

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13615 of 2014.

Date of Decision:-25.07.2017.

Anoop Garg

.....Petitioner

Versus

High Court of Punjab and Haryana at Chandigarh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sourabh Goel, Advocate for the petitioner.

Mr. G.S. Attariwala, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has sought for the following relief:-

i) issue a writ, order or direction in the nature of mandamus directing the respondents to consider the case of the petitioner for appointment to the post of restorer as per his merit (48.45 marks) against the posts in general category which are lying vacant due to non joining of the selected candidates and when the cut of in the general category is 48.50;”

Petitioner is a candidate for recruitment to the post of Restorer pursuant to the advertisement issued vide Annexure P-1. His grievance is that he is fully eligible if the 82 posts earmarked for general category are filled up. In that event petitioner's name is required to be considered whereas respondents have reduced the number of vacancies from 83 to 81.

Learned counsel for the petitioner pointed out from the

documents that 3 of the selected candidates have not reported for duty pursuant to the order of appointment issued to them. He has also pointed out that on 04.12.2013, Committee has taken a decision in respect of physically handicap category candidates to accommodate next eligible candidate in the order of merit in order to fill up vacancy reserved for physically handicap category candidate. The same principle is required to be adopted in the present case. It was also submitted that intention of the respondents is to fill up 82 vacancies as is evident from Annexure R-5 as on 10.12.2013. No doubt name of the person at Serial No.38 has been deleted vide order dated 10.12.2013, otherwise the intention of the respondents is to fill up 82 posts. In view of these facts and circumstances that the petitioner has sought for direction to the respondents to consider his name for appointment to the post of Restorer as per his merit (48.45 marks) against one of the general category post which is lying vacant due to non-reporting of the selected candidate read with the cut off percentage i.e. 48.50 marks in respect of general category be read down to 48.45 marks so as to accommodate petitioner against one of the non-reporting vacancy.

Per contra, learned counsel for the respondents submitted that in Annexure P-1-advertisement it was made clear to the candidates that *“the number of vacancies can be increased or decreased without any prior notice.”* In view of the said clause read with the proposal sent by the concerned Recruitment Branch that recruitment to fill up 83 posts of Restorer general category is contrary to the factual aspect relating to existence of vacancies of Restorer. In this regard, there was a correspondence in the branch and further Committee has taken a decision to fill up 81 posts of Restorer instead of 83 posts under general category.

Further it was submitted that petitioner has no right to seek for selection and appointment merely because he has merit of (48.45 marks) whereas cut off percentage in the general category is 48.50 marks. It was also contended that there is no provision for publication of waiting list or additional list so also to fill up non-reporting vacancies by operating next merited candidates.

Heard learned counsel for the parties.

Petition is to be dismissed at threshold for the reasons that petitioner has sought for a *mandamus* directing the respondents to consider his case for appointment to the post of Restorer with reference his merit marks i.e. 48.45 under general category against one of the lying vacant post due to non-joining of the selected candidate. Before approaching this Court, petitioner has not demanded his relief before the selecting and appointing authority. In the absence of demand question of issuing writ of *mandamus* or direction to the authorities does not arise. Before the claim of *mandamus* is made, there must be a prior demand relief and its refusal by the authority. The rationale behind this is that party against whom *mandamus* is sought should have had the opportunity of considering it. Courts have held that unless and until there is a demand before the competent authority question of invoking Article 226 of the Constitution of India and Court cannot issue writ of *mandamus* to the authorities. On this score itself, petition stands rejected. On merits, having regard to the clause in the advertisement to increase or decrease vacancies without prior notice, it is permissible to decrease vacancies with reference to the factual aspect and decision of the Committee to reduce 83 posts to 81. There is no provision for preparation of waiting list, question of considering petitioner's name do not arise. Even if the selected candidates have not reported for

duty. In that event also rule is silent whether to operate next merited candidate or not. In the absence of the same, petitioner has not made out a case on merits also.

Accordingly, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

July 25, 2017.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.