

Court No. - 36

Case :- WRIT - A No. - 14121 of 2022

Petitioner :- Manoj Kumar Pandey

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Alok Mishra

Counsel for Respondent :- C.S.C.,A.K.S.Parihar,Kushmondeya
Shahi

Hon'ble Saumitra Dayal Singh,J.

1. Heard Sri Alok Mishra, learned counsel for the petitioner, Sri A.K.S.Parihar, learned counsel for the U.P. Secondary Education Services Selection Board and Sri J.N. Maurya, learned Chief Standing Counsel along with Sri Gopal Chandra Saxena, learned Standing Counsel for the State.

2. The present writ petition has been filed seeking a direction upon the respondent authorities to offer counselling to the petitioner a candidate placed on the wait list dated 4.1.2022, prepared with reference to the result declared for T.G.T. Social Science, under Advertisement No.1/2016.

3. Undisputedly, the petitioner had participated in the above described examination conducted by the respondent U.P. Secondary Education Services Selection Board (hereinafter referred to as the 'Board') under Advertisement No.1/2016. Against 1050 posts of T.G.T. (Boys Varg-01) advertised, 500 posts were earmarked for open category, 285 for OBC category, 263 for SC category and 02 for ST category. The petitioner secured 405.32 marks and was placed at serial no.539 in order of merit, in the open category.

4. Later, on 4.1.2022 a wait list was declared by the Board wherein the petitioner was placed at serial no.40 in the general category. The total wait list appears to contain names of 48 general category candidates, 27 OBC category candidates, 25 SC category

candidates and one ST category candidates. Similar wait list was prepared for TGT (Girls Varg) wherein 7 candidates were placed in the wait list under the general category, 2 under the OBC category (physically disabled), 4 under the SC category and 01 under the ST category. Names of all candidates mentioned in the wait list have been mentioned in order of their merit.

5. Grievance of the petitioner is, no objective criteria has been followed and no transparency exists as may allow the petitioner to enforce his preferential right to appointment at an institution of his choice, commensurate to his merit position. Depending on individual facts operating in individual districts, and dependent on the whims and fancies of certain authorities as also management of various institutions, appointment letters are being issued on a pick and choose basis, leading to negation of rule of merit.

6. It also transpires, with regard to earlier Advertisement No.1/2013 a similar issue had arisen which is currently engaging the attention of the contempt court. An affidavit came to be filed by the Director of Secondary Education taking a stand that the competent authority to accord placement of institution would be borne by the Director. However, that affidavit pertains to contempt proceedings under an earlier advertisement. Also, a Government Order dated 13.08.2021 exists. However, it does not lay down any procedure.

7. In such factual background, the matter has been heard.

8. Under the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as 'the Act'), the primary responsibility to make recruitments, create Panel of selected candidates is on the Board. For that purpose, upon receipt of necessary requisition it proceeds to issue an advertisement to conduct the recruitment examination. Upon completion of the same, it proceeds to prepare a Panel of selected candidates. Section 11 of the

Act reads as below:

"[11. Panel of candidates. - (1) The Board shall, as soon as may be, after the vacancy is notified under sub-section (1) of Section 10, hold examinations, where necessary, and interviews of the candidates and prepare a panel of those found most suitable for appointment.

(2) The panel referred to in sub-section (1) shall be forwarded by the Board to the officer or authority referred to in sub-section (1) of Section 10 in such manner as may be prescribed.

(3) After the receipt of the panel under sub-section (2) the officer or authority concerned shall, in the prescribed manner, intimate the Management of the Institution the names of the selected candidates in respect of the vacancies notified under sub-section (1) of Section 10.

(4) The management shall, within a period of one month from the date of receipt of such intimation issue appointment letter to such selected candidate..

(5)Where such selected candidate fails to join the post of a teacher in such Institution within the time allowed in the appointment letter or within such extended time as the Management may allow in this behalf, or where such candidate is otherwise not available for appointment, the officer or authority concerned may, on the request of the Management, intimate in the prescribed manner, fresh name or names from the panel forwarded by the Board under sub-section (2).]"

9. The machinery provisions are further contained in the U.P. Secondary Education Services Selection Board Rules, 1998 (hereinafter referred to as the 'Rules'). Relevant to present purpose, Rule 12(6), 12(7), 12(8), 12(9), 12(10) and 12(11) of the Rules read as follows:

"12. (6) The Board, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes/Scheduled Tribes and Other Backward Classes of citizens in respect of the post of teacher in Lecturers and Trained graduates grade, call for interview such candidates who have secured the maximum marks under sub-clause (4) above/and for the post of Principal/Headmaster, call for interview such candidates who have secured maximum marks under sub-clause (5) above in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies :

Provided that in respect of the post of the Principal or Headmaster of an Institution, the Board shall also in addition call for interview two senior-most teachers of the Institution whose names are forwarded by the Management through Inspector under clause (b) of sub-rule (2) of Rule 11.

[7. The marks obtained in the quality points as referred to in sub-

rule (5) by the eligible candidates shall not be disclosed to the members of the interview board.]

(8) The Board then, for each category of post, prepare panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by them after adding the marks obtained under sub-clause (4) or sub-clause (5) above, as the case may be, with the marks obtained in the interview. The panel for the post of Principal or Headmaster shall be prepared institution-wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular institution whereas for the posts in the lecturers and trained graduates grade, it shall be prepared subject-wise and group-wise respectively. If two or more candidates obtain equal marks, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the quality points are also equal, then the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or Headmaster, the number of names shall be three times of the number of the vacancy and for the post of teachers in the Lecturers and Trained graduate grade, it shall be larger (but not larger than twenty-five per cent) than the number of vacancies.

Explanation. - For the purposes of this sub-rule the word 'group-wise' means in accordance with the groups specified in the Explanation to sub-rule (2) of Rule 11.

[(9) In the case of Lecturer grade, the Board shall at the time of interview after showing the lists of institutions which have notified the vacancy to it, require the candidates to give, if she/he so desires, the choice of not more than five, such institutions in order of preference where if selected, he/she may wish to be appointed and in the case of teachers in trained Graduate grade and attached primary teachers such choices shall be given to candidates after preparation of merit list on the basis of written examination by the board.]

(10) The Board shall after preparing the panel in accordance with sub-rule (8), allocate the institutions to the selected candidates in respect of the posts of teachers in Lecturers and Trained graduates grade in such manner that the candidate whose name appears at the top of the panel shall be allocated the institution of his first preference given in accordance with sub-rule (9). Where a selected candidate cannot be allocated any of the institutions of his preference on the ground that the candidates placed higher in the panel have already been allocated such institutions and there remains no vacancy in them, the Board may allocate any institution to him as it may deem fit.

(11) The Board shall forward the panel prepared under sub-rule (8) along with the name of the institution allocated to selected candidates in accordance with sub-rule (10) to the Inspector with a copy thereof to the Joint Director and also notify them on its notice board."

10. Then Rule-13 of the Rules reads as follows:

"13. Intimation of names of selected candidates. - [(1) The Inspector shall within 10 days of the receipt of the panel and the allocation of institution under Rule 12, -

(i) notify it on the notice board of his office;

(ii) intimate the name of selected candidate to the Management of the institution which has notified the vacancy, with the direction that, on authorization under resolution of the management, an order of appointment in the proforma given in Appendix "E" be issued to the candidate by registered post within 15 days of the receipt of the order or within such extended time, as may be allowed to him by the management, and also intimating him that on his failure to join within the specified time, his appointment will be liable to be cancelled;

(iii) send an intimation to the candidate, referred to in clause (ii), with the direction to report to the Manager within fifteen days of the receipt of the order of appointment by him from the Manager or within such extended time as may be allowed to him, by the Management.

(2) The Management shall comply with the direction, given under sub- rule (1) and report compliance thereof to the Board through the Inspector.

(3) Where the candidate, referred to in sub-rule (1) fails to join the post within the time allowed in the letter of appointment or within such extended time as the Management may allow in this behalf or where such candidate is otherwise not available for appointment, the Inspector may, on the request of the Management, intimate fresh name or names standing next in order of merit on the panel, under intimation to the Joint Director and the Board, and the provisions of sub-rules (1) and (2) shall mutatis mutandis apply.

(4) The Joint Director shall monitor and ensure that the candidates selected by the Board joins the institution in the specified time and for this purpose, he may issue such direction to the Inspector he thinks proper.

(5) Where a candidate selected by the Board could not join in an allocated institution due to non-availability of vacancy or for any other reason, the District Inspector of Schools shall recommend to the Board for the adjustment of such candidate against any other vacancy notified to the Board in any other institution. On receipt of the recommendation of the District Inspector of Schools the Board shall allocate such candidate to another institution in a vacancy notified to the Board.]"

11. From a plain reading of the above provisions it transpires, in the first place, the responsibility to prepare the Panel of selected candidates in order of merit, accommodating consideration of reservation etc., rests on the Board. While preparing that Panel, the Board has to take into account the choice of institution offered by each selected candidate. The institutions are accordingly offered to selected candidates subject to their relative merit position and order of preference. That Panel list is then communicated to individual DIOS in 75 districts of the State by the Board. The DIOS then

proceed under Section 11(2) of the Act read with Rule 12(11) of the Rules. A copy of the same is also sent to the Joint Director of the U.P. Secondary Education Services Selection Board.

12. Upon receipt of such list, the DIOS sends individual letters to the institutions falling within his/her jurisdiction calling upon the management of those institutions to issue necessary appointment letters to the selected candidates named in the list, within next thirty days. Inasmuch as names are mentioned against different notified posts at each institution, the management of individual institution is obligated to send out appointment letter to that person only. The selected persons are then enabled to join that institution within 15 days. The timelines, for issuance of appointment letters and for joining by the selected candidates are extendable within reasonable limits. To that extent there is no dispute between the parties.

13. The cause arises with the petitioner, since many selected candidates who were first issued appointment letters failed to or did not join their respective institutions. This gave rise to continuance of notified vacancies, at some institutions. At this stage, according to the petitioner, individual DIOS and management authorities are acting on their whims and fancies, overlooking the superior claim of person placed higher in the wait list and therefore carrying a preferential right to choose from amongst the available vacancies/institutions. The Act and the Rules do leave some doubt as to exact procedure to be followed, in this regard.

14. In the first place, under Section 11(5) of the Act, the Act allows for fresh name or names to be forwarded by the Board to the management for the purposes of filling up such vacancies. Then Rule 13(3) of the Rules further provides that the DIOS may, on the request of the management of an institution (where such vacancies continues to exist) intimate fresh name or names standing next in order of merit

on the Panel under intimation to the Joint Director of the Board. That is the statutory scheme.

15. However, in the context of high number of vacancies originally notified distributed over numerous institutions spread all over the State in 75 districts, not one single coordinated action takes place. While the original selection is conducted by the Board as a composite exercise wherein choice of the selected candidates is also accounted for, subject to their merit position whereby the higher placed candidates have the opportunity to choose the the district and institution and their choice first, the lower place candidates often are accommodated on their second, third, fourth or fifth choice of institution as is ascertained by the Board at the time of granting interviews.

16. Yet, at the stage of exercise under Section 11(5) of the Act read with Rule 13(3) of the Rules, such statutory Scheme that is based on fair play is given a complete go-bye without any good reason. Also different DIOS and different institutions act in a short and variable time frame and sometime on their free will in making choice of the candidates to whom appointment letters may be issued and who may be allowed to join at any particular institution.

17. The above gives rise to avoidable litigation at the instance of candidates in the wait list and in any case it becomes a complete opaque exercise conducted on the whims and fancies of individual authorities and management who were otherwise obligated in law to follow a common practice and procedure and act with fairness.

18. The above doubt in the law also plays out in favour of certain managements who seek to pick and choose between the selected candidates made available to them and those engaged by them on *ad hoc* basis, till regularly selected candidate joins. It is an unhealthy and unfair practice noticed in many litigation.

19. Thus, in ideal circumstances, all the DIOSs and all managements must act in concert and fill up all vacancies so notified within time fixed frame. Yet, if all DIOSs were to simultaneously look into the Panel of wait list candidates and offer them position/appointment in order of their seniority placement in the list, it would create chaos. It is also not possible to compel the District level authorities in all 75 districts to act at one time to allow for the spirit of the Act, to prevail. There is no single forum available where DIOS of all 75 districts may meet to collectively decide to offer placement to selected candidates in the wait list as per choice of institution, in order of their merit position.

20. In view of the above, the scheme of the Act has been followed. The Board is the central body equipped to fulfill that object and purpose of the Act. As noted above, the Board ascertains the choice of the selected candidates and offers placement to selected candidates placed in the select list, in order of their merit position, keeping in mind their choice.

21. There is no reason to not follow the same procedure while giving placement to candidates placed in the wait list. This is not contrary to the Scheme of the Act. It shall also be in the interest of institutions and the society to allow such choice to arise as that may lead to more seats to be filled up in a transparent manner, in a time bound manner.

22. Sri J.N. Maurya, learned Chief Standing Counsel has informed, at present, against Advertisement No.1 of 2016, there exist unfilled vacancies. These must be offered to and filled by candidates available in the respective wait lists prepared by the Board, in a transparent and verifiable manner.

23. Accordingly, following directions are issued to be complied with by the Board and the State authorities to fill up all vacancies

existing as on date, except where specific Court orders already exist with respect to individual posts and or candidates. Those may be identified as on 30.09.2022.

(I) The Directorate of Secondary Education and the Board shall cause to be hosted on their respective websites, the Scheme for allotment of vacant posts, to wait listed candidates, as provided by this order, together with date lines. This exercise may be completed by **07.10.2022**.

(II) The Directorate, Secondary Education, shall intimate to the Board the existing vacancies together with subject and group wise description, as on 30.9.2022, by **15th October 2022**.

(III) Upon receipt of those details, the Board shall offer the vacant posts to the candidates available on the wait list, in order of merit in the appropriate subject and group category.

(IV) At that stage, a further publication shall be made and hosted by the Board on its official website containing a complete chart of all vacant posts identified. It shall specify the post/s to be left out of this Scheme, in view of any interim order passed in any case/s. This exercise may be completed by **15th November 2022**.

(V) Thereupon, the wait listed candidates may be invited to submit their **fresh** choice of institution/s in Rule 12 (9) of the Rules. Necessary communication in that regard be made by the Board to the candidates through the same mode as may have been adopted by the Board while inviting the candidates for interview/original allotment.

(VI) Thus, the Board **shall:**

(i) call for such options/ choice on its Web Portal that may be suitably adapted and enabled to serve the purpose.

(ii) register the choice/s so expressed against the registered

email id of each candidate, linked to their mobile phone no.

(iii) the choice once registered may be acknowledged and confirmed to the individual candidates at their registered email id and mobile number.

(iv) not allow any change of choice, after its registration and acknowledgment, as above.

(VII) To express their choice, the Board **shall** allow the concerned candidates, **three days' time** to register their choice/s. In the facts of the present case that exercise may be completed between **28th November 2022, to 30th November 2022.**

(VIII) Upon completion of that process, the Board will prepare **Supplementary Panel-I**, specific to Advertisement No.1/2016, and make available, the same to all D.I.O.S., with due intimation to the concerned Joint Directors (as may have been done at the stage of original panel being prepared), within next two weeks, not later than **15th December 2022.**

(IX) The **Supplementary Panel-1** thus prepared may be simultaneously hosted on the website of the Board and the Directorate. It may contain the details of email id of each candidate, against his/her name.

(X) Upon that receipt of the **Supplementary Panel-I**, the concerned D.I.O.S. shall issue necessary letters to the concerned management and candidates in terms of Rule 13(1) of the Rules within 15 days from the date of issuance of such **Supplementary Panel-I**, i.e., **latest by 31st December, 2022**, in the facts of this case. E-mail communication in that regard may also be dispatched to the concerned candidate/s.

(XI) The concerned candidate/s may intimate his willingness to join

at the allotted institution, by post and/or by e-mail to the D.I.O.S. as also the institution concerned. That information may be considered by the D.I.O.S., at the appropriate stage if there are unexplained delays caused by the management in allowing the said candidate to join at that institution.

(XII) The individual management shall have one month time therefrom to pass appropriate resolution and issue appointment letter/s to the selected candidate/s. Thus, such letter/s may be issued by each management with a copy to the D.I.O.S. together with proof of dispatch made to the candidates. In the facts of the present case, such compliance may be made by **31st January 2023**.

Provided, in case of further time required, the concerned Management may issue the appointment letter/s within 15 further days with due intimation to the D.I.O.S concerned. In present facts, such compliance may be made, not later than **15th February 2023**.

Provided further in case any appointment letter is not issued by the Management within the first 30 days or next 15 days or if no intimation is received by the D.I.O.S. concerned (as above), he may at the instance of the affected candidate, intervene and ascertain the correct facts. If warranted, the D.I.O.S may cause issuance of such letter of appointment, at that stage, in that eventuality, subject to any order by a Court of law.

(XIII) Joining by the selected candidates, may be ensured preferably within a period of **15 days from the receipt of the appointment letter and in any case not later than two months** from the date of receipt of the appointment letter by selected candidate. Such exercise may be completed by **15th April, 2023**.

(XIV) On **30th April 2023**, all D.I.O.S. may again account for all still existing/surviving vacancies, if any. They shall send a necessary

confirmation of appointment granted and joining allowed in terms of **Supplementary Panel-I** prepared and circulated by the Board, together with surviving vacancies, if any, to the Joint Director, Secondary Education.

(XV) In the event of any further vacancy surviving and subject to any wait listed candidate/s being available on the wait list (who may yet not have been invited), at the end of five months, the aforesaid exercise may be repeated for preparation of **Supplementary Panel-II** and so on so forth till all vacancies are filled up or till all wait listed candidates have been offered an opportunity (as above), whichever is earlier.

24. The above Scheme may be applied by the Board and the Directorate of Secondary Education to all other pending and future, similar recruitments (governed by same provisions of the Act), subject to any contrary direction already issued, as on date. These directions may also be made applicable while preparing original select panel, in future.

25. With the aforesaid directions, present writ petition stands **disposed of**.

Order Date :- 29.9.2022

SP