrants no interference.

16. We have heard the learned counsel for the parties and perused the material on record.

17. The limited question that falls for our consideration is whether a candidate can claim a right to appointment against unfilled vacancies merely on the ground that she fulfils all eligibility criteria and falls within the range of remaining vacancies in the order of merit.

18. In order to answer the controversy, it is necessary to refer to the notification dated 13.06.2013 in relation to preparation of waiting list by the Respondent. The relevant portion is reproduced below:

⁹ (2019) 12 SCC 798

¹⁰ AIR 1996 SC 703

¹¹ AIR 2001 SC 2900



“1. The DSSSB has decided to draw a reserve panel/waiting list upto the extent of 10% of the posts notified, in addition to the number of candidates selected as per the notified vacancies.”

19. It is quite evident from a plain reading of the above Notification that it mandates preparation of a waiting list only up to 10% of the notified vacancies. Inasmuch (i) a cut-off of 132.25 marks was fixed by the Respondent, which has not been challenged; (ii) the Petitioner secured 131.75 marks and, therefore, did not meet the cut-off; (iii) the waiting list was prepared in accordance with the said notification, and the Petitioner did not fall within it as her position in merit being lower on account of date of birth despite securing equal marks; (iv) no infirmity in the preparation of the waiting list has been shown; and (v) the Notification dated 13.06.2013, including the 10% cap on the waiting list and the criteria for determining merit on the basis of date of birth, has not been challenged, the Petitioner has no right to appointment.

20. Mr. M. K. Bhardwaj's contention is essentially that if the remaining unfilled posts were to be filled up beyond the wait list prepared by the Respondent, the Petitioner would fall within the number of candidates who could be appointed against the said posts.

21. We are unable to persuade ourselves to agree with the said contention. According to us, accepting such a submission would be clearly against the well-settled position of law.

22. The Hon'ble Supreme Court in *Tej Prakash Pathak v. High*



Court of Rajasthan¹², has clearly held that inclusion in a select list does not confer any indefeasible right to appointment and that the State may, for *bona fide* reasons, choose not to fill up all vacancies. The above position was also reiterated in ***State of Karnataka v. Santhosh Kumar C¹³***, where in it was held that mere selection in the list does not give rise to any defeasible right to appointment in favour of the candidate and selection process must be governed by applicable rules. The relevant finding is reproduced in the following words:

“9. The above understanding also accords with the settled principle that inclusion of a candidate's name in a select list does not by itself confer an indefeasible right to appointment. A select list makes a candidate eligible for consideration in accordance with the governing rules. It does not create a vested right to claim appointment dehors the statutory framework. In Shankarsan Dash v. Union of India (1991) 2 SCC 47, this Court held that even where vacancies exist, a candidate whose name appears in the select list does not acquire an indefeasible right to appointment, unless the relevant rules so indicate. Similarly, in Rakhi Ray v. High Court of Delhi (2010) 2 SCC 637, and State of Orissa v. Rajkishore Nanda (2010) 6 SCC 777, this Court has held that appointments must conform to the notified vacancies and the governing rules, and that a select list cannot be operated in a manner not contemplated by the statutory scheme.”

23. Tested on the anvil of the aforesaid principles, the Petitioner's claim cannot be sustained.

24. The Petitioner has not been able to point to any provision in the governing rules which permits extension of the selection process beyond the prescribed waiting list. On the contrary, the Notification dated 13.06.2013 reflects that the governing rules restrict the selection process to the notified vacancies together with a waiting list candidate

¹² (2025) 2 SCC 1

¹³ 2026 SCC OnLine SC 458



limited to 10%, and do not envisage filling up all unfilled vacancies by the candidates beyond this extent.

25. Therefore, once the cut-off list and the waiting list have been duly determined in accordance with the governing rules, and the Petitioner does not fall within either, no right to appointment can be claimed merely on the ground that certain vacancies remain unfilled. In such circumstances, the Petitioner cannot claim any indefeasible right to appointment, and as to hold otherwise would amount to rewriting the recruitment process by this Court.

26. As regards the reliance placed on ***Prem Prakash (supra)*** to contend that once vacancies are notified and candidates are available, appointment cannot be denied till such vacancies are exhausted, the same is misplaced for two reasons. Firstly, the said decision pertains to candidates who were duly selected, whereas in the present case, the Petitioner is not a selected candidate as she failed to fall within the prescribed cut-off list or the waiting list. Secondly, the said precedent does not involve a restriction such as the 10% cap on the waiting list, which governs the present selection process. Reliance on ***DSSSB v. Ms. Rajni (supra)*** is also distinguishable, as no such restriction on waitlisted candidates existed in that case. Therefore, the aforementioned decisions do not advance the Petitioner's case in any manner.

27. We also find no substance in Mr. Bhardwaj's reliance on circular dated 13.06.2019 issued by the Government of National Capital Territory of Delhi, which was six years after the selections



were being made pursuant to the advertisement forming subject matter of the present dispute.

28. Thus, in these circumstances, no case arises for us to interfere with the Impugned Order of the learned Tribunal.

29. The writ petition is accordingly dismissed.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

APRIL 6, 2026/gunn//pa