

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

**CWP-14940-2014 (O&M)
Date of Decision: 24.11.2017**

Sumit Goyal

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ramesh Chand Sharma, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Petitioner assails the order dated 03.07.2014 (Annexure P-17), whereby his claim to be appointed as Inspector Grade-II under the Department of Food Supply and Consumer Affairs, State of Punjab has been declined.

Brief facts which are not in dispute may be noticed.

The respondent/Food Supply and Consumer Affairs Department issued advertisement in the year 2010 inviting applications from eligible candidates for appointing 1289 posts of Inspectors Grade-II i.e. Group 'C'. 643 posts were to be filled up from amongst the general category candidates. Clause 6 of the advertisement defined the selection procedure and clearly laid down that selection would be based on written examination only. No interview was to be conducted and the final merit was to be prepared on the basis of the marks secured in the written examination.

Petitioner, who belongs to the general category applied for the post in question and appeared in the written examination which was held on 18.04.2010. Result of the written examination was declared on 02.05.2010 and in which the petitioner secured 41.95% marks. The last candidate in the general category secured 44.34% marks. Since some of the selected candidates and who were issued appointment letters chose not to join, the respondent/department released a waiting list of 129 candidates of the general category on 02.11.2010. The last candidate in such waiting list of the general category was shown to have secured 43.15% marks.

It so transpires that certain candidates raised objections as regards the questions as also answer keys pertaining to the written examination. Response of the State was that the test had been outsourced to The University Institute of Applied Management Sciences, Punjab University, Chandigarh and hence, the department was not at fault. However, a decision was taken to have the answer sheets re-evaluated. Accordingly, the revised result was supplied by the University to the respondent/department on 19.05.2011. No action, however, was taken on the basis of the revised result. Concededly, upon revision of the result, the petitioner secured 45.32% marks as opposed to the initial result wherein he had been granted 41.95% marks. Against such backdrop, petitioner filed a representation dated 20.09.2012 (Annexure P-13) staking a claim for appointment on the basis of the revised result and by contending that a number of candidates, who had secured a lower merit position as per initial result, had been permitted to continue and by virtue of the revised result, a candidate, who is more meritorious and has secured a higher merit position

like the petitioner has a preferential right to be appointed. The claim of the petitioner stands rejected in terms of passing the impugned order dated 03.07.2014 (Annexure P-17).

At this stage, it would be apposite to take note that an identical claim and arising out of the same very recruitment process came to be dealt with by a Coordinate Bench of this Court in **CWP-12835-2012 (Sahil Aggarwal Vs. State of Punjab & others)** and other connected petitions decided on 26.04.2014 (Annexure P-12). The factual premise was summed up by the Coordinate Bench to the following effect:

“In the present case, 1289 posts of Inspector Grade-II in Food and Civil Supplies Department were advertised, out of which 643 posts were of general category. The appointments were to be made strictly on the basis of marks obtained in the written test. The last selected candidate secured 44.35% marks and the last person appointed from the waiting list had secured 43.15% marks. After the declaration of result, when the issues were raised regarding wrong questions and the answer keys, the answer sheets were got re-evaluated. New merit list was prepared, in terms of which the candidate at Sr. No. 643 secured 46.58% marks. The private respondents in the petitions had secured marks less than 46.58% in terms of the revised merit list. In fact, respondent No. 4 in CWP No. 12835 of 2012 had secured minimum of them, namely, 42.63%. All the petitioners in the present petitions had secured marks more than him in terms of the revised merit list.”

Two issues were framed by the Coordinate Bench in **Sahil Aggarwal's case (supra)**, which are reproduced hereunder:

1) Whether the private respondents, who had been appointed in terms of their merit on the basis of result initially declared, but later on when the result was revised finding certain errors

therein, should be removed from service as in the revised result, they do not find place in the merit list ?

2) Whether the petitioners, who have secured marks more than the private respondents, who have been permitted to remain in service, deserve to be appointed or not ?

Having dealt with the controversy, the petitioners in Sahil Aggarwal and other connected petitions were held to be offered appointments to the post in question. The operative part of the judgment in **Sahil Aggarwal's case (supra)** reads in the following terms:

“Considering the aforesaid facts, the petitioners also deserve to be offered appointment. However, it is made clear that they will be entitled to all the benefits from the date they are appointed in service.

RELIEF

(1) For the reasons stated above, it is held that selection and appointment of the candidates, who were appointed on the basis of evaluation of the answer sheets at the first time, who do not find place in the revised merit list, does not deserve to be set aside. Ordered accordingly.

(2) The petitioners, who have secured more marks than the last appointed candidate either in the process of selection in the first round or the second round be offered appointment. The needful be done within a period of two months from the date of receipt of copy of the order. It is made clear that they shall be entitled to all the benefits from the date they join the service.

With the above observations, the writ petitions stand disposed of.

*(Rajesh Bindal)
Judge”*

In the present case, the claim of the petitioner is sought to be resisted and passing of the impugned order justified by State counsel by submitting that marks of the petitioner were increased to 45.32% from

41.95% on account of the revised merit position but which is still lower than cut of marks of general category which was 46.58% marks. Accordingly, it is contended that the petitioner is not entitled to be considered for appointment to the post of Inspector Grade-II even consequent to revision of the result. The issue of delay has also been raised by submitting that the petitioner had chosen not to file any writ petition and was not even a party in the bunch of petitions decided by the Coordinate Bench vide common judgement dated 26.04.2014 passed in **Sahil Aggarwal's case (supra)**. Learned State counsel further argues that in case the claim of the petitioner is allowed at such belated stage then there would be a number of other similarly situated candidates, who would also claim the same benefit and it would not be possible for the department to adjust all of them.

Having heard counsel for the parties at length, this Court is of the considered view that the claim of the petitioners for appointment to the post of Inspector Grade-II deserves to be accepted.

There is no dispute as regards the fact that the final merit list for the purpose of appointment to the post in question was to be determined solely on the marks secured in the written examination. The result of the written examination was revised and as per which the petitioner has secured 45.32% marks. Even though, the cut of pertaining to the general category i.e. the category to which the petitioner belongs after the revised result is 46.58% marks but the department has appointed candidates to the post on the basis of the original merit list and who had secured a lower merit position than the petitioner as has been noticed by the Coordinate Bench in the judgment dated 26.04.2014 at Annexure P-12. A candidate belonging to

general category and who had secured 42.63% marks has been appointed.

The petitioner had submitted representation dated 20.09.2012 (Annexure P-13) to the Commissioner, Food Supply and Consumer Affairs Department, State of Punjab staking his claim on the basis of merit secured as per revised result. Placed on record and appended as Annexure P-14 is the office noting, whereby the representation preferred by the petitioner had been dealt with in the months of January to March, 2013. It would be relevant to extract the same hereunder:

Request letter- *A letter has been received from Sh. Sumit Goyal District Barnala through which he has requested that he had given the examination on 18.4.2010 for the recruitment that he had given the examination on 18.4.2010 for the recruitment of Inspector, at that time cut off merit was 42.35. According to revised merit list, he has obtained 45.32% marks and in the department candidates of 42.63 have been working as Inspector, the number of which is 56. Therefore on his behalf also for appointment request has been made.*

On the basis of the above position two other candidates (Sahil Aggarwal and Sonu Sharma) in the court Writ has been filed, which is under consideration. Therefore, whichever decision will take place in those cases, accordingly action will be taken. Here it is also taken into consideration that on the basis of the order issued vide noting at page 82 now another recruitment cannot be made.

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*For approval
Mahesh Sharma
31.1.2013*

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*Pl. discuss
Sd/- 4.2.2013
Approved
Sd/- 5.3.2013"*

The contents of the office noting are not disputed by the respondents. There would be no quarrel with the proposition that office notings are not to be construed as an order vesting any right in favour of an employee. However, the office noting reproduced hereinabove sheds light on the factual aspect that the petitioner had submitted a representation staking a claim on the basis of marks secured as per revised result and such representation was kept pending to await the outcome of the Court proceedings that had been initiated at the hands of Sahil Aggarwal and Sonu Sharma and who were identically situated.

It is not a case where the petitioner had been sleeping over his rights. Petitioner upon revision of the result had agitated the matter without any delay and had submitted the representation dated 20.09.2012 (Annexure P-13) staking claim on the basis of the merit secured as per revised result. It is not that the petitioner was attempting to gain any impetus from the judgment dated 26.04.2014 passed by this Court in **Sahil Aggarwal's case (supra)**. Rather the representation had been filed by the petitioner staking his claim as per merit secured much prior in point of time. It was the respondent/department, who had kept the issue pending and under consideration awaiting the decision in **Sahil Aggarwal's case (supra)** and as would be apparent from the office noting at Annexure P-14.

Under such circumstances, it would not lie in the mouth of the respondent/State to contend that the petitioner's claim cannot be considered in the light of the decision rendered in **Sahil Aggarwal's case (supra)**. It is not the case of a belated claim being set up. Rather the delay, if any, as regards considering the claim of the petitioner on account of the merit

secured as per revised result would be attributable to the respondent/department.

The stand taken on behalf of the State to resist the claim of the petitioner by contending that in case the petitioner is appointed then a number of other similarly situated candidates would also have to be adjusted is not well founded. It would certainly be open for the respondent/department to deny and reject the claim of a candidate who has not agitated the issue over a considerable length of time and who may now attempt to gain mileage from the judgement delivered in **Sahil Aggarwal's case (supra)**. The claim of the petitioner would have to be taken on a different pedestal as he has raised his claim without any delay in the year 2012 itself and during pendency of the Court proceedings in Sahil Aggarwal and other connected petitions. Even the respondent/department was alive to the claim and had kept the representation of the petitioner pending to await the outcome of the writ petition filed by Sahil Aggarwal.

There are specific averments in the writ petition and contained in para 10 that there are number of vacancies pertaining to the post of Inspector Grade-II under the general category and in relation to the recruitment process initiated vide advertisement at Annexure P-1. Such factual assertion has not been rebutted by the State.

In view of such factual position and in the light of the reasons recorded above, the claim of the petitioner for appointment to the post of Inspector Grade-II is allowed in terms of judgment dated 26.04.2014 passed in **CWP-12835-2012 (Sahil Aggarwal Vs. State of Punjab & others)** at Annexure P-12.

Consequently, directions are issued to issue appointment letter to the petitioner to the post in question within a period of two months from the date of receipt of a certified copy of this order. It is, however, made clear that the petitioner would be entitled to all service benefits only from the date he is duly appointed in service.

Writ petition is allowed in the afore said terms.

24.11.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | Yes |