

Before Hon'ble Jawahar Lal Gupta, J.

DHARAMBIR & OTHERS,... Petitioners.

versus

THE HARYANA STATE AGRICULTURAL MARKETING BOARD  
& ANOTHER,... Respondents.

C.W.P. 10649 of 1991

18th December, 1991.

*Constitution of India, 1950—Article 226—Haryana Government instructions dated May 26, 1972—Selection of Peons—Certain candidates in the merit list found ineligible for appointment—Petitioners coming within the zone of advertised vacancies—Petitioners seeking appointment to the posts in their respective categories—The defence that merit list is valid for six months found untenable, since the 1972 instructions do not provide that the merit list prepared by the Board is only valid for a period of 6 months—No explanation disclosed by the Board to deny appointment—Board is not justified in not appointing such candidates as it has no arbitrary right to deny appointment—Mandamus issued directing the Board to consider such persons for appointment.*

*Held, that prima facie it is not clear as to how instructions dated May 26, 1972 are applicable to the respondent-Board. Assuming these instructions are applicable, a perusal of there of shows that such vacancies as occur within 6 months from the receipt of such recommendation from Commission or the Board, can be filled up from the lists forwarded by the Commission or the Board to the Department. Such is not the situation here. These instructions do not provide that a merit list prepared by the Board is only valid for a period of 6 months. Consequently, the contention cannot be sustained.*

(Para 5)

*Further held, that normally a person who has been found suitable for appointment to a post should be appointed unless certain reasons germane to the suitability for appointment are shown by the authority to justify its action in not appointing the person concerned. In the present case, no reason whatsoever has been disclosed in the written statement on account of which the offer of appointment was not made to the selected candidates. In my view the authority does not have an absolute or arbitrary right to deny appointment at its whim and caprice. A candidate who has competed for the post*

and is found suitable is entitled to a reasonable hope that he will be appointed. This hope can be scuttled only for a valid reason. No valid reason having been shown in the present case, I find no merit in the objection raised on behalf of the respondents.

(Para 6)

S. N. Singla, Advocate with Sanjay Tangri, Advocate, for the Petitioner.

S. K. Sood, Advocate, for the Respondent.

#### JUDGMENT

Jawahar Lal Gupta, J. (oral)

(1) The three petitioners herein were recommended for the posts of Peons advertised by the Haryana State Agricultural Marketing Board (hereinafter referred to as the Board). Having failed to get appointment inspite of selection, they have approached this Court through the present writ petition.

In the written statement filed on behalf of the respondents it has been *inter-alia* averred that out of the 52 posts advertised by the Board 24 had to be filled up from amongst the members of the general category. Furthermore, 19 posts had been reserved for ex-servicemen or for their dependents, 7 for members of the Backward Class and 2 for physically handicapped persons. It has been further admitted that petitioner No. 1 belongs to the general category and was placed at serial No. 27 in the waiting list. So far as petitioners Nos. 2 and 3 are concerned, their claims were considered for the posts reserved for ex-servicemen. They were placed at serial Nos. 23 and 24 in the merit list of this category. It has been further averred that the petitioners have not been appointed as their names were not within the first 24 posts of the general category and 19 posts for the category of ex-servicemen. It has been further averred that the selection lists are valid for a period of six months only, and the period having expired, the petitioners have no right to be appointed.

(2) A replication has been filed on behalf of the petitioners. It has been *inter-alia* averred that candidates at serial Nos. 16, 21, 22, 23 and 24 in the merit list for general category have been found to be ineligible. If the names of these 5 persons are excluded from the merit list, the petitioner No. 1 would be within the first 24 on the merit list. Similarly, with regard to petitioners Nos. 2 and 3,

who are candidates for the posts reserved for the wards of the ex-servicemen, it has been averred that 3 or 4 persons besides various others have not been found to be eligible. On this premises, it has been claimed that the petitioners are within the number of posts advertised for their category.

(3) A rejoinder has been filed on behalf of the respondents. It has been *inter-alia*, mentioned that the candidate at serial No. 16 has been actually appointed. So far as candidates at serial Nos. 21, 23 and 24 of the merit list are concerned, the averment in the replication has been admitted. It has been further stated that mere selection does not give right to appointment and the merit list dated January 4, 1990 was valid for a period of one year which has since expired. It has been further stated that the candidates at serial Nos. 20, 25 and 26 have also not been given an offer of appointment. Accordingly, it is claimed that the petitioner has no right to be appointed. Similarly, with regard to the category of ex-servicemen it has been mentioned that out of a list of 24 candidates, the names of the petitioners appear at serial Nos. 23 and 24. It has been further pointed out that those candidates who have been placed above the petitioners, have not so far been given appointments.

(4) Mr. Singla appearing for the petitioners has contended that the posts having been advertised and the petitioners having been duly selected, have a right to be appointed. This right, the counsel contends, can be defeated only for certain legal and valid grounds. Since there are no valid grounds disclosed in the written statement, the action of the respondents in not appointing the petitioners is wholly arbitrary and illegal. On behalf of the respondents, Mr. Sood has contended that the list prepared by the Board was valid only for a period of 6 months, and the period having expired, the petitioners have no right to claim appointment. He further submits that persons who are above the petitioners having not been appointed, the petitioners cannot claim that the action of the Board is either illegal or arbitrary. With regard to petitioners Nos. 2 and 3, it has been further contended that even if the number of persons found ineligible is excluded, the petitioners do not fall within the first 19 persons. Consequently, they have no right to be appointed.

(5) So far as petitioner No. 1 is concerned, he was admittedly placed at serial No. 27 in the merit list. It is further clear that 4 persons whose names appear at serial Nos. 21 to 24 in the merit list, were found to be ineligible by the Board. In this situation, it is apparent that petitioner No. 1 would be at serial No. 23 in the merit

list. The total number of posts for the general category being 24, the petitioners should have, in the normal course of events, been offered the appointment. So far as the members of the category of ex-servicemen or other dependents are concerned, the averment made on behalf of the petitioners is that 3 or 4 candidates out of those selected by the Board have not been found eligible for appointment. Some illustrations have also been given. The Board has chosen to maintain silence. In reply to the replication, the position has not been clarified. However, the pleadings of the parties on this aspect are not absolutely clear. Mr. Sood appearing for the respondents has not been able to clearly state as to whether or not all the 19 posts reserved for the category of ex-servicemen have been filled up. In this situation, it is appropriate to direct that the Board shall offer appointments against the vacancies advertised on November 4, 1989 in strict order of merit to the candidates belonging to the general category as well as to those from the category of ex-servicemen. So far as petitioner No. 1 is concerned, he being within the first 24 shall be given the offer of appointment forthwith. In case there is nothing else against him, he shall be appointed to the post. Similarly, in the case of ex-servicemen, the offer of appointment shall be made to the candidates in order of merit, and in case any person above petitioners Nos. 2 and 3 does not join, if there be any, then the petitioners shall be appointed subject to their being otherwise suitable. This shall be done within one month of the receipt of a copy of this order.

(6) Before parting with the judgment, the contention raised on behalf of Mr. Sood (sic respondent) that the list is valid only for a period of 6 months may be noticed. In support of this submission, Mr. Sood has placed reliance on a letter dated May 26, 1972 sent by the Chief Secretary to the Haryana Public Service Commission and the Haryana Subordinate Services Selection Board. *Prima facie* it is not clear as to how these instructions are applicable to the respondent-Board. Assuming these instructions are applicable, a perusal of thereof shows that such vacancies as occur within 6 months from the receipt of such recommendation from Commission or the Board, can be filled up from the lists forwarded by the Commission or the Board to the Department. Such is not the situation here. These instructions do not provide that a merit list prepared by the Board is only valid for a period of 6 months. Consequently, the contention cannot be sustained.

(7) Mr. Sood has also contended that a selected person has no right to be appointed. Normally, a person who has been found

suitable for appointment to a post should be appointed unless certain reasons germane to the suitability for appointment are shown by the authority to justify its action in not appointing the person concerned. In the present case, no reason whatsoever has been disclosed in the written statement on account of which the offer of appointment was not made to the selected candidates. In my view, the authority does not have an absolute or arbitrary right to deny appointment at its whim and caprice. A candidate who has competed for the post and is found suitable is entitled to a reasonable hope that he will be appointed. This hope can be scuttled only for a valid reason. No valid reason having been shown in the present case, I find no merit in the objection raised on behalf of the respondents.

(8) Accordingly, the writ petition is allowed in the above terms. The respondents are directed to consider the claims of the petitioners for appointment within one month from the receipt of a copy of this order. The petitioners will also be entitled to their costs which are assessed at Rs. 2,000.

---

R.N.R.

*Hon'ble R. P. Sethi & S. S. Sudhalkar, JJ.*

LAWYERS' INITIATIVE THROUGH SHRI R. S. BAINS,  
ADVOCATE & ANOTHERS.—Petitioners.

*versus*

STATE OF PUNJAB & OTHERS,—Respondents.  
Civil Writ Petition No. 17983 of 1994.  
25th March, 1995.

*Constitution of India—Art. 226—Locus standi to file petition—Under normal circumstances only such person who has suffered a legal injury by reason of violation of his legal right can approach the Court invoking its jurisdiction for issuance of any writ contemplated under article 226 of the Constitution—However this rule is not narrow & rigid—There are now few exceptions that have evolved over the years—Public Interest Litigation.*

*Held, that under the normal circumstances and on the basis of traditional rule in regard to locus standi, it is only a person who has suffered a legal injury by reason of violation of his legal right by the impugned action or who is likely to suffer an injury by the reasoning of threatened violation of his legal right, can alone approach the Court invoking its jurisdiction for the issuance of any of the*