

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

Date of decision : 14.09.2018

(I) CWP-13991-2015 (O&M)

Prashant Rathi and others

...Petitioner(s)

Versus

Punjab State Power Corporation Ltd. and others

...Respondent(s)

(II) CWP-14530-2015 (O&M)

Shelly Khosla

...Petitioner(s)

Versus

Punjab State Power Corporation Ltd. and others

...Respondent(s)

(III) CWP-17102-2015 (O&M)

Atul Kumar

...Petitioner(s)

Versus

Punjab State Power Corporation Ltd. and others

...Respondent(s)

(IV) CWP-16158-2016 (O&M)

Prashant Rathi and others

...Petitioner(s)

Versus

Punjab State Power Corporation Ltd. and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. D.S. Patwalia, Sr. Advocate,

with Mr. Harmanpreet Sehgal, Advocate,
for the petitioner(s) in CWP-13991-2015 & CWP-16158-2016.

Mr. M.S. Longia, Advocate,
for the petitioner in CWP-14530-2015.

Mr. G.S. Chahal, Advocate,
for the petitioner in CWP-17102-2015.

Mr. Vinod S. Bhardwaj and Mr. Vikas Chatrath, Advocates,
for the respondent-Corporation.

Mr. Ishaan Bhardwaj, Advocate,
for the private respondents.

JITENDRA CHAUHAN, J.

**CM-11246-CWP-2017 & CM-6206-CWP-2017
IN CWP-13991-2015**

Allowed as prayed for, subject to all just exceptions.

**CM-11256-CWP-2017 & CM-6180-CWP-2017
IN CWP-14530-2015**

Allowed as prayed for, subject to all just exceptions.

**CM-11283-CWP-2017 & CM-6172-CWP-2017
IN CWP-17102-2015**

Allowed as prayed for, subject to all just exceptions.

Main cases

The above noticed four writ petitions are being disposed of by this single judgment as the facts and relief claimed in these petitions is essentially the same.

Three petitions out of the present batch of petitions viz. CWP Nos.13991, 14530 and 17102 of 2015 have been preferred seeking issuance of a writ in the nature of Mandamus, directing the respondent-Corporation to appoint the petitioners against the vacant posts of Junior Engineer (Electrical)/Auxiliary Plant Attendant/Assistant Junior Specialist, as

advertised vide advertisement No.276 of 2012 dated 10.05.2012 (Annexure P-1). However, for brevity the facts are being derived from CWP-13991-2015.

It is the case of the petitioners that vide advertisement Annexure P-1, 242 posts of Junior Engineer (Electrical)/Auxiliary Plant Attendant/Assistant Junior Specialist were advertised. Out of said 242 posts, 127 posts fell in the General Category. On 03.04.2013, written examination was conducted by the respondent-Corporation. However, the said written examination became subject matter of challenge in a batch of writ petitions, one being CWP-14036-2012 which led to annulling of the written test. Thereafter, public notice dated 05.07.2013 (Annexure P-3) was issued for holding the written test afresh. The revised result of the written examination held on 27.07.2013 and 28.07.2013 was declared and combined merit list of all qualified candidates was published vide Annexure P-4. The petitioners were placed at Serial Nos.171, 172, 180 and 188 in the merit list under the general category. Respondent-Corporation called candidates for counselling upto Sr.No.165 for filling up of 127 posts under the general category. Thereafter, the respondents issued a fresh advertisement i.e. CRA No.286 of 2015 dated 17.06.2015 for filling up of more than 700 vacancies of Junior Engineer (Electrical)/Auxiliary Plant Attendant/Assistant Junior Specialist. Feeling aggrieved, the petitioners preferred the instant petition seeking appointment against the vacant posts as advertised in Advt. No.276 of 2012 dated 10.05.2012 (Annexure P-1). In CWP-14530-2015, petitioner Shelly Khosla and in CWP-17102-2015, petitioner Atul Kumar, were placed at

Serial Nos.176 and 189 respectively, in the merit list under General category.

During the pendency of the instant petitions, affidavit dated 28.08.2015 on behalf of the Deputy Secretary (Recruitment), PSPCL, was filed to the effect that 35 posts remained vacant due to non-joining of candidates. The respondents also took a stand that the vacant 35 posts shall be filled up as per merit of the candidates who had applied against advertisement number CRA 286 dated 10.05.2012 (Annexure P-1). On the submission so made, this Court allowed continuation of the selection process under advertisement dated 17.06.2015, as it did not adversely affect the rights of the petitioners, however, restrained the respondents from issuing appointment letters so that the issue of seniority may not be created. In the meantime, the Board of Directors of respondent-Corporation resolved not to fill up 37 posts of Junior Engineer (Electrical)/Auxiliary Plant Attendant/Assistant Junior Specialist as advertised vide advertisement dated 10.05.2012 (Annexure P-1).

In the above backdrop, the petitioners in CWP-13991-2015 preferred to approach this Court by way of filing CWP-16158-2016, challenging resolution dated 29.01.2016, which was ordered to be heard along with the above-noticed three petitions including CWP-13991-2015.

It is contended that for filling up of 127 vacancies in the General Category, only 165 candidates were called for counselling. The petitioners were in merit list at Serial Nos.171, 172, 180 and 188, respectively. After the counselling, 37 vacancies still remained unfilled on

account of non-joining of certain candidates. Therefore, the petitioners ought to have been offered appointment being in the merit list. In spite of filing affidavit to the effect that the said 37 vacancies will be filled up from amongst the candidates who had applied against the advertisement in question, the Board of Directors arbitrarily resolved not to fill up the same. Even otherwise, while passing impugned resolution dated 29.01.2016, the Board of Directors have failed to dilate any reason for non-filling the vacant posts, thus, the same is arbitrary and liable to be set aside.

On the other hand, learned counsel for the respondent-Corporation contend that vide affidavit dated 28.08.2015, it was stated that the remaining 35 posts will be filled up as per advertisement and merit, subject to final decision of the Board of Directors. However, the Board of Directors, vide resolution dated 29.01.2016, resolved not to fill up 37 posts which remained unfilled on account of issuance of new advertisement No.CRA-286/15. Therefore, the petitioners cannot claim any relief on account of the statement made vide affidavit dated 28.08.2015. No candidate lower in merit than the petitioner has been selected. It was a conscious decision of the respondent-Board to call candidates till serial No.165 in the merit list for selection of 127 candidates in the General Category. The respondent-Board being employer is well within its rights to determine the number of candidates to be called for the counselling. At this stage, the inclusion of the petitioners in the select list would have a cascading effect as the candidates already selected have been working since 2013-14.

Heard.

It is not in dispute that the petitioners had applied for being considered against 127 General Category posts of Junior Engineer (Electrical)/Auxiliary Plant Attendant/Assistant Junior Specialist. The petitioners successfully participated in the written examination conducted in pursuance of public notice dated 05.07.2013 (Annexure P-3) and their merit was determined as at serial Nos.171, 172, 180 and 188. Thus, their candidature and eligibility for selection against the posts in question are not in dispute. It has also come on record that out of 127 posts falling under the General Category, 37 vacancies remained unfilled on account of non-joining of certain successful candidates. During the pendency of the instant writ petition, the respondents issued a fresh advertisement dated 17.06.2015, for filling up certain posts of Junior Engineer. From the entire oral and documentary pleadings on behalf of the respondent-Corporation, the logic applied for calling of candidates only upto serial No.165 in the first instance for counselling has not come forth. Be that as it may, the respondent-Corporation has failed to explain the reasons for not calling the next available candidates for counselling and offer of appointment against the posts that remained unfilled on account of non-joining of certain successful candidates.

Before delving further, it is considered appropriate to notice that on 31.08.2015, the following order was passed:-

“As per the short reply filed in Court today through Mr. Vikas Chatrath, the 35 posts against which the petitioners had applied in the year 2013,

are not been filled up pursuant to advertisement issued on 17.06.2015 (Annexure P-7). The said 35 posts, as per Mr. Chatrath, would be filled up only as per the merit drawn in respect of the applications received against the advertisement issued on 10.05.2012 (Annexure P-1).

Mr. D.S. Patwalia, Sr. Advocate, submits that then the only issue would be that though the advertisement, in response to which the petitioners had applied, was issued more than 3 years ago, in case the successful applicants as have applied against the advertisement (Annexure P-7), are appointed prior to the petitioners, an issue of seniority would unnecessarily be created.

Adjourned to 01.10.2015.

In the meanwhile, though the selection process pursuant to Annexure P-7 may continue, appointment letters be not issued. Further, the Board of Directors would take its decision with regard to the finalization of the selection process pursuant to advertisement (Annexure P-1), in the meanwhile.

Photocopy of this order be placed on the files of other connected cases.”

Thereafter, the petitioners preferred CM No.741 of 2016 in CWP-13991-2015, which came to be decided on 21.01.2016, by this Court and it was observed as under:-

“This is an application for advancing the date of hearing. The apprehension of the petitioners is that several posts of Junior

Engineers have been or are being advertised afresh for direct recruitment by the respondent corporation. The petitioners are already in the fray of litigation seeking appointments under the previous advertisement [subject matter of this petition] where 30 vacancies remain unfilled of the total number of vacancies advertised and 165 appointments from those already made by PSPCL till thus far from the previous recruitment process. Mr. Patwalia argues that in case the 30 unfilled vacancies from the previous advertisement have been brought forward and counted in the pool of vacancies presently advertised then the case of his clients would be seriously jeopardized and would be unnecessarily complicated, a situation which can be avoided at present, without affecting third party rights.

In case, the fresh process of direct recruitment is for new vacancies, which have nothing to do with the 30 vacancies lying unfilled, then I think the selection process under the fresh advertisement can go on but still appointments under the fresh advertisement shall not be offered to the successful candidates until the rights of the petitioners are determined in this petition so that they do not lose seniority in case they are successful in the present petition and appointed in due course of time. This interim arrangement would continue to operate till the next date with liberty to the respondent PSPCL to apply for modification etc. of this interim order in which case stay matter will be heard promptly. Copy of the order be remitted to PSPCL since order is

passed ex parte to avoid any miscarriage of justice.

In view of above, no orders are required to be passed in the application and the same stands disposed of.”

Consequently, in pursuance of order dated 31.08.2015, the Board of Directors resolved on 29.01.2016, as under:-

“Resolved that 37 posts of JE/APA/AJS/Elect. which were left unfilled against CRA 276/12/Reconduct and have not been included in the posts advertised vide CRA 286/15 may not be filled at this stage due to issuance of new CRA 286/15....”

Thereafter, CM Nos.11282-83-84-CWP-2016 in CWP-17102-2015, were preferred by respondent Nos.2 to 116 therein, wherein, the following order was passed on 03.10.2016:-

“The grievance of the petitioners in all the writ petitions is that they were in the waiting list and have not been considered for appointment whereas learned counsel for respondents No.2 to 116 submits that there are total 506 posts and the petitioners are only six candidates and even in case, the writ petitions are allowed then the petitioners can be considered only against six posts whereas the stay has been granted against all posts.

Keeping in view the facts as mentioned above, interim order dated 31.08.2015

is modified to the extent that out of total 506 posts, six posts be kept vacant and the result of remaining posts be declared, if selection process has been finalized.

However, it is made clear that any right of seniority and other consequential benefits of the petitioners against the candidates, whose result is to be declared, is subject to decision of the present writ petitions.

A photocopy of this order be placed on the file of each connected case.”

From the above sequence, it is evident that initially, this Court was made to believe that the posts which remained unfilled would be filled up only as per merit drawn in respect of the applications received against the advertisement issued on 10.05.2012 (Annexure P-1) subject to final decision of Board of Directors. However, the Board of Directors took a somersault and decided not to fill up the said posts on the solitary and whimsical ground that a fresh advertisement had already been issued. There is no dispute with regard to the fact that it is for the employer to decide whether to issue appointment letter to a candidate or not. However, being a public sector entity, the respondent-Corporation ought to have conducted itself in a fair manner. Similar question came to be considered by this Court in ***Sukhvir Singh Vs. State of Punjab***, bearing CWP-820-2014, decided on 26.03.2015, wherein, it has been held as under:-

“Once, it is admitted that there were 21 posts of Junior Engineer (Civil) meant for the General Category as advertised through the

advertisement dated 11.11.2011, only 20 posts out of them had been filled up and that the petitioner was the next eligible candidate on merit, then it would not take me long to hold that the petitioner deserved to be appointed in accordance with his merit.

Out of the 21 posts of Junior Engineer (Civil) so advertised to be filled up from amongst candidates belonging to the General Category, initially only 20 posts were filled up and the 20th post was offered to one Parveen Kumar son of Lachhman Dass. For the 21st post between Parveen Kumar and the petitioner was one Kushaldeep Singh who admittedly did not appear for interview when called for the same. Even otherwise, it is the un rebutted case of the petitioner that Kushaldeep Singh has never staked a claim for appointment against the 21st post meant for the General Category for the last over three years. On the other hand, the petitioner has been consistently clamouring for the same. That being so, I find no reason in fact or in law to deny the petitioner his rightful claim.

The stand of the respondent-Corporation that in the meanwhile another advertisement had been issued on 03.08.2012 through which more posts of Junior Engineer (Civil) had been advertised and therefore, they could not consider the case of the petitioner is a stand which needs to be considered only to be rejected. It is admitted by the respondents that through letter dated 25.01.2013 Kushaldeep Singh Randhawa who was one step higher than the

petitioner, in the order of merit was asked to appear for the interview on 05.02.2013 but he did not appear for the same and therefore, he was declared ineligible. Thus, as per the respondent-Corporation's own admission, candidates on the merit list qua the earlier advertisement dated 11.11.2011, i.e. the advertisement against which the petitioner was an applicant, were being considered even after the issuance of second advertisement on 03.08.2012. This is clear from the stand taken by the respondent-Corporation in Para No.14 of the written statement filed before this Court, which is reproduced below for ready reference:-

“14. That in reply to the contents of para No.14 of petition, it is stated that to fill up the left over/unfilled posts of CRA 01/2011, advertisement CRA 02/2012 was issued on 03.08.2012. In case of JE (Civil), Sh. Mohit Jindal was selected but was on extension upto 05.12.2012, as such the post was not carried forward. After expiry of extension, Sh. Kushaldeep Singh Randhawa, candidate next in merit was directed to appear on 25.01.2013 for documentation checking to be held on 05.02.2013, but he did not appear. Meanwhile as referred above, the Corporation concluded that the validity of CRA 01/2011 had completed its validity, when process of CRA 02/2012 had started, so the

post could not be filled. Still further, the submissions made in the preliminary objections be read as part and parcel of the present reply.” [emphasis supplied].

It is further admitted before me that the post against which the petitioner seeks appointment was not included in the posts advertised through the later advertisement dated 30.08.2012.

In view of the above, I unhesitantly hold that the petitioner is entitled to be appointed as Junior Engineer (Civil) as per his merit in pursuance to his application made in response to the advertisement dated 11.11.2011.

As soon as the candidate immediately higher in merit to the petitioner namely Kushaldeep Singh Randhawa did not appear for the interview on 05.02.2013, rendering himself ineligible, the post should have been offered to the petitioner and as this was not done, the petitioner was precluded from discharging his duties as Junior Engineer (Civil) due to the above inaction on the part of the respondent-Corporation. Accordingly, I hold him entitled to all consequential benefits including continuity of service w.e.f. 01.03.2013.”

In view of the above, this Court feels that the petitioners ought to have been called for counselling and offered appointment being next in the merit list against the 37 posts which admittedly remained unfilled and

were not included in the subsequent advertisements. The assertion of learned counsel for the respondent-Corporation that the appointment of the petitioners at this stage would have a cascading effect is also unfounded as necessary protection had already been granted vide orders dated 21.01.2016 and 03.10.2016 (*ibid*).

Accordingly, impugned resolution dated 29.01.2016 is hereby quashed to the extent of non-filling up of unfilled vacancies against advertisement (Annexure P-1). The respondents are directed to offer appointment to all the six petitioners w.e.f. 01.03.2015 with continuity of service, namely, seniority and pay fixation, which shall be fixed notionally. However, the petitioners shall not be entitled to any arrears of pay/back-wages. The needful be done within six weeks from the date of receipt of a certified copy of this judgment.

Disposed of in the above terms.

It is made clear that the benefit of this judgment shall enure only to the petitioners.

14.09.2018
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No