

C.W.P No.24324 of 2014 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No.24324 of 2014 (O&M)

DATE OF DECISION: 23.08.2016

Ronnie Singh Salh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Sube Sharma, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

DAYA CHAUDHARY, J.

C.M. No. 3766 of 2015

This application has been filed for placing on record replication to the written statement filed by respondents No.1 and 2.

Application is allowed and replication to the written statement filed by respondents No.1 and 2 is taken on record.

Learned State counsel has also filed rejoinder in the Court today and the same is taken on record. A copy thereof has been supplied to the counsel opposite in the Court itself.

C.W.P. No. 24324 of 2014

Brief facts of the case as made out in the present petition are that the respondent-Department issued an advertisement dated 28.7.2011,

vide which, applications were invited for filling up the posts of 120 male and 30 female Sub Inspectors in Punjab Police (District Cadre). In pursuance of the said advertisement, the petitioner applied for the post of Sub Inspector (General Category). After qualifying the physical test, the petitioner appeared in written test held on 11.9.2011 and after qualifying the same, he was called for interview on 25.11.2013. The petitioner appeared in the interview and ultimately his name figured in the list of selected candidates at Sr. No. 69 in General Category. However only, the candidates upto Sr. No. 61 were offered appointments. The candidates from Sr. No. 60 to 71 secured same marks but were kept in merit list according to their age. Subsequently the petitioner sought information under Right to Information Act, 2005, whereby, it was informed that 61 candidates were selected but 8 did not join their duties. Seven persons from waiting list were offered appointment vide instructions dated 25.6.2014, 2.9.2014 and 9.9.2014 but one candidate from waiting list also refused to join and thus, two posts are still lying vacant. The petitioner after getting information under RTI Act has claimed his right over the vacant post being next in merit. He made a detailed representation to DIG Administration claiming his right of appointment but the same was rejected on the ground that name of the petitioner was neither reflected in the list of selected candidates nor in the waiting list prepared by the respondent-Department.

The order of rejecting the claim of the petitioner has been challenged with a further prayer to appoint him as two posts are still lying vacant and persons upto Sr. No. 68 have already been appointed, whereas, the name of the petitioner figured at Sr. No. 69.

Learned senior counsel for the petitioner submits that the action

of the respondents in rejecting the claim of the petitioner is arbitrary, mala fide and is not sustainable in the eyes of law. Learned senior counsel further submits that some of the candidates, who were also in the waiting list have been appointed but the claim of the petitioner has wrongly been rejected on the ground that his name even does not figure in the waiting list. Learned counsel for the petitioner has also relied upon the judgments of this Court in the case of **Rohtas Singh Kharub Vs. State of Haryana** 1989 (6) SLR 45, **Vinay Singh Vs. State of Haryana** 1993 (1) S.C.T. 730 and C.W.P. No. 13493 of 2010 (**Ranjit Singh Vs. State of Punjab and others**) decided on 11.3.2015, in support of his contentions.

Learned counsel for respondent-State opposes the submissions made by learned counsel for the petitioner and submits that the judgments relied upon by the learned senior counsel for the petitioner are not applicable in the present case as total 61 candidates were selected in General category and seven were in waiting list. The selection process was closed after declaration of the result. The name of the petitioner was neither in the list of 61 selected candidates nor in the waiting list consisting of seven candidates and, therefore, he has no right to be appointed. Learned counsel for the respondent-state has also relied upon the judgment of Hon'ble the Apex Court in the case of **Surinder Singh Vs. State of Punjab** 1998 AIR (SC) 18 in support of his contentions, wherein, it was held that no appointment can be made against more than the advertised posts even if more candidates are selected. It has also been held that waiting list cannot be used as a source of recruitment against future vacancies.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Admittedly, in pursuance of advertisement dated 28.7.2011, the petitioner applied for the post of Sub Inspector in General Category. The name of the petitioner was at Sr. No. 69 in the final merit list of the General Category after qualifying the physical test as well as written test. It is also not disputed that the candidates from Sr. No. 61 to 70 secured same marks and were kept in the merit list as per their age. As per information sought under RTI Act, total 61 candidates were selected but 8 did not join. Thereafter seven candidates were offered appointment from the waiting list and even one candidate from the waiting list refused to join. It has also been informed during arguments that two posts are still lying vacant. The petitioner being next in merit has claimed his right over one out of two vacant posts. The claim of the petitioner has been rejected only on the ground that his name has neither been reflected in the list of selected candidates nor in the waiting list. The argument of learned counsel for the respondent-State is that the waiting list cannot subsist for a long period and the petitioner was not even in the waiting list. Moreover, the purpose of waiting list is only to appoint the person against the post which fell vacant due to non-joining of the selected candidate.

Similar controversy was dealt with in **Ranjit Singh's case (supra)**. In that case, applications for filling up of 5293 vacancies were invited, which were later on enhanced to 5578 vide subsequent advertisement. The petitioner in that case belonged to BC category and was at Sr. No. 3 in the waiting list. Two candidates before him in the waiting list were already recruited but four posts were lying vacant. The petitioner in that case claimed his right to be appointed in the category of BC as the post was lying vacant. The writ petition was disposed of with a direction to

respondents to consider his claim against BC category in case the post was lying vacant. In **Vinay Singh's case (supra)**, the petitioner was selected and appointed as an Excise and Taxation Officer. He claimed that on the basis of his merit, he was entitled to be appointed to HCS (Executive Branch) as person at Sr. No. 7 in the merit list did not join. The petitioner was at Sr. No. 8 and he claimed his right to the vacancy which had originally been offered to the person, who did not join. The petitioner was held entitled to be appointed to the post of HCS (Executive Branch) being the next in the merit list.

Undoubtedly, the selection does not confer any indefeasible right to be appointed but the State cannot deny the appointment to a person, who has duly been selected. Nothing has been pointed out as to how the petitioner has been denied the appointment against the post, which has fallen vacant due to non-joining of the candidates. Simply it has been rejected on the ground that the petitioner was not part of the selected list or the waiting list. It is also not disputed that the petitioner was next in merit to the candidate who refused to join duty. The argument of learned counsel for respondent-State cannot be accepted that there was delay in making claim on the post as this petition was filed in the year 2014 and last candidate, namely, Ankardeep Singh, who was appointed from waiting list was given appointment two months back only.

Same view was taken by this Court in the cases of **Sarabdeep Kaur Vs. State of Punjab and another** 2016 (1) S.C.T. 83 and **Satwinder Singh Vs. State of Punjab and others** 2016 (1) S.C.T., 268, wherein, it was held that in case the vacancies remain unfilled by reason of non-joining of selected candidates, then the candidate next below in the merit deserves

to be considered against unfilled vacancy.

In view of the facts as well as law position as explained above, there is merit in the contentions raised by learned senior counsel for the petitioner. Since two posts are still lying vacant, the petitioner has right to be considered against vacant posts.

Accordingly, the present petition is allowed and the respondents are directed to consider the case of the petitioner for appointment on the post of Sub Inspector within a period of two months from the date of receipt of copy of the order.

August 23, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes