

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

**CWP No. 7428 of 2012(O&M)**

Date of Decision: 20/01/2015

Guneet Pal Singh Sodhi

...Petitioner

Versus

Punjab State Power Corporation Ltd. and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr. R.S. Cheema, Advocate  
for the petitioner.

Mr. Vishal Chaudhary, Advocate  
for the respondent – Corporation.

Mr. Daman Dhir, Advocate  
for respondent No.2.

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**HARINDER SINGH SIDHU, J.**

**CM No. 14466-CWP of 2014**

Civil Misc. Application is allowed.

Written statement of respondent No.2 is taken  
on record.

**Main Case.**

Vide advertisement No. CRA-272/2011 dated  
16.11.2011, respondent No.1 invited applications for posts  
of various categories including 20 posts of Assistant  
Manager (IT Systems). It was specified in the

advertisement that the reservation of posts for various categories would be as per the reservation policy of the Punjab Government. The petitioner being fully eligible, applied for the post of Assistant Manager (IT Systems), under Freedom Fighter category as he was the ward of Freedom Fighter. The applications were required to be submitted online and the petitioner's application form submitted online was duly accepted.

The selection for the post of Assistant Manager (IT Systems), was based on written test only, which was held on 24.03.2012. The petitioner was issued an admit card showing his category as 'Freedom Fighter'. He appeared for the written test. The result of the test was declared on 11.04.2012 and those placed in the merit list were called for verification of documents before issuing them appointment letters. The petitioner was not one of those. He checked the result from the internet. He had secured 51.75 marks. Respondent No.2 had secured 51.50 marks, which were less than the petitioner, but he had been called for verification of documents.

The petitioner visited the office of respondent No.1, to know the reason of his not being called for verification of documents despite securing more marks than respondent No.2. He was informed that as he had applied against the Freedom Fighter category and there is

no post available under the Freedom Fighter category, hence he could not be considered for selection and appointment to the post of Assistant Manager (IT Systems).

Aggrieved, the petitioner has filed the present writ petition praying for directions to respondent No.1 to select and appoint the petitioner in place of respondent No.2, as he has secured more marks in the written test than respondent No.2.

In the written statement filed on behalf of respondent – Corporation, the factual position regarding the marks secured by the petitioner and respondent No.2 has not been disputed. The only defence is that respondent No.2 was called for verification of documents on the basis of his merit in the General category. It is stated that there were total 20 posts of Assistant Manager (IT Systems) and as per reservation policy, only 1 per cent of the posts were reserved for Freedom Fighter category. In the hundred point roster, the vacancy in the category of Freedom Fighters falls at Sr. No. 63 and as such, no post was available in this category. It was asserted that the reservation under Freedom Fighter category is horizontal reservation and as such the claim of the petitioner could not be considered in the General Category as he had applied in the Freedom Fighter Category. Reliance has

been placed on Clause 5 of the advertisement (Annexure P-1), that the category once filled in the application form will not be allowed to be changed and no benefit of other category will be admissible later on.

I have heard Sh. R.S. Cheema, learned counsel for the petitioner, Sh. Vishal Chaudhary, learned counsel for respondent No.1 and Mr. Daman Dhir, learned counsel for respondent No.2.

Learned counsel for the petitioner has stressed that assuming there is no vacancy under the Freedom Fighter category, the petitioner being higher in merit than the last candidate in the General category is entitled to be considered and appointed in the General Category.

Learned counsel for respondent No.1 with reference to advertisement has stressed that it is clearly specified therein that the category wise and discipline wise number of posts will be worked out on the basis of running roster points as per reservation policy of the Punjab Government. He has further referred to condition of the advertisement that the category once filled in the application form cannot be allowed to be changed.

Learned counsel for respondent No.2 has stressed that he has been working for almost three years. There is no fraud or misrepresentation on his part in securing the appointment and that even if the petition is to

be allowed, his appointment deserves to be protected.

There is merit in the contentions of the Learned counsel for the petitioner whereas those of the Learned counsel for respondent No. 1 are liable to be rejected.

It has been settled by the Hon'ble Supreme Court in a long line of cases that in the first instance general category seats are to be filled up purely on the basis of merit of the candidates irrespective of their category. Then the seats reserved for Scheduled Castes, Scheduled Tribes and Backward Classes are to be filled and candidates belonging to these categories who have been selected on merit in the open general category are not to be counted against the quota reserved for these categories. The third stage is to find out how many candidates belonging to the horizontal reservation e.g. Women, Sportsmen, Ex-Servicemen, Freedom Fighters etc. have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates.

This position, including the concept of vertical and horizontal reservation has been explained by the

Hon'ble Supreme Court in **Rajesh Kumar Daria v. Rajasthan Public Service Commission, (2007) 8 SCC 785, at page 789:**

“6. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In *Indra Sawhney v. Union of India* the principle of horizontal reservation was explained thus: (SCC pp. 735-36, para 812)

“All reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations—what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected

against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of Backward Class of citizens remains —and should remain—the same.”

7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta v. State of U.P.* (SCC p. 185, para 18)thus:

“The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied—in case it is an overall horizontal reservation—no further question arises. But if it is not so satisfied, the requisite

number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)”

**8.** We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be: “For SC: 30 posts, of which 9 posts are for women.” We find that many a time this is wrongly described thus: “For SC: 21 posts for men and 9 posts for women, in all 30 posts.” Obviously, there is, and there can be, no reservation category of “male” or “men”.

**9.** The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are “vertical



reservations”. Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are “horizontal reservations”. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide *Indra Sawhney*, *R.K. Sabharwal v. State of Punjab*, *Union of India v. Virpal Singh Chauhan* and *Ritesh R. Sah v. Dr. Y.L. Yamul*.) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of “Scheduled Caste women”. If the number of women in such list is

equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four

woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that “SC women” have been selected in excess of the prescribed internal quota of four.)”

Thus, the act of the respondents in not considering the petitioner for appointment in the open general category on the basis of his merit position is not justified. It is, accordingly held that the petitioner was entitled to be considered for selection and appointment on the basis of his merit in the general category candidates irrespective of the fact that he had applied in the Freedom Fighters category and as admittedly his merit having secured 51.75 marks as against 51.50 secured by respondent No.2 was higher he was liable to be appointed to the post of Assistant Manager (IT Systems) in preference to respondent No. 2.

The consequence of the above would be that respondent No.2 would have to make way for the petitioner. But taking into consideration the fact that respondent No.2 after his appointment has been working for almost three years, this Court had on 16.12.2014 asked the Learned Counsel for the respondent- Corporation to verify as to whether the parties to the petition could be adjusted against an additional post. The response from the

Corporation has not been positive.

In this view of the matter, taking note of the fact that there was no fault or misrepresentation on the part of respondent No.2 in securing appointment and that he has worked for almost three years, I am of the view that it would be unfair and unjust to disturb his appointment. The respondent No.1 is, accordingly, directed to take necessary steps to protect his appointment.

In holding as above, I am relying on a decision of this Court in **Harinder Pal Singh Vs. State of Punjab and others** (CWP No. 18419 of 2013 decided on 3.11.2014). In this case while allowing the petition and directing the appointment of the petitioner therein, which would have entailed ousting the respondent from the zone of appointment, the Court directed that the appointment of the respondent be not disturbed as there was no fault or misrepresentation on his part in securing appointment and he had worked for about one year.

In another decision **Sahil Aggarwal Vs. State of Punjab, 2014 (3) SCT 813**, where some candidates were appointed on the basis of result of competitive examination and later on it was found that there was some error either in the questions or answer key, their appointments were not set aside, even though they did not make it on merit in terms of the revised result taking note

of the fact that there were no allegations of fraud or misrepresentation on their part and they had worked for three years or more.

Resultantly, this writ petition is allowed. Respondent No. 1 is directed to offer appointment to the petitioner on the post of Assistant Manager (IT Systems) subject to the necessary formalities like medical and police verification etc. The petitioner would be entitled to seniority and notional pay fixation from the date the appointments were originally made. However, it is made clear that he will not have the right to claim arrears of salary for the period prior to his joining.

The appointment of respondent No. 2 will not be disturbed.

Disposed of accordingly.

20/01/2015  
Atul

**(HARINDER SINGH SIDHU)**  
**JUDGE**