

CWP No.83 of 2017

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

CWP No.83 of 2017

Date of Decision: 09.2.2017

Navkirat Singh Randhawa

....Petitioner

Versus

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Gurwinder Singh, Sr. Advocate with
Mr. M.S. Longia, Advocate for the petitioner.

Mrs. Sudeepti Sharma, DAG, Punjab assisted by
Mr. Sanjay Goswami, Sr. Assistant, Department of
Personnel.

JASWANT SINGH, J

1. Petitioner has filed the present writ petition, *inter alia*, for issuance of a writ in the nature of Mandamus directing respondent No.1 & 2 to consider and allocate him the post of Tehsildar instead of Excise and Taxation Officer, on the basis of his preference and merit in the Punjab State Civil Services Combined Competitive Examination (PSCSCCE) 2015.

2. Learned counsel for the petitioner submits that there were six posts of Tehsildar in the General Category as per Advertisement dated 10.9.2015 (**P.1**) and the petitioner is at Serial No.7 of the Merit List ascertained based on the preference of the selected candidates in the Combined Merit. The main grievance of the petitioner is that two candidates who are higher in merit than the petitioner had given up their claim for appointment as Tehsildar duly in writing but despite that factual position, the offer

of appointment have been made to said two candidates just to defeat the lawful claim of the petitioner. It is also argued that those two persons, who are higher in merit did not join within the stipulated time, as per the offer of appointment, and thus the petitioner is entitled to be appointed against one vacancy as Tehsildar being next in merit.

On the other hand, learned State counsel contends that as per Clause 1.2 of the Advertisement (**P.1**), the PPSC is required to send the names of the successful candidates equal to the number of vacancies in each category for each service and there is no provision of any wait-list for the candidates. It is further contended that anybody who has merit beyond the advertised number of vacancies, has no right to seek appointment and moreover, as per the PPSC Regulation 44 Clause (5), no new appointments are to be made against the unfilled vacancies, rather they have to be carried forward. It is next contended that the PPSC sends a category-wise merit list equal to the total number of posts for which the Combined Examination has been held for different service and it is the Personnel Department, which on receipt of the merit as well as in order of preference qua the selected candidate, allocates them to the various departments and any deviation of this schedule unnecessarily complicates the whole process.

3. Heard learned counsel for the parties and perused the paper book with their able assistance. This Court finds merit in the plea raised by the petitioner.

4. It is not in dispute that the PPSC advertised 101 posts on

10.9.2015 to be filled up by way of direct recruitment on the basis of a Combined Competitive Examination, which was to be held on 6.12.2015. Since in the present case, dispute is regarding the posts of Tehsildars, therefore it will not be necessary to give the details of the other posts except the Tehsildars, which were total 09 in number out of them, 06 were for General Category.

In pursuance of the Advertisement, the petitioner applied within the stipulated period and order of preference for the post as reflected in the Application form **(P.2)** reads as under:

- “1. PCS (Executive)
2. DSP
3. Tehsildar
4. ETO
- 5 to 10. Xx xxx xxxx ”

5. After conducting written examination, the categoriwise merit list on the basis of Competitive Examination was declared on 08.8.2016 **(P.3)** and the particulars of the petitioner reads as under:

Sr.No. Roll No. Date of Birth	Name of Candidate	Category Code	Mains Exam Marks	Interview Marks	Grand Total	Percent age	Merit
1 to 26	Xxx	Xxx	Xxx	Xxxxx	Xxxx	Xxxxx	Xxx
27 (9238) 19-Apr- 1991	Navkirat Singh Randhawa	71	730.00	91.67	821.67	54.78	27

It transpires that respondent No.3-Jagpal Singh Dhanoa at merit No.11 vide his request dated 5.10.2016 **(P.7)** intimated respondent No.2 to the effect that since he has been selected as

IPS for an All India Services by the UPSC, therefore, he is not interested to join the services/post allocated to him through Competitive Examination 2015 conducted by the PPSC. Still further, one Lakshay Kumar, at merit No.19, who was already working as Tehsildar (under Training), Government of Punjab, also declined to join on the post of Tehsildar and intimated the same to respondent No.2 in this respect on 05.10.2016 **(P.8)**.

It further transpires that in view of the aforesaid factual background, the petitioner vide his letter dated 10.10.2016 **(P.9)** requested respondent No.1-Chief Secretary, Punjab that the candidate having rank No.26 in the merit list **(P.3)** has already been allocated the post of Tehsildar and the petitioner is ranked at No.27 and two of the candidates, namely, respondent No.3-Jagpal Singh Dhanoa (rank No.11) and Lakshay Kumar (Rank No.19) have already given up their claim against the post of Tehsildar and vide his application form, the petitioner has already given his preference for the post of Tehsildar instead of ETO, and thus, he may be appointed as Tehsildar.

6. There is a categorical averment made in para 12 of the writ petition to the effect that in order of preference, after the post of Deputy Superintendent of Police, the petitioner has preferred the post of Tehsildar instead of Excise and Taxation Officer. It has been further specifically submitted that post of Tehsildar in General Category was allocated to 06 candidates and relevant para 12 of the writ petition reads as under:

“ That the petitioner has also been allocated the post

of Excise and Taxation Officer whereas while filling up the application form the petitioner had clearly mentioned the post of Tehsildar as his order of preference after Deputy Superintendent of Police whereas in the present allocation petitioner has been allocated the post of Excise and Taxation Officer, which was the order of preference below the post of Tehsildar. That the meritwise allocation of the post of Tehsildar (General Category) is given below in a tabulated form.

Total 6 candidates in general category.

Sr. No.	Merit No.	Name of candidate	Remarks
1	8	Lovepreet Kaur	
2	11	Jagpal Singh Dhanoa (Respondent no.3)	
3	15	Vinay Bansal	----
4	17	Ankita Aggarwal	----
5	19	Lakshya Kumar	Already working as Tehsildar (under training) in PCSCCE 2013
6	26	Harminder Singh Hundal	----
7	27	Navkirat Singh Randhawa (Petitioner)	

In reply to para 12 of the writ petition as reproduced hereinabove, respondent Nos.1 & 2, by way of an affidavit dated 24.01.2017 of Sh. Harish Nayyar, Addl. Secretary to Government of Punjab, Department of Personnel, have admitted the contents of corresponding in the following terms:

“That the contents of para 12 of the writ petition are admitted being matter of record. However, it is submitted that allocation was made as per preference given by the candidate and rank determined by the Punjab Public Service Commission”.

As discussed above, specifically averred by the

petitioner and admitted by respondent Nos.1 & 2, respondent No.3-Jagpal Singh Dhanoa and aforesaid Lakshay Kumar both have declined to join on the posts of Tehsildar and thus, in the opinion of this Court, the petitioner being next in order of merit at No.27, having legitimate claim because of his preference for the post of Tehsildar instead of ETO, as depicted in his Application Form (P.2) reproduced above, deserves to be appointed on the post of Tehsildar against the unfilled vacancy within the advertised posts, in view of the settled proposition of law and reference in this regard can be made to para 10 of a latest judgment of Hon'ble Supreme Court reported as **State of Jammu and Kashmir and Others Vs. Sat Pal, (2013) 11 SCC 737**, which reads as under:

“ 10. It is not a matter of dispute that the respondent Sat Pal participated in a process of selection for recruitment against the post of Junior Engineer (Civil), Grade II. It is also not in dispute that his name figured in the merit/select list of Scheduled Caste candidates. Trilok Nath, who had been offered appointment against the post of Junior Engineer (Civil), Grade II on 22.4.2008 did not join despite the said offer of appointment. The instant fact is fully substantiated from the order dated 5.5.2008 issued by the Chief Engineer, R&B Department, Jammu. Even though candidates who were higher in merit were offered appointment to the post of Junior Engineer (Civil), Grade II, for which recruitment was held, some of such posts remained vacant on account of the fact that persons higher in merit to the respondent Sat Pal had declined to join, despite having been offered

appointment. At least one such vacancy offered to Trilok Nath never came to be filled up. In such a situation, respondent Sat Pal whose name figured in the merit/select list, ought to have been offered appointment against the said post. The claim of respondent Sat Pal could not have been repudiated, specially on account of his assertion, that his name in the merit/select list amongst Scheduled Caste candidates immediately below the name of Trilok Nath was not disputed even in the pleadings before this Court. It is not the case of the appellants before this Court that any other candidate higher than Sat Pal in the merit/select list is available out of Scheduled Caste candidates, and can be offered the post against which Trilok Nath had not joined.”

7. There is another material aspect of the matter that a perusal of clause 3 of Memo/letter dated 30.12.2016 **(P.11)** issued by the Government of Punjab, Revenue and Rehabilitation Department to respondent No.3-Jagpal Singh Dhanoa and other candidates makes it abundantly clear that it was only an offer of appointment and after its acceptance only the same has to be construed as appointment letter and not prior thereto. Aforesaid clause reads as under:

“ If you accept the offer of appointment on the aforementioned conditions then your acceptance regarding this be sent to the Department immediately. Only after sending your acceptance letter this letter would be deemed as appointment letter. ”

The clause 3 reproduced hereinabove leaves no

manner of doubt that aforesaid letter is only an offer of appointment and not an Appointment Letter until there is an acceptance by the selectee/addressee. In order to make the things more clear in the present scenario, this Court has a definite opinion that mere offer of appointment will not amount to consumption of the vacancy, rather there must be an acceptance by the selected candidate and in the absence thereof, by no stretch of imagination, the same shall be termed an appointment letter.

8. The reliance of the State Counsel to clause (5) of para 44 (V) of part III-K of Regulation and Instructions Governing the Work of the Punjab Public Service Commission is misconceived in view of the fact that the same is a part of Punjab Government Circular dated 11.1.1962, which has been annexed by the petitioner also as **Annexure P.10**. A perusal of the circular dated 11.1.1962 reveals that the same was issued in order to rationalize allocation of candidates selected on the result of Combined Examinations for the sake of uniformity and speedy decisions and clauses 4 & 5 being relevant reads as under:

“(iv) On the basis of the Commission's list a meeting of the Department concerned will be called and candidates earmarked in the order of merit, including reservation for the Scheduled Castes etc, for the various services according to the vacancies indicated by the Departments. If at this stage the Departments can indicate additional number of firm vacancies, these will also be provided for.

(v) *Having earmarked the candidates as above the Departments should proceed with the appointments after the formalities are completed. If by chance any candidate falls out as a result of verification of character and antecedents, medical examination, etc a new appointment should not be made in place thereof as that would involve a revision of the whole list, but this vacancy should be carried forward as an additional vacancy to the next year. It is believed that the number of candidates who fail in the medical examination or whose antecedents are found to be unsatisfactory will be very small and the risk of ignoring this number can be easily taken, than running the risks of delays involved in reallocating the whole list."*

Still further, the Government of Punjab vide letter dated 24.11.1962, which has been incorporated in para 41 & 42 of the aforesaid Regulations/Instructions, has decided as under:

" 41. The Punjab Public Service Commission shall hold the combined examinations for recruitment to the various posts shown in the following group:

Name of Group	Name of services/posts included in the Group
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Name of Group

Group-I

1. *P.C.S (Executive Branch).*
2. *Excise and Taxation Officer.*
3. *Assistant Excise and Taxation Officer.*
4. *Tehsildar.*
5. *Assistant Registrar, Co-operative Societies.*
6. *Assistant Employment Officer.*

Group-II to Group VIII xxxx xxxxx

42. The posts in each group have not been arranged in order of their superiority and will be offered to the qualified candidates in the order of their positions in the merit list, keeping in view the preference given by them.”

A perusal of aforesaid para 41 and 42 clearly reveals that the posts in each Group have not been arranged in order of their superiority and the same will be offered to the qualified candidate in order of their preference and merit position. In the present case, undisputedly, the petitioner has given a preference for the post of Tehsildar in comparison to ETO and thus he has a valid and legitimate claim to be considered an appointment for the same.

The reference to clause 44 (V) is wholly misplaced in view of the conclusion already reached by this Court to the effect that Memo/Letter dated 30.12.2016 (**P.11**) is only an offer of appointment and not an appointment letter and, thus, the eventuality for verification of Character/antecedents and medical examination as stipulated therein has not arisen as both the respective candidates, namely, Jagpal Singh Dhanoa-respondent No.3 and Lakshay Kumar had already declined the offer of appointment for the post of Tehsildars at the initial stage. Still further, the clause (4) of para 44 of the said Circular (**P.10**) clearly envisages that on the basis of a list sent by the PPSC, the meeting of department concerned will be called and the candidates earmarked in order of merit, including reservation for Scheduled Castes etc for various services, according to the vacancies

indicated by the Departments and if at this stage, the Departments can indicate additional number of Firm vacancies, these will also be provided for. Therefore, it is apparent that the provisions of Clause 5 would have operated only if the previous clauses had been meticulously followed, which in the present case, have been totally ignored, thus, this clause does not operate, in any manner, in the present case.

As a sequel of what has been stated above, the writ petition is allowed and a direction is issued to respondent Nos.1 & 2 to make an offer of appointment to the petitioner for the post of Tehsildar within a period of fifteen days from the date of receipt of certified copy of this order subject to fulfillment of the terms and conditions as prescribed.

February 09, 2017
manoj

(JASWANT SINGH)
JUDGE