

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 25<sup>th</sup> OF AUGUST, 2022**

**WRIT PETITION No.18516 of 2022**

**Between:-**

**SURAJ SINGH DHAKAD S/O SHRI  
LITRU DHAKAD AGE- 34 YEARS  
R/O BEHIND VANDNA CONVENT  
SCHOOL, HOUSE NO.13, GAYATRI  
BHAWAN, GUNA (MADHYA  
PRADESH).**

**.....PETITIONER**

***(BY SHRI S.K. SHRIVASTAVA – ADVOCATE)***

**AND**

- 1. STATE OF MADHYA PRADESH  
THROUGH PRINCIPAL  
SECRETARY, DEPARTMENT OF  
HEALTH, VALLABH BHAWAN,  
BHOPAL.**
- 2. COMMISSIONER, HEALTH  
SATPUDA BHAWAN, BHOPAL  
(MADHYA PRADESH).**
- 3. DIRECTORATE OF HEALTH  
SERVICE THROUGH ITS  
DIRECTOR, PUBLIC HEALTH AND  
FAMILY WELFARE, SATPUDA  
BHAWAN, BHOPAL (MADHYA  
PRADESH).**

.....RESPONDENTS

**(BY SHRI G.K. AGRAWAL – GOVERNMENT ADVOCATE)**

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*This petition coming on for hearing this day, the Court passed the following:*

**ORDER**

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

- i. A writ of mandamus may kindly be issued directing the respondents to consider the case of petitioner for the post of Lab Technician (Contractual Employee).
- ii. An appropriate writ, order or direction may kindly be issued directing the respondents to consider the case of petitioner whose name is at S. No.01 in the waiting list.
- iii. An appropriate writ, order or direction may kindly be issued directing the respondents to take decision on the representation Annexure P-13, Annexure P-14 & Annexure P-15 submitted by the petitioner.

Any other relief which this Hon'ble High Court deems fit in the facts and circumstances of the case may also kindly be granted.”

2. It is submitted by the counsel for the petitioner that the respondents issued an advertisement for the post of Lab Technician. Total 279 posts were advertised for direct recruitment on regular basis and 68 posts were advertised for appointment on contractual basis and in all 347 posts of Lab Technician were advertised in the year 2020. The selection was to be made on the basis of marks obtained in the examination. The

petitioner also applied for the post of Lab Technician. The petitioner was placed at serial No.1 in the list of contractual employees. It is submitted that as per the provisions of M.P. Kanisht Sewa (Sanyukt Aharta) Pariksha Niyam, 2013, (in short “Rules, 2013”) a waiting list is required to be prepared and appointment was to be made from the persons in the waiting list, in case if the selected candidate does not join on the post. The petitioner moved an application under the Right to Information Act through his friend. It was informed in reply to the said RTI application that in Rewa Division out of 9 persons from contractual employees category, only 5 persons have been appointed and 4 employees have not joined, therefore, posts are vacant in Rewa Division. Even in Indore Division also 5 posts are vacant. The waiting list as required under Rule 13 of Rules, 2013 has not been prepared and, therefore, an application under the Right to Information Act was moved through his nephew, in which it was replied by the respondents that the process for finalization of waiting list is still in progress. Since no waiting list has been prepared so far in spite of repeated representations, accordingly, this petition has been filed. It is submitted that due to the mistake on the part of the employer, a prospective and potential candidate cannot be allowed to suffer.

3. Heard learned counsel for the petitioner.
4. According to the advertisement, the last date for submitting the application form was 29/10/2020. The life of waiting list is one year. The result was declared and the successful candidates were directed to join by order dated 21/5/2021. Thus, it is clear that more than one year has expired from the date of declaration of result. The counsel for the

petitioner could not point out any right under which he can seek mandamus for the respondents to prepare a waiting list. It is well established principle of law that even a selected candidate does not have any right to seek mandamus for issuance of appointment order. The Supreme Court in the case of **Union Territory of Chandigarh vs. Dilbagh Singh** reported in (1993) 1 SCC 154 has held as under:

12. If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an

opportunity of hearing to the respondents (candidates in the select list) is a misconceived one and is consequently rejected.

5. The Supreme Court in the case of **Shankarsan Dash vs. Union of India** reported in (1991) 3 SCC 47 has held 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] .

6. The Supreme Court in the case of **State of U.P. vs. Rajkumar Sharma** reported in (2006) 3 SCC 330 has held as under:

14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : AIR 1991 SC 1612] ; *Asha Kaul v. State of J&K* [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] ; *Union of India v. S.S. Uppal* [(1996) 2 SCC 168 : 1996 SCC (L&S) 438 : (1996) 32 ATC 668 : AIR 1996 SC 2340] ; *Hanuman Prasad v. Union of India* [(1996) 10 SCC 742 : 1997 SCC (L&S) 364] ; *Bihar Public Service Commission v. State of Bihar* [(1997) 3 SCC 198 : 1997 SCC (L&S) 775 : AIR 1997 SC 2280] ; *Syndicate Bank v. Shankar Paul* [(1997) 6 SCC 584 : AIR 1997 SC 3091] ; *Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra* [(1997) 10 SCC 264 : 1997 SCC (L&S) 1265] ; *Punjab SEB v. Seema* [1999 SCC (L&S) 629] ; *All India SC & ST Employees' Assn. v. A. Arthur Jeen* [(2001) 6 SCC 380 : AIR 2001 SC 1851] ; *Vinodan T. v. University of Calicut* [(2002) 4 SCC 726 : 2002 SCC (L&S) 606] ; *S. Renuka v. State of A.P.* [(2002) 5 SCC 195 : 2002 SCC (L&S) 689 : AIR 2002 SC 1523] and *Batiarani Gramiya Bank v. Pallab Kumar* [(2004) 9 SCC 100 : 2004 SCC (L&S) 715 : AIR 2003 SC 4248] .)

15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P.* [(1996) 7 SCC

426 : AIR 1996 SC 540] ; *Secy., Jaipur Development Authority v. Daulat Mal Jain* [(1997) 1 SCC 35] ; *State of Haryana v. Ram Kumar Mann* [(1997) 3 SCC 321 : 1997 SCC (L&S) 801] ; *Faridabad C.T. Scan Centre v. D.G., Health Services* [(1997) 7 SCC 752] ; *Jalandhar Improvement Trust v. Sampuran Singh* [(1999) 3 SCC 494 : AIR 1999 SC 1347] ; *State of Punjab v. Dr. Rajeev Sarwal* [(1999) 9 SCC 240 : 1999 SCC (L&S) 1171] ; *Yogesh Kumar v. Govt. of NCT, Delhi* [(2003) 3 SCC 548 : 2003 SCC (L&S) 346] ; *Union of India v. International Trading Co.* [(2003) 5 SCC 437] and *Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority* [(2006) 2 SCC 604 : JT (2006) 2 SC 259].)

7. The Supreme Court in the case of **S.S. Balu vs. State of Kerala** reported in **(2009) 2 SCC 479** has held as under:

12. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See *Pitta Naveen Kumar v. Raja Narasaiah Zangiti* [(2006) 10 SCC 261 : (2007) 1 SCC (L&S) 92] .) The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus. (See *Batiarani Gramiya Bank v. Pallab Kumar* [(2004) 9 SCC 100 : 2004 SCC (L&S) 715] .) In *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] a Constitution Bench of this Court held: (SCC pp. 50-51, para 7)

“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.”

**13.** In *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] this Court held: (SCC p. 226, paras 10-11)

“10. ... The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. ...

11. It must be remembered that the petition is for a mandamus. This Court has pointed out in *Rai Shivendra Bahadur (Dr.) v. Nalanda College* [AIR 1962 SC 1210] that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have



no legal right under the rules to enforce its performance the petition is clearly misconceived.”

**14.** In *Pitta Naveen Kumar v. Raja Narasaiah Zangiti* [(2006) 10 SCC 261 : (2007) 1 SCC (L&S) 92] this Court held: (SCC p. 273, para 32)

“32. ... A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise.”

**15.** In *State of Rajasthan v. Jagdish Chopra* [(2007) 8 SCC 161 : (2007) 2 SCC (L&S) 837] this Court held: (SCC pp. 164-65, paras 9 and 11)

“9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. In *State of Bihar v. Amrendra Kumar Mishra* [(2006) 12 SCC 561 : (2007) 2 SCC (L&S) 132] this Court opined: (SCC p. 564, para 9)

‘9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an

appropriate order is issued by the State, no appointment can be made out of the said panel.’

It was further held: (*Amrendra Kumar case* [(2006) 12 SCC 561 : (2007) 2 SCC (L&S) 132] , SCC p. 565, para 13)

‘13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.’

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11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] and *Asha Kaul v. State of J&K* [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] .)”

16. Furthermore, the rank list was valid for a period of three years. Its validity expired on 5-6-2000. Another select list was published for the period from 16-9-2002 to 15-9-2005. Vacancies in terms of the said select list have also been filled up.

17. It is also well-settled principle of law that “delay defeats equity”. The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of

Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh* [(2007) 9 SCC 278 : (2007) 2 SCC (L&S) 398] this Court held: (SCC p. 283, para 16)

“16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.”

(See also *Virender Chaudhary v. Bharat Petroleum Corpn.* [(2009) 1 SCC 297 : (2008) 15 Scale 67] at SCC p. 302, para 17.)

8. Rule 12 of Rules, 2013 provides as under:-

- 12. Declaration of results of examinations and issuance of list of successful candidates by the Board.-** (1) The Board shall declare its results by 30<sup>th</sup> of April of current year of examination and shall issue a list of successful candidates on the basis of merit and also on the preference of the Departments for the groups as mentioned in rule 7.
- (2) The Board shall issue a joint list of successful candidates based on the marks achieved by them in which the Scheduled Castes / Scheduled Tribes

/ Other Backward Classes/Women/Physically Challenged / Ex-servicemen shall be kept in the open category.

- (3) If any candidate belonging to the Scheduled Castes / Scheduled Tribes / Other Backward Classes finds the rank in the unreserved (open) category on the basis of merit, then he shall be considered in the unreserved category and such candidate shall not be counted in his respective reserved category.
- (4) Any candidate belonging to reserved category shall be adjusted against unreserved posts, if he is found equally qualified with the unreserved candidate without any relaxation. Such candidate shall not get any age relaxation.
- (5) After issuing a joint open list by giving the benefit of reservation, a separate list of successful candidates of Scheduled Castes / Scheduled Tribes / Other Backward Classes shall be issued in which the names of eligible candidates from concerned reserved category shall be included on the basis of horizontal reservation system also.
- (6) If a candidate of the reserved category namely women/ Ex-Servicemen/Physically Challenged finds a place in the unreserved category, on the basis of merit, he shall be counted in the unreserved horizontal category. Thereafter horizontal reservation in the category wise list shall only be given to the candidate relating to the category concerned. Candidates of Scheduled Castes / Scheduled Tribes / Other Backward Classes/ Women, Physically Challenged and Ex-Servicemen may get place in the related category/compartments.

9. Rule 14 of Rules, 2013 provides as under:-

- 14. Duration of validity of the final list of successful candidate.-** (1) The final list of the successful candidates in the examination in any

recruitment year shall be valid upto 18 months from the date of declaration of the final list, but shall become invalid after declaring the results of next years examination.

- (2) The Board shall make preparations for next examinations when 6 months time for the validity of final list remain that is the month of January: Provided that till the date of issuance of new final list of successful candidates, if the Board has sent the names of candidates to the concerned Department, then the department may issue the appointment order of the candidates and the new list shall not adversely affect the previous one.

10. Thus, it is clear from Rules, 2013 that there is no provision for preparation of waiting list, however, as per the Rules uploaded by the respondents alongwith the advertisement, it appears that Rule 13 of Rules, 2013 provides that a waiting list shall be prepared in accordance with an order dated 10/10/2016 passed by GAD No.C-3-9/2016/1-3 Bhopal. Thus, it appears that although the Rules do not provide for preparation of waiting list, but the State Government by an executive letter has made a provision for the same. By virtue of this additional provision for preparation of waiting list it cannot be said that the executive instructions have supplemented the Rules, 2013, but it amounts to supplanting the Rules, 2013. It is well established principle of law that any Rule framed under Article 309 of the Constitution of India cannot be amended by any executive instructions. Since there was no provision for preparation of waiting list in the Rules, therefore, it cannot be said that there was a vacuum which can be filled up by issuing departmental executive instructions. Thus, in absence of any provision in the Rules, 2013, it cannot be said that the respondents were under an obligation to

prepare any waiting list.

11. It is settled legal proposition that executive instructions cannot override the statutory provisions [Vide B.N. Nagarajan v. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan and Ors., AIR 1967 SC 1910; Union of India and Ors. v. Majji Jangammyya and Ors., AIR 1977 SC 757; B.N. Nagarajan and Ors. v. State of Karnataka and Ors., AIR 1979 SC 1676; P.D. Agrawal and Ors. v. State of U.P. and Ors., (1987) 3 SCC 622; M/s. Beopar Sahayak (P) Ltd. and Ors. v. Vishwa Nath and Ors., AIR 1987 SC 2111; State of Maharashtra v. Jagannath Achyut Karandikar, AIR 1989 SC 1133; Paluru Ramkrishananiah and Ors. v. Union of India and Ors., AIR 1990 SC 166; Comptroller and Auditor General of India and Ors. v. Mohan LalMalhotra and Ors., AIR 1991 SC 2288; State of Madhya Pradesh v. G.S. Dall and Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights v. Union of India and Ors., AIR 1998 SC 431; C. Rangaswamacah and Ors. v. Karnataka Lokayukta and Ors, AIR 1998 SC 96.]

12. Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory Rule nor does it have any force of law; while statutory rules have full force of law provided the same are not in conflict with the provisions of the Act. (Vide State of U. P and Ors. v. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu v. M/s. Hind Stone etc., AIR 1981 SC 711).

13. In Union of India v. Sri Somasundaram Vishwanath, AIR 1988 SC

2255, the Hon'ble Apex Court. observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

14. Similar view has been reiterated in *Union of India v. Rakesh Kumar*, AIR 2001 SC 1877; *Swapan Kumar Pal and Ors. v. Samitabhar Chakraborty and Ors.*, AIR 2001 SC 2353; *Khet Singh v. Union of India*, (2002) 4 SCC 380; *Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr.*, (2003) 5 SCC 413; and *Delhi Development Authority v. Joginder S, Monga*, (2004) 2 SCC 297, observing that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.

15. In *Ram Ganesh Tripathi v. State of U.P.*, AIR 1997 SC 1446, the Hon'ble Supreme Court considered a similar controversy and held that any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law. The Hon'ble Supreme Court observed as under:

"They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."

16. Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the Rules framed under the proviso

to Article 309 of the Constitution and statutory rules cannot be set at naught by the executive fiat.

17. Furthermore, as per Rules, 2013, all the departments/institutions are now restricted from conducting any selection process at their own level or through any other agency and all the departments / undertakings of the State shall fill up their vacancies from the list of successful candidates finalized by the Board. The Board shall also forward the names of eligible candidates to all the departments, if so demanded by them, but the departments/undertakings are required to send their requisition forms to the Board alongwith the details and accordingly, an examination shall be conducted by the Board through online or offline basis and after conducting the examination, the Board shall declare the names of successful candidates for appointment to the concerned departments as per Rule 13 of Rules, 2013. The concerning department shall examine the required documents relating to qualification and shall complete the formalities of names of candidates sent by the Board and shall issue the order of appointment. The selected candidate shall be allocated a department where the candidate shall have to join by the last date mentioned in the appointment order, failing which his candidature in the concerned examination shall be cancelled automatically. Thus, it is clear that the examination conducted by the Board is just for the purposes of forwarding the names of the selected candidates to the concerned department.

18. Even otherwise, if the order dated 10/10/2016 issued by GAD is considered, then it is clear that the life of a waiting list is one year or till the declaration of new result (whichever is earlier). According to the



petitioner, the result was declared on 21/5/2021. Thus, one year from the date of declaration of result has also elapsed.

19. The Supreme Court in the case of **Vallampati Satish Babu Vs. The State of Andhra Pradesh & Ors.** by judgment dated 19/4/2022 passed in Civil Appeal No.2473/2022 has held as under:-

8. Now, the submission on behalf of the appellant that as per sub-rule (5) of Rule 16, all the 33 posts notified are required to be filled is concerned, the same has no substance. Sub-rule (5) of Rule 16 is required to be read as a whole and in its entirety and the same is required to be read alongwith the Guidelines issued. What is provided under sub-rule (5) of Rule 16 is that the number of candidates selected shall not be more than the number of vacancies notified. However, it further provides that there shall be no waiting list and posts, if any, unfilled for any reason whatsoever shall be carried forward for future recruitment. Therefore, there shall not be any appointment of more than the number of vacancies notified but that does not mean to prepare and operate the waiting list, which otherwise is specifically not provided for under the Rules, 2012.

8.1 An identical question came to be considered by this Court in the case of **Suresh Prasad and Ors. (supra)**. In the said decision, it is specifically observed and held that even in case candidates selected for 14 appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held 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. The aforesaid decision of this Court has been subsequently followed by the Andhra Pradesh High Court in the case of **Samiula Shareef and Ors. (supra)**

9. Applying the law laid down by this Court in the case of Suresh Prasad and Ors. (supra) to the facts of the case on hand and considering the statutory provisions contained in Rule 16 of the Rules, 2012 read with the Guidelines, we are of the view that the appellant cannot claim appointment on the unfilled vacancy being next below the candidate in the merit list. If the submission on behalf of the appellant is accepted, in that case, it will lead to providing for preparation of a waiting list, which otherwise is not permissible as per sub-rule (5) of Rule 16. If the same is permitted, in that case, it will be directing the respondents to act contrary to the statutory provisions. Therefore, the High Court has not committed any error in refusing to appoint the appellant to the post which remained unfilled due to one of the selected candidates in the final selection list not appearing for counselling. The impugned judgment and order passed by the High Court is absolutely in consonance with the relevant statutory provisions with which we agree.

20. Thus, there is no statutory provision for preparation of waiting list, therefore, this Court cannot direct the respondents to prepare a waiting list. Even otherwise, a selected candidate has no vested right to claim order of appointment.

21. Considering the totality of the circumstances, this Court is of the considered opinion that no case is made out warranting interference in the matter.

22. Accordingly, the petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

**Arun\***