

Sr. No.205

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

CWP No.21465 of 2014 (O&M)

Date of Decision: 30.10.2019

Jasmer Singh

... Petitioner

Versus

Chandigarh Administration and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. K.S.Dadwal, Advocate,
for the petitioners.

Ms. Deepali Puri, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

1. *Inter alia*, writ in the nature of mandamus has been sought by the petitioner directing respondent No.4 to take requisite remedial action to consider his claim for promotion to the post of Head Mali with effect from the date when the posts of Head Mali have been lying vacant prior to coming into force of Regulations of 2012.

2. I have heard rival contentions of learned counsel and conjointly perused the pleadings along with the relevant record appended thereto. In an earlier round of litigation instituted by the petitioner vide CWP No.14679 of 2010, following order was passed by this Court on 17.05.2011:-

“This writ petition has been filed with a prayer to quash a letter dated 7.4.2010 on a ground

that it limits rights of the petitioner for appointment against the post of Head Mali.

At the time of arguments, Mr.Kaushal produced in Court a letter dated 20.7.2010, wherein it is stated as under:-

“To

The Commissioner

Municipal Corporation,

Chandigarh

Subject: Regarding filling up the vacant post of Head Malies from amongst work Charged / daily work employees

Reference your memo No.5488, dated 2.6.2010, on the subject noted above.

It is clarified that the direct quota posts can be filled up through open advertisements as per policy with prior approval of the Finance Department. The direct recruitment cannot be limited to worked charged only.

Sd/- Superintendent Finance II,

For Secretary Local Govt.,

Chandigarh Administration.”

Above said letter makes it very clear that the filling up of the direct recruitment post cannot be limited to the work charged employees only.

In view of above, we feel that the petitioner is eligible for the post in question.

The writ petition stands disposed of.”

3. A perusal of the above leaves no manner of doubt that the petitioner was eligible to be considered for the promotion to the post of Head Mali as on 20.07.2010 and, therefore, as per settled position in law, principle of Old Vacancy Old Rule is applicable.

4. In the aforesaid premise, I am of the opinion that the petitioner being eligible and entitled to be considered for appointment to the post of Head Mali by way of direct recruitment, as per the vacancy existed on 17.05.2011 when the judgment, *ibid* (Annexure P-4) was passed by the Division Bench of this Court, his claim ought to have been considered by the respondent Corporation.

5. The inaction on the part of the Corporation cannot be to the detriment of the petitioner and, therefore, defence in view of the later enactment of Service Regulations, 2012 vide which all the appointments are to be made 100% by way of promotion is not sustainable in law qua the petitioner and, in any case, cannot be applied retrospectively.

6. During pendency of the writ petition, pursuant to the order dated 27.08.2019, an additional affidavit dated 19.09.2019 has been filed by the Superintending Engineer (H&E) and in para 5, it has been deposed that out of 24 sanctioned posts, 4 posts are still lying vacant as on today.

7. In view of my aforesaid discussion and reasoning contained therein, the writ petition is disposed of with a direction to the respondents particularly respondent No.4 i.e. Superintending Engineer (B&R Circle), Municipal Corporation, Chandigarh to consider the claim of the petitioner for promotion to the post of Head Mali by way of direct recruitment as per the vacancy existing in terms of the applicable Rules and pass appropriate orders, in accordance with law.

8. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.
9. Disposed of in above terms.

30.10.2019
vandana

(ARUN MONGA)
JUDGE

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