

Ajay Dungrakoti vs Hon'ble High Court Of Uttarakhand And ... on 22 August, 2022

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

THE CHIEF JUSTICE SHRI VIPIN SANGHI
AND
JUSTICE SHRI RAMESH CHANDRA KHULBE

WRIT PETITION (S/B) No.35 OF 2021

22nd AUGUST, 2022

Ajay Dungrakoti

..... Petitioner

Vs.

Hon'ble High Court of Uttarakhand and another
Respondents

Presence: -

Shri Lalit Belwal with Mr. Ashish Belwal and Ms. Abhilasha
Belwal, learned counsel for the petitioner.

Shri Shobhit Saharia, learned counsel for respondent no.1.

Shri B. P. S. Mer, learned Brief Holder for the State-
respondent no.2.

JUDGMENT:

(Per Shri Vipin Sanghi, C.J.) The petitioner has preferred the present writ petition to assail the decision taken by the High Court of Uttarakhand-respondent no.1 as communicated by the communication dated 30.12.2020 rejecting the claim of the petitioner for recommending his name to the State Government for appointment in Uttarakhand Higher Judicial Services-2019, against the vacant post in the General Category. The petitioner seeks a mandamus to the High Court of Uttarakhand to consider his candidature and recommend his name to the State Government for appointment in the Uttarakhand Higher Judicial Services- 2019 against the vacant posts in the General Category.

2. On 10.04.2019, the High Court of Uttarakhand issued a notification for filling up six vacant posts of Additional District and Sessions Judges by direct recruitment in the Uttarakhand Higher Judicial Services. Of the six posts, one was an unreserved-general category post. Against the said post, no horizontal reservation for woman was provided. There were three posts reserved for Scheduled Castes and two for the Economically Weaker Sections. One post in each of these categories was reserved horizontally reserved for women candidates. We are concerned with the one post falling in the general category for which no horizontal reservation for women was prescribed.

3. The petitioner offered his candidates against the general category post. On the basis of written examination held on 20th and 21st July, 2019, the High Court circulated a list of successful candidates, who were called for viva-voce. Amongst the general category candidates, one Rahul Singh having Roll No.1022 and the petitioner Ajay Dungrakoti having Roll No.1092, were called for viva-voce by the High Court. The result of the examination, namely, the written and the viva-voce was declared by the High Court, wherein Rahul Singh secured 247.16 marks and the petitioner secured 230 marks. They were at serial nos.1 and 2 in the merit list and they both belonged to the general category.

4. The result of the said examination was declared by the High Court on 23.08.2019. It discloses the names recommended to the State Government for appointment in Higher Judicial Services. Against the general category vacancy, the name of Mr. Rahul Singh was recommended. Since there was only one post for the general category, obviously, the name of the petitioner does not find mention in the said result. It appears that on the basis of two communications received from the State Government dated 15.11.2019 and 31.12.2019, the Full Court in its meeting held on 19.02.2020, resolved to reject the candidature of Mr. Rahul Singh. The communication to this effect was issued by the High Court of Uttarakhand to the State Government on 22.02.2020. This communication reads as follows:-

"Madam, With regard to the subject noted above, kindly refer to your letter no.426/XXX(4)/2019- 04(1)/2018 T. C. dated 15.11.2019 and letter no.556/xxx(4)/2019-04(1)/2018(T.C) dated 31.12.2019 of Additional Secretary, Personnel & Vigilance Section-

04, Government of Uttarakhand, by which, opinion of the Hon'ble Court has been sought in the matter.

2. In this regard, after considering the matter, Hon'ble Court has been pleased to recommend that the candidature of Sri Rahul Singh be rejected.

3. I am directed to communicate the aforesaid recommendation of the Hon'ble Court to the State Government.

4. You are, therefore, communicated with the opinion of the Hon'ble Court."

5. It appears that the petitioner subsequently learnt of Mr. Rahul Singh not being appointed against the general category vacancy. On 18.08.2020, he made an application under the Right to Information Act to the Public Information Officer, High Court of Uttarakhand seeking information whether, after the declaration of the result of the examination in question, Mr. Rahul Singh had been granted appointment, and if any decision has been taken in relation to the appointment of Mr. Rahul Singh, a copy of the same may be provided to him. On 30.08.2020, the petitioner raised similar queries to the State Government under the Right to Information Act. The Uttarakhand High Court responded to the queries raised by the petitioner on 19.11.2020, informing the petitioner that no appointment has been offered to Mr. Rahul Singh. He was further informed that the candidature of Mr. Rahul Singh has been rejected by the Full Court vide its Resolution dated 19.02.2020. The

extract of the Resolution was also communicated to him. The State Government also responded to the application moved by the petitioner under the Right to Information Act, informing the petitioner that while cancelling the candidature of Mr. Rahul Singh, in his place, Mr. Tarun has been offered appointment. At this stage itself we may observe that this response of the State Government was not completely accurate, inasmuch as, appointment was offered to Shri Tarun against a reserved vacancy, and not against the General Category post.

6. The petitioner made his representation to the Uttarakhand High Court praying that his name be recommended for appointment, since the recommendation made in favour of Mr. Rahul Singh had been withdrawn / rejected. This representation was made on 02.09.2020. He made other representations on 18.09.2020 and 05.10.2020 as well. These representations were rejected on 30.12.2020, without assigning any reason. Consequently, the petitioner preferred the present writ petition.

7. The submission of learned counsel for the petitioner is that, considering the fact that the petitioner was placed at serial no.2 on the merit list, and the candidate at serial no.1 of the merit list, namely, Mr. Rahul Singh was not found fit for appointment, and consequently, his recommendation made to the State Government was withdrawn/rejected, the Uttarakhand High Court should have proceeded to recommend the name of the petitioner for appointment against the general category vacancy, as he was the second most meritorious candidate after Mr. Rahul Singh, having secured 230 marks in the written and viva-voce examination.

8. Learned counsel submits that there was absolutely no reason assigned as to why the Full Court in its meeting held on 19.02.2020 did not simultaneously proceed to recommend the name of the petitioner, when it passed the Resolution to withdraw/reject the recommendation earlier made in favour of Mr. Rahul Singh in the light of aforesaid two communications dated 15.11.2019 and 31.12.2019 from the Government of Uttarakhand.

9. Learned counsel submits that even though a candidate may not have a vested right to seek appointment merely because his name appears on the merit list as the most meritorious candidate, and because vacancies exist, at the same time, he submits that the decision not to make the recommendation for appointment in favour of such a candidate has to be rationale and cannot be arbitrary or whimsical.

10. Learned counsel submits that the process of recruitment was initiated by the Uttarakhand High Court precisely for the purpose of filling six vacancies, when it issued the advertisement dated 10.04.2019. A long drawn recruitment process was undertaken, wherein, applications were invited from candidates; written examination was conducted followed by a vice-voce examination; publication of the final result and recommendation of the candidates to the State Government as per merit for appointment - including against the general category vacancy.

11. Learned counsel submits that the recommendation in favour of Mr. Rahul Singh was withdrawn/rejected on certain aspects being raised by the State Government in its communications dated 15.11.2019 and 31.11.2019. He submits that the recruitment process did not come to an end,

merely upon making of recommendation of the name of Mr. Rahul Singh against the general category vacancy, since that recommendation was subsequently withdrawn / rejected, and, as a matter of fact, no letter of appointment was issued to Mr. Rahul Singh by the State Government, and consequently, Mr. Rahul Singh never had occasion to join the post. He further submits that the recruitment process was not scrapped - either generally, or in relation to the general category vacancy, for any germane or good reason. He further submits that, in fact, Mr. Tarun, who was a scheduled caste candidate, was offered appointment even though he was not one of the candidates whose name figured in the declaration of result by the High Court on 23.08.2019. Thus, merely because the name of the petitioner did not figure in the result dated 23.08.2019, the petitioner could not be denied appointment against the general category post, as he was the most meritorious general category candidate remaining in the field, since Mr. Rahul Singh's candidature was withdrawn / rejected. In support of his submissions, learned counsel for the petitioner has placed reliance on the following decisions:-

A. Mrs. Neelima Shangla, Ph.D candidate versus State of Haryana and others, (1986 (4) SCC 268).

B. R. S. Mittal versus Union of India, (1995 Supp (2) SCC 230).

D. Jai Narain Ram versus State of U.P. and others, (1996 (1) SCC 332).

E. Manoj Manu and another versus Union of India and others, (2013 (12) SCC 171).

F. State of U.P. and another versus Rajiv Kumar Srivastava and another (CC 10604 of 2013) decided by the Supreme Court on 26.07.2013.

G. State of Uttarakhand and others versus Jitendra Joshi, (2020 SCC Online Utt 1180).

H. Dayaram versus State of Uttarakhand and others (Uttarakhand High Court, WPSB No.241 of 2007, decided on 13.05.2013).

12. On the other hand, the submission of Mr. Shobhit Saharia, learned counsel for respondent no.1- High Court, is that merely because the name of petitioner appears in the merit list, is no ground for this Court to issue a direction or mandamus, to make a recommendation to the State Government, to offer appointment to the petitioner against the un-reserved / general category post in the Uttarakhand Higher Judicial Service-2019. In this regard, he places reliance on, firstly, the decision of the Supreme Court in Shankarsan Dash versus Union of India, 1991 (3) SCC 47. He also relies on Raj Rishi Mehra and others versus State of Punjab and another, 2013 (12) SCC 243.

13. Mr. Saharia submits that under the Recruitment Rules, there was no obligation for the High Court to maintain a wait list of the candidates, and therefore, once the recommendation made in favour of Mr. Rahul Singh was withdrawn/rejected, there was no obligation for the High Court to make another recommendation in favour of the petitioner since his name did not figure in the result

published on 23.08.2019. He further submits that in the meantime, on 22.05.2020, the Government of Uttarakhand issued G.O No.124/XXX(2)/2020-53(01)/2001, circulating the 25-Point Roster, which provided for horizontal reservation for women candidates of Uttarakhand against the general category posts. He submits that, consequently, the un-filled general category seat of 2019 examination stood horizontally reserved for the women candidates of Uttarakhand belonging to the general category. He submits that the fresh recruitment process was, firstly, undertaken in the year 2021, which was scrapped. He submits that yet another recruitment process was initiated in the year 2022. However, that process has yet not attained finality.

14. Mr. Saharia submits that with the initiation of fresh recruitment process firstly in the year 2021, and thereafter in the year 2022, the recruitment process in question in respect of the year 2019 stood scrapped.

15. We have considered the submissions of learned counsels and we are of the considered view that the denial of recommendation of the petitioner's name, simultaneously with the withdrawal / rejection of the recommendation made in favour of Mr. Rahul Singh, on 19.02.2020, which was communicated to the State Government on 22.02.2020, was without any disclosed reasons, and the said decision was unreasoned and irrational.

16. At this stage, we may notice the decisions relied upon by learned counsels on either side.

17. Mrs. Neelima Shangla (supra) is a case relating to appointment to the Haryana Civil Service (Judicial Branch). The petitioner's grievance before the Supreme Court was that though there were 54 vacancies altogether, the Public Service Commission recommended the names of 26 candidates only, in which they included 17 from the general category. The petitioner claimed that 32 candidates in order of merit from the general category could have been selected for appointment, and that the Service Commission illegally withheld the names of the successful candidates from the Government and the High Court. She placed reliance on the relevant rules relating to appointment of Subordinate Judges in Haryana.

18. We may note that under those rules, the names of the selected candidates were required to be entered in the register maintained by the High Court strictly in the order of merit, and appointments were to be made from the names entered in that register strictly on merit. In the course of this decision, the Supreme Court, inter alia, observed - "It is, of course, open to the government not to fill up all the vacancies for a valid reason." The Supreme Court went on to observe -

"However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the government and the High Court before the number of persons selected for appointment is restricted."

19. In the present case, the recruitment process was initiated by the High Court to fill up 06 vacancies, including the one falling in the general category. That recruitment process was undertaken at a great cost and expenditure of valuable time and resources, and the objective was to

fill up the existing vacancies. The intention of the High Court, while undertaking the said recruitment process, was not to complete a mere formality or undertake a futile exercise. The fact that the High Court recommended the name of Mr. Rahul Singh to the State Government for appointment against the general category vacancy shows that the High Court was fully satisfied with the examination process which involved written test and viva-voce. The High Court was also satisfied with the determination of the inter se merit of the candidates as it recommended the name of, inter alia, Mr. Rahul Singh against the general category post, as he was the highest scorer in the written examination and viva-voce. Since the recommendation of the name of Mr. Rahul Singh was subsequently rejected by the Full Court in its meeting held on 19.02.2019, there was no reason why the name of the petitioner - who was the second most meritorious candidate belonging to the general category, should not have been recommended for appointment to the State Government. As observed by the Supreme Court, the selection could not have been arbitrarily restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. For the High Court to decide not to recommend the name of the petitioner, there should have been conscious application of mind and germane reasons when the said decision was taken, or ought to have been taken.

20. Manoj Manu (supra) was a case where the names of the appellants were not recommended by the UPSC, even though their names figured in the reserve list maintained by it. The UPSC did not recommend their names, even though there were vacancies available which could have been filled by the appellants if their names had been so recommended. The claim of the appellants seeking recommendation of their names to fill up the existing vacancies was rejected by the Central Administrative Tribunal. The High Court also rejected their writ petition. The Supreme Court found merit in the case of the appellants. In paragraph 12 of its judgment, the Supreme Court observed as follows:

"12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required / advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies."

(emphasis supplied)

21. Thus, it would be seen that once again the Supreme Court has reiterated the same principle - that though a person whose name is included in the select list does not acquire any right to be appointed, and the Government may decide not to fill up the vacancy for valid reasons, however, such a decision on the part of the Government not to fill up the required / advertised vacancies should not be arbitrary or unreasonable, but must be based on sound, rational and conscious application of mind.

22. As we have noticed here-in-above, the Full Court decision of the High Court dated 19.02.2019, is devoid of any reasons as to why, while rejecting the recommendation made in favour of Mr. Rahul Singh, the name of the petitioner was not recommended.

23. R.S. Mittal (supra) is another case where the appellant, whose name was included in the panel of selected candidates, was not appointed against the advertised post. The Central Administrative Tribunal rejected his claim. The said decision of the Tribunal was challenged before the Supreme Court. The Supreme Court, inter alia, observed in its decision as follows:

"10. The Tribunal dismissed the application by the impugned judgment on the following reasoning :

(a) The selection panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment.

The recommendations of the Selection Board were directory and not mandatory and were not therefore enforceable by issue of a writ of mandamus by the Court.

(b) The letter of Ministry of Home Affairs dated 08.02.1982 which extends the life of panel till exhausted is not relevant in the present case. In the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July 1989.

It is no doubt correct that a person on the select 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 select panel or decline to make the appointment on its whims. 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, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

(emphasis supplied)

24. Thus, the Supreme Court again reiterated the principle that the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. 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, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In that case, the Supreme Court found that there was mere inaction on the part of the Government and no reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not

offered to the candidates expeditiously and in accordance with law. The position appears to be similar in the facts of the present case.

25. In *Jai Narain Ram* (supra), the Supreme Court went a step further and directed the Public Service Commission to recommend the names of the 04 reserved candidates belonging to Scheduled Castes against 04 posts since the 04 candidates who were selected did not join service. The Supreme Court in para 7 of this judgment observed as follows:

"7. Right to seek appointment to a post under Article 14 read with Articles 16(1) and (4) is a constitutional right to equality. The State failed to perform its constitutional duty to requisition the PSC to recommend the next qualified persons to the post reserved for Scheduled Castes. Under these circumstances, the denial of appointment to the appellant and three others above him is unconstitutional. Therefore, the respondents are not justified in denying the claim of the appellant for the appointment to the above post."

26. We may now take notice of the judgment of the Supreme Court in *Rajiv Kumar Srivastava* (supra). In that case the Allahabad High Court issued a direction to the State of U.P. for appointment of Rajiv Kumar Srivastava as Lecturer in Government Ayurvedic College against the vacancy which remained unfilled due to non-joining of another candidate, namely, Dr. Vinod Kumar Lavania. The appeal preferred by the State of U.P. was dismissed by the Supreme Court. The submission of the State Government that it had taken a policy decision not to operate the waiting list and, as such, respondent No. 1

- Rajiv Kumar Srivastava, was not entitled to be appointed against the vacancy which remained unfilled due to non-joining of Dr. Vinod Kumar Lavania was rejected by observing as follows :-

"In our view, the policy decision taken by the State Government does not have any bearing on the case of respondent No. 1 because he acquire a vested right to be appointed against the advertised post which remained unfilled due to non-joining of the candidate who was more meritorious than him. It is neither the pleaded case of the petitioners nor it has been argued before us that Dr. Vinod Kumar Lavania had joined the service and then resigned. Rather, it is the admitted case of the parties that one of the advertised posts remained unfilled due to non-joining of the selected candidate. This being the position, the concept of waiting list cannot be brought in picture for defeating the legitimate right of respondent No. 1 appointed against the unfilled post."

(emphasis supplied)

27. Thus, it appears that even if a letter of appointment had been issued to Mr. Rahul Singh, and he had not joined - for whatever reason, even then it could not be said that the recruitment process got exhausted or stood culminated. However, the fact situation in the present case is even more glaring. As noticed above, merely a recommendation had been made by the High Court in favour of Mr.

Rahul Singh to the State Government to appoint him against general category post. That recommendation was subsequently rejected by the High Court itself. That recommendation did not fructify into an appointment order. Obviously, Mr. Rahul Singh never joined the post, since no offer of appointment was ever issued to him. Thus the High Court should have proceeded to recommend the name of the petitioner to the Government, as it had no valid reasons as on 19.02.2019, not to recommend his name for appointment against the general category vacancy. The whole purpose of maintaining the merit list would be defeated, if the said merit list were not to be operated upon. If the most meritorious candidate was not initially recommended, or the recommendation made was withdrawn / rejected subsequently upon disclosure of certain relevant and germane facts, the only reasonable course open to the High Court was to recommend the name of the next meritorious candidate, in the normal course, unless there were certain disclosed and germane reasons. Unfortunately, that was not done and, even when the petitioner represented, the representation was turned down without assigning any reasons.

28. Jitendra Joshi (supra) is a decision of Division Bench of this Court. In this case, 05 persons were selected out of the male quota under the freedom fighters quota. The person at serial No. 1, namely, Mr. Naresh Chandra Durgapal - out of said 05 persons, did not participate in the medical test which was a mandatory precondition for appointment. The respondent Jitendra Joshi staked his claim in respect of the post for which Naresh Chandra Durgapal did not participate in the medical test. This Court held that in the aforesaid circumstances, the next person in the list, i.e., the respondent Jitendra Joshi should have been appointed. This Court observed in paragraph 7 as follows:

"7. Be that as it may, the material on record indicates that gross injustice has been committed by the State. When Shri Naresh Chandra Durgapal's appointment could not have been made, the next person in the merit list should have been appointed."

29. Dayaram (supra) is a short order of a Division Bench of this Court. In that case the selected Scheduled Caste candidate was not appointed for the reason that he was treated to be not a Scheduled Caste of Uttarakhand. The petitioner then staked claim against the vacant post on the basis of his merit. The Division Bench disposed of the writ petition by observing as follows:

"We, accordingly, dispose of this writ petition by directing the Commission to ascertain whether the petitioner can be recommended for the said post on the basis of merit and, if so, to make a recommendation in favour of the petitioner. We, at the same time, direct the State Government to ascertain, whether the petitioner is a scheduled caste of the State of Uttarakhand and, if so, to take such steps as may be required for honouring the said recommendation of the Commission."

30. Shankarsan Dash (supra) has been relied upon by Mr. Saharia in support of his submission that a candidate included in the merit list has no infallible right to appointment, even if the vacancy exists. There is no quarrel with this proposition, as we have already noticed here-in-above. However, even in Shankarsan Dash (supra), the Supreme Court, inter alia, observed -

"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."

31. Similarly, Raj Rishi Mehra (supra) relied upon by Mr. Saharia is of no avail, since in this judgment as well, the Supreme Court reiterated the same legal principle as we have taken note of here-in-above.

32. The submission of Mr. Saharia that the High Court was not obliged to maintain a wait list of the candidates and that, once the recommendation made in favour of Mr. Rahul Singh was withdrawn / rejected, there was no obligation for the High Court to make another recommendation in favour of the petitioner, does not appear to be correct. This is for the reason that the issue with regard to maintenance or operation of a wait list does not arise in the present case. As observed by the Supreme Court in Rajiv Kumar Srivastava (supra) the petitioner acquired a vested right to be, at least considered for recommendation for appointment against the advertised post, as the recommendation made in favour of Mr. Rahul Singh - which was merely a recommendation made to the Government, did not fructify into an appointment, and it was subsequently rejected by the Full Court on 19.02.2019. Thus, the concept of wait list cannot be brought into picture for defeating the legitimate right of the petitioner.

33. Reliance placed by Mr. Saharia on the fact that, in the meantime, on 22.05.2020, the Government of Uttarakhand issued G.O. No. 124/XXX(2)/2020- 53(01)/2001, circulating the 25-Point Roster, which provided for horizontal reservation for women candidates of Uttarakhand against the general category post is also of no avail. This is for the reason, that when the decision was taken by the Full Court on 19.02.2019 to reject the recommendation made in favour of Mr. Rahul Singh, there was absolutely no impediment in recommending the name of the petitioner, who was the second most meritorious candidate on that date - which is the crucial date for consideration. On that date, the aforesaid G.O. dated 22.05.2020 was not in existence. The said G.O. came to be issued much later and, in our view, the same cannot be cited as the reason not to fill up the general category seat of the 2019 examination. The further steps taken by the High Court to hold fresh recruitment processes in the year 2021, and thereafter in the year 2022, also cannot be to the prejudice of the petitioner, who acquired a right to be considered for the said post, as there was no germane reason - either existing, or recorded by the Full Court on 19.02.2019, for not recommending his name for appointment to the Government.

34. For the aforesaid reasons, we hold that the petitioner was entitled to be considered for recommendation by the High Court to the State Government for appointment against the general category seat in the Uttarakhand Higher Judicial Service - 2019 vacancy. We, therefore, direct the High Court of Uttarakhand to consider the candidature of the petitioner and, unless there is a good reason, which existed as on 19.02.2019 for not recommending the name of the petitioner for appointment against the aforesaid vacancy, his name should be recommended to the State of Uttarakhand for his appointment.

35. In case, the petitioner's name is so recommended, and the State of Uttarakhand grants appointment to the petitioner in terms of the said recommendation, his appointment shall relate back to the date on which he would normally have been appointed. Since that development did not occur, we estimate that if the name of the petitioner had been recommended on 21.02.2019 - when the rejection of the recommendation of Mr. Rahul Singh was communicated to the Government, the appointment would have come about within a month or so. We, thus direct that the petitioner will be deemed to have been appointed from 01.04.2019, provided his appointment is not denied for any good and germane reason. In that eventuality, he will be entitled to notional seniority from such date. His pay shall also be fixed notionally from the said date. However, since he has not served, he shall not be entitled to claim any back wages.

36. We also direct the High Court to work out the impact of the appointment that may be granted to the petitioner, on the vacancy position vis-à-vis the recruitment process initiated in the year 2022.

37. The petition stands disposed of in the aforesaid terms leaving the parties to bear their respective costs.

VIPIN SANGHI, C.J.

RAMESH CHANDRA KHULBE, J.

Dated: 22nd August, 2022 Negi