

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

CWP No. 20605 of 2012 (O&M)
Date of decision: February 23, 2017

Navpreet Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. G.S. Bal, Senior Advocate with
Mr. A.D.S. Bal, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. The Punjab government issued an advertisement inviting applications for various posts, including the post of Soil Conservation Officers. 25 vacancies of Soil Conservation Officers were advertised. As per the statutory rules, 60% of the said posts were required to be filled up from Agriculture Science Graduates and 40% from those who possess the degree of B.Sc (Agriculture Engineering). 11 posts were meant for General Category, 6 Scheduled Caste category, 3 posts for Backward Class category and 3 for Ex-servicemen, amongst others. The 6 posts that were meant for the Scheduled Caste category were to be bifurcated in the ratio of 60:40 that is 4 posts were to fall to the share of Agricultural Graduates and 2 posts were to be filled up from those having the educational qualifications of being Agriculture Engineers. Further out of the 4 posts meant for B.Sc.

(Agriculture), 2 would be reserved for Valmiki and Mazbhis and 2 for Scheduled Caste (others). The petitioner having the educational qualification of being an Agriculture Engineer from the Scheduled Caste (others) was eligible to be considered for appointment against these 2 posts.

2. The petitioner being eligible applied and undertook the written test for selection to the post of Soil Conservation Officer. A combined merit list was prepared by the respondents and the name of the petitioner appeared at serial No. 88 in General Rank and at merit No. 2 in the category of Scheduled Caste category (others). The 1st candidate in the merit list of Scheduled Caste category (other) was Ms. Satwinder Kaur with a General Rank No. 83. Respondent No. 4 lower in merit was offered appointment ignoring the rightful claim of the petitioner against the Scheduled Caste (others) category. Aggrieved on account of the fact that a person lower in merit has been offered appointment, the instant writ petition has been filed.

3. Mr. G.S.Bal, Senior Counsel, assisted by Mr. A.D.S. Bal, Advocate, appearing on behalf of the petitioner argues that the petitioner herein is higher in merit than respondent No. 4 and thus any appointment offered to him is against all canons of law. It is further argued that the name of the petitioner was reflected at serial No. 2 in the merit list prepared for Scheduled Caste (other) category and was entitled to be offered appointment once the selected candidate Ms. Satwinder Kaur failed to join as Soil Conservation Officer.

4. Per contra, Mr. Harkesh Manuja, learned counsel appearing on behalf of the respondent—State submits that the petitioner was No. 2 in the merit list and only one post was to be filled up from the Scheduled Caste

(others) category and, as such, Ms. Satwinder Kaur who was 1st in merit list was selected. It is also argued that the petitioner herein is not entitled to the said appointment since as on date there are no vacancies available. It has been decided to re-advertise all vacancies.

5. I have heard the counsel for the parties and have also produced the record of the case.

6. The petitioner having the necessary qualification applied for the post of Soil Conservation Officer. It is not disputed that he belongs to the Scheduled Caste category nor is it disputed that he was at merit No. 2 in the list that was prepared. Ms. Satwinder Kaur did not join service and, therefore, there was a vacancy that was available in Scheduled Caste Category (others). It is well settled that once the post is not filled up and another meritorious candidate in the merit list is available, then the vacancy has to be filled up by appointing the next person from the merit list. The contention raised that there are no vacancies at the present moment against which the petitioner can be appointed, is also an argument without any merit. Once it became incumbent upon the authorities concerned to have offered the vacancy that occurred on non-joining by the selected candidate, to the next meritorious candidate, there is no justification to carry forward the vacancy.

7. A similar view was taken by the learned Single Judge in **Gajraj Singh versus State of Haryana and others in Civil Writ Petition No. 13215 of 2009** decided on 5.5.2010, which has been affirmed by the Division Bench in **LPA No. 716 of 2011 titled State of Haryana and others Versus Gajraj Singh decided on 20.4.2011.**

8. Therefore, in view of the fact that the selected candidate did not join on post and the petitioner being the next meritorious candidate available on the merit list ought to have been offered appointed, this writ petition is allowed with following direction: –

- (i) Respondents will offer appointment to the petitioner being No. 2 on the merit list in the Scheduled Caste category others, subject to his fulfilling all other eligibility criteria.
- (ii) In case, there are no vacancies as on date a supernumerary post be created for the petitioner or in the alternative the vacant post that is being advertised be withdrawn.
- (iii) The petitioner would be entitled to all notional benefits.
- (iv) The respondents herein are also directed to complete the exercise within a period of 4 weeks from receipt of certified copy of this order.

9. The writ petition stands allowed accordingly .

February 23, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No