

**214 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12964 of 2015.

Date of Decision: 05.07.2018.

Parwinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Ms. Alka Chatrath, Advocate,
for the petitioner.

Ms. Deepali Puri, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

Through the instant civil writ petition, the petitioner seeks quashing of order dated 16.03.2015, Annexure P-18 passed by respondent No.1 vide which the claim of the petitioner for appointment to the post of Horticulture Development Officer (Pathology) under general category has been declined.

The petitioner holds degrees in M.Sc (Plant Pathology) and M.B.A. (Agriculture Business). The Horticulture Department-respondent No.2 issued an advertisement, Annexure P-5, inviting applications for five posts of Horticulture Development Officer (Pathology). In pursuance to the advertisement, Annexure P-5, the petitioner applied for the aforesaid post. The petitioner appeared in the written examination held on 20.08.2013 and was placed at serial No.5

in the merit list of general category. Thereafter, the candidates including the petitioner appeared in the counselling on 26.09.2013. The certificates of the petitioner were found to be in order. Accordingly, the department issued appointment letters to all the selected candidates against four advertised posts of general category including respondent No.3 who was shown at serial No.4 in the merit list. However, respondent No.3 did not join the duties. The petitioner moved various representations for offering him appointment letter but his claim was declined vide order, Annexure P-18.

On the other hand, the precise stand taken by the official respondents is that no waiting list had been prepared by the department. A similar controversy was involved in CWP No. 20605 of 2012 titled as “Navpreet Kumar vs. State of Punjab and others which was dismissed vide judgment dated 23.12.2014 (Annexure R-2) holding that the preparation of a waiting list to be operated is not a common law right which operates in the absence of rules as a cardinal rule of service law. It is a matter of state policy.

It is contended by the learned counsel for the petitioner that Navpreet Kumar's case (supra) stands reviewed and the writ petition was allowed vide judgment dated 23.02.2017 by holding that the next meritorious candidate in the merit list is entitled to the appointment. Learned counsel has further relied upon (i) State of Haryana and others vs. Gajraj Singh 2011(4) SCT 207; (ii) Ritu vs.

State of Haryana and others 2013(3) S.C.T. 281 (iii) Naresh

Kumari vs. State of Punjab and another 2015(2) SCT 121; (iv)
Narinder Pal vs. State of Punjab and others CWP No. 6376 of 2013
decided on 10.02.2015; (v) Navpreet Kumar vs. State of Punjab
and others CWP No. 20605 of 2012 decided on 23.02.2017; (vi)
Suman Rani vs. State of Haryana 2016(4) SCT 361; (vii) CWP No.
3016 of 2014 Jagmohan Singh vs. State of Punjab and another
decided on 29.09.2017.

In **Gajraj Singh's case (supra)** it has been held as
under:-

“This controversy has been examined by a Division Bench of
this Court in 1996 (1)AIJ titled as **Gopi Chand and others vs.**
State of Haryana wherein following observations have been
made:-

“As the vacancies had occurred within the time specified by
the Government instructions and the same were required to be
filled up from the waiting list, we are of the opinion that the
petitioners' grievance was genuine, bonafide, legal and based
upon the provisions of law and instructions issued in that
behalf. There was no justification for the respondents to carry
forward the vacancies of the Excise and Taxation Officer in
the Scheduled Castes category when candidates in order of
merit determined on the basis of the combined competitive
examination were available.”

It is contended on behalf of the respondents that no waiting
list has been prepared. There is no force in the submissions of
the respondents. Waiting list or no waiting list. Once a merit

list is prepared, the next candidate in the merit will have to be considered in the waiting list and thus in the eventuality of availability of a vacancy on account of non-joining of the selectee, it has to be offered to the next candidate in the merit, notwithstanding the fact whether any formal waiting list has been notified or not. Though the petitioner claims that he is next in the merit, however, there is no authentic material on the record. It may be noticed that even the respondents have neither admitted nor denied the merit of the petitioner. The state-respondent, however, in its reply has admitted that Vinod Kumar has refused to join the post and the matter has been referred to the Government for cancellation of his candidature. This plea seems to be totally misplaced. Once a candidate has refused to join in writing, no sanction is required for cancellation of his candidature and the next candidate in the merit ought to have been offered the appointment immediately.

In **Narinder Pal's case (supra)**, it was held as under:-

“In the matter of public appointments plenty of effort goes into a selection process and thus when human resources responds to an advertisement, the endeavour of the employer should be to sap up as much of it without wasting it. The process being cumbersome should be utilized to its maximum. Thus keeping in view the above facts when there was hardly any reason to keep the petitioner away from employment, I am of the view that the respondents need to visit a reconsideration to the whole issue in the light of what has been stated above. Ordered accordingly. Let needful be done as expeditiously as

possible, preferably within a period of two months from the date of receipt of the certified copy of this order. In case the petitioner fulfills all the requisites he shall be given the employment keeping in view the undisputed fact of existing vacancies.

Petition stands allowed.”

In the present case, it has been admitted by the respondents that the name of the petitioner figured at serial No.5 in the merit list. The candidate at serial No.4 did not join the service. In view of the settled preposition of law that once a merit list is prepared, the next candidate in the merit will have to be considered in the waiting list, the stand taken by the State that no waiting list has been prepared carries no weight. The judgment relied upon by the learned State counsel in **Navpreet Kumar's case (supra)** stands reviewed by a Coordinate Bench of this Court. The relevant paragraph of the judgment reads as under:-

“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.”

In view of the fact that the selected candidate did not join on post and the petitioner being the next meritorious candidate available in the list ought to have been offered appointment. Accordingly, this petition is hereby allowed. The respondents are directed to offer appointment letter to the petitioner within a period of three months from the date of receipt of copy of the judgment.

05.07.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No