

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

(1) CWP No. 18438 of 2013 (O&M)
Date of decision: 26.03.2018

Yadwinder Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(2) CWP No. 15308 of 2015 (O&M)
Date of decision: 26.03.2018

Ajit Singh and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(3) CWP No. 24222 of 2013 (O&M)
Date of decision: 26.03.2018

Gurmail Singh and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Parminder Singh and Mr. A.S. Cheema, Advocate
for the petitioner(s) in CWP-24222 and 18438-2013.
Mr. Parminder Singh-I, Advocate for the petitioner(s)
in CWP-15308-2015.
Ms. Sudeepti Sharma, Addl. A.G., Punjab.

Jitendra Chauhan, J. (Oral)

The aforementioned petitions are being decided by way of

common order, as the issues involved in the matter being common.

By way of instant writ petitions, under Articles 226/227 of the Constitution of India, the petitioner(s) seek(s) issuance of a writ for quashing the office order to the extent of rejecting the claim of the petitioners for the post of constable in the Punjab District Police Cadre recruitment Muktsar and Bathinda for the year 2010, in the category of Ex. Serviceman.

Learned counsel for the petitioner(s) argued that in pursuance of the advertisement (Annexure P-1), the petitioners applied for the post of Constable (M) in District Muktsar under Ex. Serviceman general category whereby 13% seats are to be filled from Ex-serviceman category which comes to total 46 posts, out of which 26 posts are to be filled in from general category and 20 posts are to be filled from SC/ST and BC category. Learned counsel for the petitioner(s) in CWP-15308 of 2015 and 24222 of 2013 have submitted that in District Bathinda, total 407 posts were advertised and as per 13% quota, total 54 posts were reserved for Ex-serviceman category, out of which 30 posts were reserved for Ex-serviceman general category and 16 posts were reserved for SC category and 8 posts were reserved for backward class. The petitioners have applied against Ex-servicemen general category in response to advertisement dated 12.09.2010. The petitioners after going through all the process of recruitment were interviewed, however, their names did not surface in the merit list. Out of the selected candidates, in District Muktsar 14 candidates did not join and such candidates intimated

the respondents that they had been recruited in other Government agencies and did submit their No Objection Certificates/affidavits in this regard. Thus, in District Bathinda, six posts remained unfilled as the selected candidates did not join. The petitioners represented before the authorities to consider their names against vacant posts, however, the respondents flatly refused to do so. Hence, the present writ petitions.

On the other hand, learned State counsel submits that as on today, no person beyond the waiting list has been given appointment. The petitioners have laid their claim beyond the waiting list. Their names never figured in the waiting list, therefore, their claim has rightly been rejected by the competent authority. She further states that as on today, there are no vacancies available against the posts reserved for the Ex-Serviceman category and as per instructions/standing order dated 25.02.2010 (Annexure R-3), the Board had prepared a waiting list of 10% candidates from each category (minimum 1 candidate of each category), as per which, the persons from waiting list have been called for counselling and they have joined as Constables.

Heard, learned counsel for the parties and perused the record.

The recruitment pertains to the year 2010. Admittedly, the name of the petitioners were beyond the waiting list. However, in District Muktsar, out of total 25 posts from Ex.-serviceman general category, nine posts as per record remained unfilled and in District Bathinda, out of total 30 posts, 07 candidates came forward to join from the waiting list

and at present 06 posts are vacant as per reply filed on behalf of the State.

As per record, the candidates who have not joined after their selection have also submitted their affidavits that they do not wish to join as they have already been selected in the other departments. The State has rejected the claim of the petitioners in view para 4(2) of Punjab Ex-Serviceman Rules, 1982 which reads as under:-

4. Reservation of Vacancies:-

(2) Where a reserved vacancy remains unfilled for non-availability of (person eligible for recruitment under these Rules) such vacancy may be filled in temporarily from any other source in accordance with the rules.

The petitioners, though not found mentioned in the merit list, however, they have passed the recruitment process, therefore, the act of the State to de-reserve the vacant posts is not tenable since the petitioners were the next eligible candidates to the selected candidate(s) against the posts in question. Similar view was taken by Hon'ble the Supreme Court in **Kulwinder Pal Singh Vs. State of Punjab and others** (2016) 6 SCC 532, wherein in para Nos.14 & 15 it was observed as under:-

“14. On behalf of the appellants, it was contended that once posts were de-reserved and appointments were made as against the said de-reserved posts and the de-reservation was not challenged, High Court erred in going into the question of de-reservation. As noticed above, out of 52 posts of Punjab Civil Service (Judicial Branch) advertized, 08 posts of reserved category were not filled up and Public Service Commission de-reserved the same. Bifurcation of the said de-reserved posts is as under:-

- 1. Ex-servicemen, Punjab - 3 posts*
- 2. Physically Handicapped, Punjab 2 posts*

3. *Sports Person, Punjab 1 post*
4. *Scheduled Caste, Ex-servicemen, Punjab 1post*
5. *Ex-servicemen, Backward Class 1 post*

Out of the said eight de-reserved posts, one post was filled up by a backward class candidate and the remaining seven posts by general category candidates. As observed by the High Court, so far as two posts of physically handicapped, three posts of ex-servicemen and one post of sports person is concerned, there was no statutory prohibition in respect of dereservation. However, in respect of de-reservation of one post of scheduled caste category, Section 7 of Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 prohibits de-reservation and stipulates the manner in which such de-reservation could be done. Section 7 of the Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 as extracted in the impugned judgment reads as under:-

7. De-reservation of reserved vacancy:- (1) There shall be no de-reservation of any reserved vacancy by any appointing authority in any establishment, which is to be filled up by direct recruitment or by promotion. In case, a qualified or eligible Scheduled Castes or Backward Classes candidate, as the case may be, is not available to fill up such vacancy, in that situation, such vacancy shall remain unfilled.

(2) Notwithstanding anything contained in sub-section(1), if, in the public interest, it is deemed necessary to fill up any vacancy referred to in that sub-section, the appointing authority shall refer the vacancy to the Department of Welfare of Scheduled Castes and Backward Classes for dereservation. Upon such reference, the Department of Welfare of Scheduled Castes and Backward Classes may, if it is satisfied that it is necessary or expedient so to do, by order in writing, de-reserve the vacancy, subject to the condition that the vacancy so de-reserved, shall be carried forward against a subsequent unreserved vacancy.

15. By perusal of Section 7, it appears that as a general

rule there is a bar on de-reservation of the post reserved for scheduled caste candidates. However, sub-clause (2) provides an exception to this general rule by laying down that in the public interest the authorities may by passing an order in writing de-reserve the seats reserved for candidates belonging to scheduled castes category. After insertion of clause (4B) in Article 16 of the Constitution vide Eighty First (Amendment) Act, 2000, de-reservation could not have been done. Under Article 16(4B) of the Constitution of India, unfilled vacancies reserved for scheduled castes or scheduled tribes candidates are to be carried forward independent of ceiling of reservation of fifty per cent. The seats reserved for scheduled castes and scheduled tribes categories are to be filled only by specified category. Therefore, High Court was right in finding fault with the de- reservation of the seven posts which were filled by candidates belonging to general category and we do not find any reason warranting interference.”

A Division Bench of this Court in **Gopi Chand Vs. State of Haryana**, 1996(3) SCT 343 in para No.10 and 13 observed as under:-

10. “Despite the letter written for and on behalf of the Financial Commissioner and Secretary to the Govt., of Haryana, the representation (Annexure P-12) of the petitioners was rejected without assigning any valid reasons. Learned counsel for the respondents have conceded that the petitioners, in fact, had appeared in the combined competitive examination for recruitment to the posts mentioned in the Annexure P-1, including the posts of Excise and Taxation Officers. As the vacancies were specified, the petitioners could not be appointed to the posts on the basis of their performance in the said competitive examination. However, on the basis of their merit, they were recommended to be appointed as Assistant Excise and Taxation Officers. It has been conceded by the respondents that the petitioners were definitely at serial Nos.1 and 2 in the waiting list of candidates,

belong to the Scheduled Castes category, who were recommended for appointment as Assistant Excise and Taxation Officers. After Balbir Singh and Sat Parkash had declined to accept the offer to be appointed as Excise and Taxation Officers, it was obligatory on the part of the respondent/State to offer such posts to the next candidates in order of the merit determined on the basis of the combined competitive examination. It is not the case of the respondents that the petitioners did not possess the requisite qualifications for the post of Excise and Taxation Officers or that they had not appeared in the said examination. It was obligatory on the part of the respondent-State to offer the aforesaid two vacant posts of Scheduled Castes category to the petitioners in view of the Government's own policies, referred hereinabove (as Annexures P-8, P-9 and P-10). The opinion of the Law Department and the recommendations made by and on behalf of the Financial Commissioner and Secretary to the Government were rejected without assigning any valid reasons. The existence of the aforesaid two vacancies has not been disputed before us. Despite mentioning in their reply, "Recommendation letter of H.C.S. (Ex.B.) and other allied service examination, 1987 sent to the respondent No.1 will be produced at the time of arguments." No such recommendation was shown to us. 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 Officers in the Scheduled Castes category when candidates in order of merit determined on the basis of combined competitive examination were available.

13. Under the circumstances, the writ petition is allowed, by quashing the impugned order (Annexure P-12) and with a command to the respondents to appoint the petitioners as Excise and Taxation Officers against the posts meant for Scheduled

Castes category quota, which admittedly are lying vacant on account of non-joining/non-acceptance of the offer of appointment by Sarvshri Dalbir Singh and Sat Parkash Ranga. No costs.”

Keeping in view the facts and circumstances of the case and the admitted position, the present petitions are allowed. The respondents are directed to consider the case of the petitioners and pass the consequential order, within a period of three months from the date of receipt of a certified copy of this order.

26.03.2018
sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No