

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

**Civil Writ Petition No. 9035 of 2016 (O&M)
Date of Decision: 06.10.2018**

Mandeep Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Dharmender Singh Rawat, Advocate
for the petitioner.

Mrs. Anu Chatrath Kapur, Additional Advocate General, Punjab
for the respondent(s)/State and assisted by
Mr. Jasveer Singh, Superintendent Grade-I, Mining Deptt. and
Mr. Mohit Sharma, Sr. Assistant, Industry Department, Punjab.

JASWANT SINGH, J. (ORAL)

Petitioner (Mandeep Kaur) competed for the post of Mining Officer in the General Category against the total eight (08) posts (GC=2, SC (M&B)=01, SC (R&O)=01, BC=01, ESM/DESM=02 and PHC=01) advertised on 08.10.2013 (**Annexure P-2**). In the selections, finalized in the year 2014, the petitioner was placed at merit position No. 7 in the combined merit list in the General Category.

The petitioner filed a writ petition bearing CWP No. 19097 of 2015 seeking diversion of one (01) post from the ESM Category to General Category in view of the reservation for the said category having exceeded. The writ petition was disposed of vide order dated 10.09.2015 passed by this Court directing the respondents to pass a speaking order. The consequent speaking order dated 16.12.2015 (**Annexure P-7**) has been impugned in the present writ petition.

Upon notice, reply stands filed contesting the claim of the petitioner.

During the course of hearing on 19.09.2018, the following order was passed:-

“ Reply by way of affidavit of Gurlovleen Singh Sidhu, Director Industries & Commerce, Punjab on behalf of respondents no.1 & 2 has been filed in Court to the CM No.7725 of 2018, which is wholly inadequate, therefore, the Director Industries & Commerce, Punjab is directed to be present in Court on the next date of hearing.

After hearing both the sides, the following conceded position emerges:-

1. That the post of Mining Officer is governed by the Punjab Industries Technical (Group-B) Service Rules, 2004 and as per Rule 5 read with Appendix “B” the post of Mining Officer can be filled up 50% by way of direct recruitment and 50% by promotion. The cadre as on today comprises 8 sanctioned posts. It is, therefore, not understandable as to how 08 posts could be advertised for being filled up by way of direct recruitment.

2. Assuming the 08 posts could rightly be advertised, then the situation is as follows:-

(i) that the petitioner was placed at merit position no.7 for appointment against the two posts of Mining Officers in the general category.

(ii) that the aforesaid two vacancies stands consumed with the appointment of Bipan Kumar and one Gagan who are at merit no.3 & 5 in the combined merit lists of general category whereas the candidates placed at merit no.1 and 2 did not join and candidates at merit no.4 & 6 have refused appointment as Mining Officers.

(iii) the cadre of mining officers comprises of 8 posts and as per the prescribed 13% reservation fixed for the ESM category, only one post falls within quota of ESM, therefore, only one post instead of two in the ESM category could be advertised in the selection in question, vide advertisement dated 8.10.2013 (P-2), thus the net result would be that the one post which has remained vacant in the ESM category has to revert back to the general category.

(iv) It also cannot be disputed that on fulfillment of the quota meant for ESM category in the cadre of Mining Officers the future roster point reserved for ESM category has to remain in abeyance till the appointed

person in the said category vacates his posts.

- (v) *The petitioner, thus, being next in line of merit, is entitled to be appointed against the vacant post in the ESM category to be diverted to the general category.*

At this stage, Ms. Sudeepti Sharma, Additional Advocate General, Punjab prays for one opportunity for re-consideration of the issue.

List on 04.10.2018.

To be shown in urgent.

Copy of this order be given to Ms. Sudeepti Sharma, Additional Advocate General, Punjab under the signatures of Bench Secretary. ”

Thereafter on 04.10.2018, the following order was passed:-

“ Learned State Counsel on instructions from Mr. DPS Kharbanda, Director Industries, Punjab concedes that some mistakes have been committed by the department in reserving two posts for the ESM category in the direct recruitment of the eight (08) posts advertised on 08.10.2013. It is conceded that the second post reserved for ESM category should have been diverted to be filled up from the general category and the petitioner (belonging to general category) being next in line would have been entitled for appointment against the said post. She however, states that the Directorate of Industries has been bifurcated and the post of Mining Officer is now under the Directorate of Mining. However, the Department of Industries/Mining would be willing to rectify the mistake provided the petitioner is willing to accept a fresh appointment effective w.e.f. the date of issue/joining.

Petitioner Mandeep Kaur is present in Court and accepts that she is willing to forego all her claims for the intervening period so as to obviate the complications like seniority etc., qua the person who have been recruited during the said period. She further concedes that she is willing to file an undertaking accepting fresh appointment before the department today itself.

List on 06.10.2018.

To be shown in urgent.

Let the Director of Mining, Punjab issue the necessary appointment orders on instructions from Mr. DPS Kharbanda, Director Industries, Punjab present in Court today.

*Copy of this order be given to the learned State Counsel
under the signatures of Bench Secretary. ”*

At the time of resumed hearing today, counsel for the petitioner states that the present writ petition has become infructuous in view of the appointment order dated 05.10.2018 having been issued in terms of the previous orders.

“Disposed of as Infructuous”.

The petitioner shall be bound by her undertaking dated 04.10.2018.

October 06, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>