

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No. 13587/CAT of 2015**

**Date of decision: 10.07.2015**

Union of India and others

....Petitioners

Versus

Mahinder Paul and another

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant  
Hon'ble Mr. Justice P.B. Bajanthri**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Singla, Advocate  
for the petitioners.

**P.B. Bajanthri, J.**

Petitioners are Union of India and three others. They are aggrieved by the order of the CAT, Chandigarh Bench dated 30.05.2014 passed in O.A. No.232/CH/2012. Facts are like this. Respondent No.1 was selected and appointed as a Casual Labourer (Gardener) on Ad hoc basis at Headquarter Western Command, Chandigarh w.e.f. 01.09.1993. He was paid a sum of Rs.750/- per month. He has been uninterruptedly working as a casual worker since than.

2. The Government of India launched a Special Recruitment Drive to fill up backlog of reserved vacancies of SCs and STs. In pursuance of the aforesaid Special Recruitment Drive to fill up backlog vacancies, some of the regular posts like Gardener, Messengers and Cook were advertised. Respondent No.1 is one of the candidate applied for recruitment to the post of Gardener. He was called for interview on 03.02.1994 and was selected

for the post of Gardener. However, for want of release of vacancy appointment order was not issued. There were number of correspondence between the selecting authority and the AG's Branch, New Delhi-petitioner No.3 herein. Vacancies of Messengers and Cook were released by the Army Headquarter in the year 1996 whereas Gardener vacancy was not released despite request made by the 4th petitioner to the 3<sup>rd</sup> petitioner.

3. The Additional Dte General of Staff Duties, SD-7, (Adm. Civilians), General Staff Branch, AHQ, DHQ, New Delhi clarified vide its letter dated 07.11.2004, that select list prepared as per the Government orders on the subject and approved by the appointing/delegated appointing authority remains valid till it is exhausted. It was further clarified that the SC candidates in the earlier valid select list, if any, are first to be given appointment and the fresh applications from SC candidates are to be invited against the remaining unfilled SC vacancies thereafter.

4. In this background, the AGs Branch released the vacancy of the Gardener pertains to the year 2005-09. However, respondent No.1 was not absorbed on regular basis against the released vacancy. Aggrieved by the inaction of the petitioners, respondent No.1 approached to CAT, Chandigarh Bench. The CAT after perusal of the facts of the case read with documents directed the petitioners to consider name of the Ist respondent for released vacancy of Gardener to Western Command Headquarters. It was further directed to comply with the aforesaid direction within a period of 3 months from the date of receipt of a certified copy of the order.

5. The petitioners aggrieved by the directions of the Tribunal filed this writ petition contending that Gardener vacancy was not existing as on

the date of Ist respondent's selection namely in the year 1994 by oversight the post was advertised along with Messengers and Cook. No doubt vacancy of Messenger and Cook were released by Army Headquarter in the year 1996 and the same were filled up in pursuance of the Special Recruitment Drive to fill up backlog of reserved vacancies earmarked for SCs and STs therefore, respondent No.1 has no right to seek any relief for the purpose of release of vacancy and appointing him to the post of Gardener. The next contention is that Gardener vacancy was released by the AGs Branch pertains to the year 2005-09 therefore, the said vacancy cannot be converted OR related back to Special Recruitment Drive 1993. Therefore, the Tribunal has felt error in directing the petitioner to consider name of the respondent to regularize the services against Gardener vacancy released in the year 2005-09.

6. We have perused the petition.

7. The respondents proceeded with the selection procedure in which respondent No.1 was selected for the post of Gardener. Respondent No.1 should not be penalized in not appointing him. At this juncture, it is to be noted that the petitioners have never withdrawn the recruitment which were notified in the year 1994 and so also not cancelled the selection of the Ist respondent herein.

8. In this background, it is highly unreasonable on the part of the petitioners contending that Gardener vacancy is not available from 1994 to 2005. In fact respondent No.1 could have been accommodated against a vacancy in which he has been appointed on temporary basis. It is to be seen that when the Ist respondent is working as a Gardener how he has been

asked to work as a Gardener in the absence of vacancy. That apart vacancy of Gardener was released in the year 2005 and the same should have been filled up in view of the clarificatory order issued by the AG dated 07.11.2004 (Annexure A-6) wherein it has been clarified that the SC candidate in the earlier valid select list, if any are Ist to be given appointment. In view of this aforesaid clarificatory order, Ist respondent is entitled for appointment to the post of Gardener on regular basis. The petitioner No.3 being a Public Servant entrusted with duty and power to implement constitutional policy under Article 16(4) and 16(4-A) and all interrelated directive principles, should exhibit transparency in implementation and of accountable for due effectuation of constitutional goals.

9. Contention of the petitioner that the gardener vacancy released in the year 2005-09 cannot be converted or reverted back to Special Recruitment Drive 1993 is contrary to the clarificatory order dated 07.11.2004. Therefore, there is no infirmity in the order of the Tribunal in directing the petitioners to consider the grievance of the Ist respondent to appoint him as Gardener pursuant to selection. Accordingly, the writ petition is dismissed.

**(SURYA KANT)**  
**JUDGE**

**(P.B. BAJANTHRI)**  
**JUDGE**

**10.07.2015**  
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