

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

**CWP-12409-2016 (O&M)
Date of decision : 30.05.2019**

Gurbir Singh Kohli

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Yagyadeep, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for issuance of a direction to the respondents to appoint the petitioner against the post of PCS (Executive Branch) which had been relinquished by one candidate, namely, Suneetinder Singh, being next candidate in merit list.

It is contended that the Punjab Public Service Commission vide Advertisement No.09 dated 06.12.2013 (Annexure P-1), advertised 120 posts to be filled up through Punjab State Civil Services Combined Competitive Examination – 2013. Out of the total 120 posts advertised, 23 posts were of Punjab Civil Services (Executive Branch). Further, out of the said 23 posts, 13 posts were of general category. The recruitment process fructified and the final result was declared on 22.01.2016 (Annexure P-3), wherein, the petitioner secured 20th rank in the general category. The 7

selected candidates who were higher in merit than the petitioner, also cleared Civil Services Examination, 2014 declared by the Union Public Service Commissioner (UPSC) and all of them joined their respective services there. Thus, the rank of the petitioner was moved up from 20th to 13th making the petitioner eligible to be appointed to the post of PCS (EB). It is further submitted that on 21.04.2016, the counselling was held for allocation of seats for the posts in question. During the counselling, 6 out of 7 candidates (who had been selected by the UPSC) relinquished their posts of PCS (EB) but one candidate, namely, Suneetinder Singh Walia (Rank 7), wrote an e-mail that he would join later on and he be given more time to join.

The petitioner made a representation dated 04.05.2016 (Annexure P-4) to the respondents wherein he prayed that one post of PCS (EB) lying vacant on account of non-joining of Suneetinder Singh Walia, be offered to him being the next candidate in the merit list.

Thereafter, respondent No.1 allocated the post of PCS (EB) vide order dated 04.05.2016 (Annexure P-11) to Suneetinder Singh Walia and further issued offer of appointment (Annexure P-12) to him wherein, Clauses 3 & 4 stipulated that if the conditions in the offer letter were acceptable to him, he could sent his acceptance and further, only after acceptance, he could consider Annexure P-12 as appointment letter. However, said Suneetinder Singh Walia refused to accept the offer of appointment and relinquished his claim over the post vide letter dated 20.05.2016 (Annexure P-5) and that he had no objection if the post was offered to the next candidate in the merit list. On the same day, the

petitioner once again made another representation (Annexure P-6), requesting the respondents to appoint him against the vacant post of PCS (EB) but to no avail.

It is contended that despite relinquishing of the post of PCS (EB) by Suneetinder Singh Walia and repeated representations by the petitioner, the respondents did not issue appointment letter to the petitioner for the post of PCS (EB). Rather, the petitioner was issued appointment letter to the post of Excise and Taxation Officer (ETO) and he joined as such on 06.06.2016. However, he did not give up his claim over the post of PCS (EB). It is further submitted that after keeping the post in question vacant for two years, the respondents have re-advertised the same vide Advertisement No.04 dated 21.03.2018, ignoring the legitimate claim of the petitioner. He refers to Clauses 14 and 16 of the Punjab Civil Services (Executive Branch) (Class-1) Rules, 1976 (for short, 'the 1976 Rules'), to contend that the post in question cannot said to be consumed as Suneetinder Singh Walia did not undergo medical examination and his name was never entered in Register 'B'.

On the other hand, learned State counsel states that after the declaration of the result, six candidates higher in merit than the petitioner declined to accept the employment on account of their selection in the UPSC. One more candidate, namely, Suneetinder Singh Walia, whose name figured at Sr. No.7 of the merit list and was selected in the UPSC as well, sent an e-mail to the respondents saying that he wished to join the employment of the Punjab Government. Thus, his name was considered for the post of PCS (EB) by the Committee during the counselling held on

21.04.2016 and on the basis of his written request, appointment letter was issued to him after allocating him the post of PCS (EB). In this way, the allocation process had been completed. The name of the petitioner was upgraded to Sr. No.14 of the merit list after six candidates declined to accept the employment. There were 13 posts of PCS (EB) in the general category. Otherwise also, after allocation of said 13 posts, the recruitment process stood concluded. There is no provision in the Punjab Civil Services (Executive Branch) (Class-1) Rules, 1976, for re-allocation of the posts.

Heard.

Before proceeding further, it would be apposite to refer to the provisions of Rules 14 and 16 of the 1976 Rules, which read thus:-

“14. Subject to the provision of rules 13 and 13-A Government shall include in Register 'B' in order of merit determined by the Commission, the names of such number of candidates as it may, from time to time, determine, from amongst those who have been declared as qualified in the main competitive examination by the Commission.

16. The name of a person selected by the Government under the provisions of rule 14 shall not be entered in Register B of accepted candidates unless he has within the specified period appeared for medical examination before duly constituted Medical Board and has been declared by such Board to be physically fit for the duties which he will have to perform as a member of the service;

Provided that if the duly constituted Medical Board reports that any such person is suffering

from physical defect which renders him unfit for the Service, the Government shall decide whether the name of such person may nevertheless be entered in Register 'B' of accepted candidates or whether he should be required to appear again at a future date before the Medical Board or whether his name may not be entered in Register 'B' of accepted candidates.”

Admittedly, on 21.04.2016, the counselling was held for allocation of seats for the posts in question. During the counselling process, six out of seven candidates who had been selected by the UPSC, relinquished their posts of PCS (EB) but one candidate, namely, Suneetinder Singh Walia, Rank 7, wrote an e-mail that he would join later on and he be given some more time to join. The respondents, therefore, kept vacant one post for said Suneetinder Singh Walia, despite the fact that neither did he attend counselling nor his documents were verified nor he presented himself before the Medical Board for medical examination. Reference in this regard can be placed on Rule 16 of the 1976 Rules which stipulates that the name of a selected person shall not be entered in Register B unless he has within specified period appeared for medical examination before duly constituted Medical Board and has been declared by such Board to be physically fit for the duties which he will have to perform as a member of the service. A bare perusal of the provision clearly shows that it is mandatory for a candidate to appear before the Medical Board and found to be physically fit before his name is entered in the Registry B. Further, Rule 14 of the 1976 Rules stipulates that the Government shall include in Register B in order of merit determined by the Commission, the names of such candidates as it may,

from time to time, determine from amongst those who have been declared as qualified in the main competitive examination by the Commission. Thus, a joint reading of Rules 14 and 16 clearly stipulates that a name of the accepted candidate shall be entered in register B in order of merit after medical examination. Meaning thereby, the name of the candidate can only be entered in the register B in order of merit when he has undergone the medical and he has been found medically fit for the post of PCS (EB). Thus, the action of the respondent No.1 to allocate the post of PCS (EB) to Suneetinder Singh Walia vide order dated 04.05.2016 (Annexure P-11) and further, offer of appointment dated 05.05.2016 (Annexure P-12) to him for the post in question is totally illegal, arbitrary and against the statutory provisions despite the fact that the petitioner was available and fully eligible for the said post.

Another important aspect of the matter is that Clauses 3 and 4 of the offer of appointment (Annexure P-12) issued to Suneetinder Singh Walia, clearly stipulated that if the conditions in the office letter were acceptable to him, he could send his acceptance and further, only after acceptance, he could consider Annexure P-12 as letter of appointment. Clauses 3 and 4 of the offer of appointment (Annexure P-12) read as under:-

“3. If the aforementioned conditions are acceptable to you, kindly send your acceptance to this office immediately.

4. After sending your acceptance, you can consider this letter as your appointment letter.”

Thus, mere offer of appointment in the present set of facts issued to Suneetinder Singh Walia (Annexure P-12) will not amount to

consumption of the vacancy, rather there must be an acceptance by the selected candidate and in the absence thereof, the same shall not be termed as 'appointment letter'.

The respondents have committed illegality by not offering the vacant post to the petitioner as the petitioner was the next candidate in the merit list upon relinquishing of claim by Suneetinder Singh Walia. In this regard, reliance can be placed on the law laid down by Hon'ble the Supreme Court in ***State of J&K and others Vs. Sat Pal, 2013 (11) SCC 737***, wherein, it has been held 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. Atleast one such vacancy offered to Trilok Nath never came to be filled up. In such a situation, the claim of the 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.

11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil) Grade-II for which the

recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil) Grade-II on 22.4.2008. The aforesaid offer was made, consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22.4.2008, because the vacancy was offered to Trilok Nath on 22.4.2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23.8.2011 (extracted above), that the waiting list was valid till May, 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, in so far as the present controversy is concerned.

12. The date of filing of the representation by the parties concerned and/or the date on which the competent authority chooses to fill up the vacancy

in question, is of no consequence whatsoever. The only relevant date is the date of arising of the vacancy. It would be a different legal proposition, if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates on the waiting list. The offer made to Trilok Nath on 22.4.2008 by itself, leads to the inference that the vacancy under reference arose within the period of one year, i.e., during the period of validity of the waiting list postulated by the rules. The offer of the vacancy to Trilok Nath, negates the proposition posed above, i.e., the desire of the employer not to fill up the vacancy. Herein, the appellants wished to fill up the vacancy under reference. Moreover, this is not a case where the respondent was seeking appointment against a vacancy, over and above the posts for which the process of selection/recruitment was conducted. Based on the aforesaid inference, we have no hesitation in concluding that the appellants ought to have appointed the respondent Sat Pal, against the vacancy which was offered to Trilok Nath.”

A similar controversy arose in the PCS Recruitment Process-2015 wherein, CWP No.83 of 2017 titled as ***Navkirat Singh Randhawa Vs. State of Punjab and others***, came to be decided by this Court by holding thus:-

“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.”

In view of the above discussion, the instant petition is allowed and the respondents are directed to make an offer of appointment to the petitioner for the post of PCS (Executive Branch), within a period of six weeks from the date of receipt of a certified copy of this judgment, subject to the fulfillment of the terms and conditions by the petitioner, as prescribed.

Allowed.

30.05.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No