



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.15374 of 2025

Decided on: 07.05.2026

Deepak Thakur	... Petitioner
Versus	
Union of India and another	... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹Yes

For the petitioner:	M/s M.L. Sharma and Meghna Kashava, Advocates.
For the respondents:	Mr. Nand Lal Thakur, Senior Panel Counsel, for respondent No.1. Ms. Devyani Sharma, Senior Advocate, with Ms.Soma Thakur, Advocate, for respondent No.2.

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition, the petitioner has, *inter alia*, prayed for the following relief:-

“1. To issue of a writ of mandamus or any other appropriate writ, order direction directing respondent no.2 to offer appointment to the petitioner to the post of Assistant Registrar consequent to his selection and placement at Sr. No.1 in the waiting list of the Unreserved Candidates with all consequential benefits regarding seniority etc. or for any other appropriate writ, order or direction in the fact and circumstances of the case.”

2. Brief facts necessary for the adjudication of the present petition are that a process was initiated by the respondent-IIT to fill-up the posts of Assistant Registrar vide

¹ Whether reporters of the local papers may be allowed to see the judgment?



Advertisement No.IIT Mandi/Recruit./NTS/2024/04, dated 30.08.2024 (Annexure P-1). In all, 6 posts were advertised. 1 post was reserved for Scheduled Caste Category, 2 posts for OBC Category and 3 posts for Unreserved Category. The petitioner being eligible to participate in the process, participated in the same against unreserved quota. To cut the controversy short, the result of the process undertaken by the respondent-IIT for the selection of candidates against the posts of Assistant Registrar, was declared on 06.02.2025 and against the Unreserved Category, candidates with Roll Numbers 11446, 11691 and 11781 were declared as selected.

3. The grievance of the petitioner is that in terms of the information provided to him under the Right to Information Act, copy whereof is appended with petition as Annexure P-6, the petitioner was 4th in the overall merit, having scored 70.30 marks, which is evident from the marks mentioned against his Roll Number, 11467, yet the respondents have not offered him appointment, after two of the selected candidates failed to join the posts.

4. Learned counsel for the petitioner has vehemently argued that in the process of selection undertaken by the respondents, the petitioner was fourth in overall merit. Once the posts remained vacant on account of the selected candidates not



having joined, the respondents should have offered the posts to the next in line and as the petitioner was next in line on merit, the post should have been offered to him. Denial thereof to the petitioner according to the learned counsel, is bad in law. Accordingly, he prayed that the said act of the respondents be declared as bad and a mandamus be issued to the respondents to offer the post which has not been occupied by the selected candidates to the petitioner. In support of his contention, learned counsel has relied upon the following judgments:-

- “i) *Shankarsan Dash Versus Union of India, (1991) 3 Supreme Court Cases 47.*
- ii) *Asha Kaul (Mrs) and Another Versus State of Jammu and Kashmir and others, (1993) 2 Supreme Court Cases 573.*
- iii) *R.S. Mittal Versus Union of India, 1995 Supp (2) Supreme Court Cases 230.”*

5. On the other hand, learned Senior Counsel appearing for respondent-Institute submitted that the respondent-Institute has framed the Non-Faculty Staff Structuring and Recruitment and Promotion Norms, 2016. She submitted that these are the Norms which govern the recruitment of the Non-Faculty Staff and in terms of said Norms, there is no provision of maintaining any Waiting List during the course of carrying out recruitment qua the Non-Faculty Staff members. Learned Senior Counsel submitted that in the absence of there being any such provision in the Recruitment and Promotion Norms, the petitioner cannot claim



any right to be offered appointment against the posts not occupied by the selected candidates, as there is no Waiting Panel and the process stands exhausted after the candidates were selected *de hors* as to whether they joined the posts or not. In support of her contention, learned Senior Counsel has relied upon the following judgments:-

- “i) *Bihar State Electricity Board Versus Suresh Prasad and Others, (2004) 2 Supreme Court Cases 681.*
- ii) *Vallampati Sathish Babu Versus State of Andhra Pradesh and others, (2022) 13 Supreme Court Cases 193.*
- iii) *State of Uttar Pradesh Versus Karunesh Kumar, (2022) SCC Online, SC 1706.*
- iv) *SLP(C) 35896 of 2025, titled State of Karnataka & Ors. Versus Santosh Kumar C (2026 INSC 276), decided on 23.03.2026.”*

6. In rebuttal, learned counsel for the petitioner submitted that irrespective of the fact whether the Recruitment Norms contained any criteria for having a Waiting List or not, when the petitioner indeed was meritorious as is apparent from the overall merit of the candidates prepared by the respondent-Institute, no purpose is going to be achieved by denying appointment to him and undertaking the recruitment process afresh. Learned counsel also submitted that in terms of the judgment cited by him, the Hon’ble Supreme Court had reiterated that in the event of availability of vacancies as also selected



candidates, no arbitrary discretion was vested with the employer to deny appointment to the selected candidate on merit.

7. Sh. Nand Lal Thakur, learned Senior Panel Counsel, appearing for respondent No.1, submitted that respondent No.1 adopts the arguments advanced by learned Senior Counsel for respondent No.2. He submitted that in the absence of there being any provision in the Recruitment Norms of preparation of any Waiting List, no infirmity can be pointed towards the act of the respondent-Institute of not offering appointment to the petitioner on account of non-joining of the selected candidates.

8. I have heard learned counsel for the petitioner, learned Senior Panel Counsel for respondent No.1 as well as learned Senior Counsel for respondent No.2 and have also carefully gone through the pleadings as well as documents appended therewith.

9. The moot issue involved in this case is in a very narrow compass and the same is as to whether there is any right vested in a candidate who participates in a selection process to claim appointment against an unfilled post on merit in the absence of there being any Waiting List, on account of non-joining of the selected candidates.

10. Firstly, I will refer to the judgments cited by Sh. M.L. Sharma, learned counsel for the petitioner. In *Shankarsan Dash*



Versus *Union of India*, (1991) 3 *Supreme Court Cases* 47, the Constitutional Bench of the Hon'ble Supreme Court has been pleased to hold that if number of vacancies are notified for appointments and adequate number of candidates are found, the successful candidates acquire an indefensible 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 be posted. 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 license of acting in an arbitrary manner. The decision not to fill-up vacancies has to be taken bonafidely 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 in the recruitment test and no discrimination can be permitted.

11. In *Asha Kaul (Mrs) and Another Versus State of Jammu and Kashmir and others*, (1993) 2 *Supreme Court Cases* 573 Hon'ble Supreme Court has been pleased to hold that though it is true that mere inclusion in the Selection List does not confer upon the candidates included therein any indefensible right to



appointment, but that is only one aspect of the matter and the other aspect is the obligation on the Government to act thereupon.

12. In *R.S. Mittal Versus Union of India, 1995 Supp (2) Supreme Court Cases 230*, Hon'ble Supreme Court has been pleased to hold that it is no doubt correct that a person on the Selection Panel, has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment, but at the same time, the Appointing Authority cannot ignore the Selection Panel or decline to make the appointment on its whims. Hon'ble Supreme Court also held that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, ordinarily there is no justification to ignore him for appointment.

13. Now, I will refer to the judgments which have been cited by the learned Senior Counsel appearing for respondent No.2. In *Bihar State Electricity Board Versus Suresh Prasad and Others, (2004) 2 Supreme Court Cases 681*, Hon'ble Supreme Court has been pleased to hold as under:-

"6. We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash v. Union Of India. (1991) 3 SCC 47, (1991) 17 ATC 95 it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of



candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such 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. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. Moreover, there is no merit in the contention advanced on behalf of Respondents 1 to 7 that the appellant had violated the order of the High Court dated 23-3-1994 by preparing a list of only 22 candidates instead of filling up 50% of the alleged 161 vacancies. In this connection, the impugned judgment of the High Court has recorded a finding of fact that the Board has rightly reduced the number of vacancies to 50 and to that extent claim of the writ petitioners was rejected. In the impugned judgment, the High Court found that 50 vacancies were required to be filled up, 25 against the advertisement dated 15-12-1986 and 25 against advertisement dated 15-11-1992. However, according to the impugned judgment, the appellant ought to have made appointments by preparing a further panel for 18 vacant posts which became vacant when the earlier 18 selected candidates opted out. It is this part of the reasoning of the High Court, which is fallacious.

7. In the present case pursuant to the direction of the High Court dated 23-3-1994, the appellant took steps for filling up 25 vacancies in the post of Operators from



Advertisement No. 3/86 and the remaining 25 vacancies from Advertisement No. 6/92. The results were notified on 29-4-1994 on the notice-board. The Board recommended names of successful candidates under Advertisement No. 3/86 and Advertisement No. 6/92. Out of 22 candidates selected by the Board for appointment under Advertisement No. 3/86, 18 candidates did not turn up. At this stage it is important to note that Respondents 1 to 7 had applied for appointment under Advertisement No. 3/86 dated 15-12-1986 and they had qualified but they were placed at Serial No. 23 onwards in the descending order. As stated above, a panel of 22 candidates was prepared for appointment under Advertisement No. 3/86 and Respondents 1 to 7 fell beyond the cut-off number. We are not shown any statutory recruitment rules which require the appellant Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of Respondents 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard. In our view, the judgment of this Court in the case of Shankarsan Dash v. Union Of India. (1991) 3 SCC 47, (1991) 17 ATC 95 squarely applies to the facts of this case. Further there was no infirmity in the judgment of this Court delivered on 4-12-1998 and in our view with respect there was no need to recall the said judgment.”

14. Thereafter, in *Vallampati Sathish Babu Versus State of Andhra Pradesh and others*, (2022) 13 Supreme Court Cases 193,



Hon'ble Supreme Court has been pleased to reiterate the law earlier laid down in *Bihar SEB Versus Suresh Prashad (2004) 2 Supreme Court Cases 681*, that even in case candidates selected for appointment have not joined, in the absence of any statutory rule to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates below, the said candidates in the merit list. Hon'ble Supreme Court also reiterated that in the absence of any provision, the employer is not bound to prepare a Waiting List in addition to the Panel of selected candidates and to appoint the candidates from the Waiting List in case the candidates from the Panel do not join.

15. In State of *Uttar Pradesh Versus Karunesh Kumar, (2022) SCC Online, SC 1706*, Hon'ble Supreme Court has been pleased to hold in Paras 29 and 30 thereof that it is settled law that there is no vested right of unsuccessful candidates to insist upon their consideration, in the absence of any rule requiring the preparation of a Waiting List.

16. Thereafter, in a recent judgment, Hon'ble Supreme Court in *SLP(C) 35896 of 2025*, titled *State of Karnataka & Ors. Versus Santosh Kumar C (2026 INSC 276)*, decided on 23.03.2026, Hon'ble Supreme Court has been pleased to hold as under:-

“ 19. *The principal reason for the impugned order of the High Court is that, since the selected candidate did not undergo the mandatory medical examination, the post*



continued to remain unfilled and, therefore, the respondent, being the candidate immediately next below, ought to have been considered against that post. In our view, this approach conflates the factual existence of an unfilled post with the legal question as to the permissible mode of filling it. Even if it were assumed that the post continued to remain vacant in fact, the further question still remained whether the 1997 Rules permitted the same select list to be operated for filling such post. It is precisely on that question that the High Court, with respect, fell into error. The High Court was also not justified in holding that Rule 11(3) of the 1997 Rules had no application to the case at hand. On the contrary, Rule 11(3), read with Rule 11(1) and sub-rule (3) of Rule 4, lies at the heart of the controversy. It is these provisions which delineate the scope of the select list, the manner in which service-wise consideration is to take place, and the limits within which appointments may be made against the vacancies notified in that recruitment. Once the Rules themselves define the contours of the list and do not provide for any reserve or additional list, the absence of a selected candidate from the field cannot enlarge the statutory operation of the list.

20. In our considered view, therefore, the impugned judgment cannot be sustained. The Tribunal was right in holding that the 1997 Rules do not contemplate preparation or operation of any additional or waiting list, and that a post left unfilled on account of non-completion of pre-appointment formalities or non-joining by a selected candidate could not be claimed by the



respondent as of right from the same selection process. The High Court erred in quashing the communication dated 27.06.2022 issued by DPAR and the order dated 13.10.2023 passed by the Tribunal.”

17. Coming back to the facts of the present case, it is not in dispute that in the present case, no Waiting List was prepared by respondent No.2. As far as the petitioner is concerned, his name was not included in the ‘Select List’. There were three posts advertised under the unreserved Category and the ‘Select List’ included the name of three meritorious candidates.

18. The judgments which have been cited by the learned Counsel for the petitioner, all refer to the situations wherein the employer for some reason was not offering appointment to the candidates in the ‘Select Panel’ on merit. Unfortunately, the judgments cited by the learned Counsel for the petitioner do not come to the rescue of the petitioner for the simple reason that herein the name of the petitioner was not there in the ‘Select Panel’. Had it been a case that the petitioner was one of the top three meritorious candidates and his name was included in the Selection List, yet the Institution was not offering him appointment, then the judgments cited by the learned Counsel for the petitioner could have come to the rescue of the petitioner. Herein, in the absence of the name of the petitioner being included



in the Selection Panel, as observed hereinabove, these judgments do not help the cause of the petitioner.

19. On the other hand, the judgments which have been cited by the learned Senior Counsel for the respondent-Institution demonstrate that the Hon'ble Supreme Court of India has been pleased to consistently hold that until and unless there is a statutory or a rule-based requirement that the employer has to frame a Waiting List, it cannot be forced to make the same and an unsuccessful candidate in the absence of a Waiting List, cannot call upon the employer to offer the post to him, which has remained unfilled on account of a Selection Panel candidate not joining the same.

20. In the present case, the stand of the Institution is that the recruitment and promotions of Non-Faculty Staff is governed by the Recruitment and Promotions Norms-2016 and there is no provision contained therein that in the process of recruitment undertaken by the Authority to fill-up Non-Faculty Staff, a Waiting Panel has to be created. A Careful perusal of the Norms demonstrates that there is provision of preparing a 'Wait List' in the process of recruitment. This, in the absence of any such requirement being there in the Norms-2016, the non-preparation of the Waiting List at the best of respondent No.2 cannot be faulted with. Obviously, as there is no Waiting Panel, there



are none in the Waiting List, including the petitioner. Therefore, in the backdrop of the above factual position wherein the Norms governing recruitment to the Non-Faculty Posts do not envisage the preparation of a Wait Panel, the present petitioner cannot compel the respondents to offer him appointment against the vacancy which has remained unfilled on account of non-joining of the selected candidate(s).

21. This Court again reiterates that a Selection List or a Selection Panel of the candidates who were recommended for appointment was duly prepared by the Institution in terms of Annexure-C, i.e. communication dated 06.02.2023 and it is not as if, one of the candidates whose name was there in the list of the Selection Panel, is before the Court feeling aggrieved by the fact that he or she is not being offered appointment by the respondent-Institution.

22. Therefore, in light of the above observations, as this Court does not find any merit in the present petition, nor does it find any fault in the act of the respondent-Institution of not preparing a Wait List, and not offering appointment to the petitioner against the post which has remained unfilled on account of non-joining of the selected candidate(s), this petition is dismissed. Interim order, stands vacated. Pending miscellaneous application(s), if any, also stand disposed of. However, before



parting away with the judgment, this Court would like to make an observation that as the process of recruitment undertaken by Institutions like respondent No.2 is time consuming and involve expenditure from the Public Exchequer, therefore, the Institution may re-think over the issue of having a Waiting Panel in the matter of appointments. By doing so, not only the time and money of the Institution shall be saved, but candidates like the petitioner, who have undergone the toil of participating in the process, can be adjusted against the posts not filled on account of non-joining of a selected candidates if such candidates otherwise on merit are eligible to be offered the said post(s).

(Ajay Mohan Goel)
Judge

May 07, 2026
(Rishi)