

**Sr. No.249
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.19243 of 2018 (O&M)

Date of Decision: 12.07.2019

Shinaaz Mittal

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Gurminder Singh, Senior Advocate with
Mr. J.S.Gill, Advocate,
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

ARUN MONGA, J.(ORAL)

Grievance of the petitioner is that against the unfilled advertised vacancies, due to non-joining of a selected candidate, the petitioner, being next in merit, is still not been offered appointment.

On the last date of hearing i.e. 03.07.2019, matter was heard and following order was passed:-

“A conjoint reading of pleadings would reflect that reliance, inter alia, has been placed on Para 44(v) of Part-III(K) of the Regulations and Instructions governing the work of Punjab Public Service Commission, 1958. Para 44(v), ibid, envisages that a candidate appointed pursuant to a selection process if, by chance, falls out as a result of verification of character and antecedents, medical examination etc., then a new appointment should not be made in his place. The said vacancy then should be carried forward to the next year.

Learned counsel for the petitioner submits that interpretation of Clause 44(v) was subject matter of a writ petition filed before this Court bearing CWP No. 83 of 2017 and the same was dealt with in the following terms:-

"The reference to clause 44(V) is wholly misplaced in view of the conclusion already reached by this Court to the effect that Memo/Letter dated 30.12.2016 (P.11) is only an offer of appointment and not an appointment letter and, thus, the eventuality for verification of Character/antecedents and medical examination as stipulated therein has not arisen as both the respective candidates, namely, Jagpal Singh Dhanoa-respondent No.3 and Lakshay Kumar had already declined the offer of appointment for the post of Tehsildars at the initial stage."

Relying on the above, learned counsel for petitioner submits that in the present case also, the selected candidate was merely given an offer of appointment. The said offer was declined by him vide letter dated 07.02.2018 (Annexure P-5) and, therefore, there was no occasion for the post in question having fallen out as a result of verification of character and/or antecedents etc. He further submits that judgment, supra, relied by him was not challenged by the State and has since attained finality.

Confronted with the situation, learned State counsel seeks time to get instructions qua the submissions of learned counsel for the petitioner, as noted above, and also the import/applicability of the judgment, ibid, in the present case.

List on 12.07.2019."

Pursuant to the above order, a communication dated

10.07.2019 by the Department of Personnel (Personnel Policies-3 Branch) addressed to Learned Advocate General of Punjab has been produced in Court, which is taken on record. Copy whereof has been supplied to learned Senior counsel for the petitioner. Despite a pointed query of this Court as recorded in the order dated 03.07.2019, the said communication does not offer any explanation, let alone plausible explanation as to why the petitioner has not been accorded the benefit of appointment.

Per written statement, the ostensible reason given for non appointment of the petitioner is that it will result into cropping of other similar claims. While at the same time, it is stated therein that as per report of Department of Co-operation (Respondent No.4), one post is still lying vacant.

In fact, qua the said vacant post, one of the selected candidates, even prior to the issuance of appointment letter had already declined to join the post as ARCS. While the other candidate did not join despite the appointment letter and did not appear for verification of character and/or antecedents etc.

In the premise, I am of the opinion that there was no occasion for the post in question having fallen out as a result of the candidate having failed in the verification of character and/or antecedents and/or medical examination as contemplated in Para 44 (v) of Part-III (K) of Regulations and Instructions governing the work of Punjab Public Service Commission, 1958.

In the circumstances, the writ petition is allowed with direction to the respondents to accord the benefit of her merit to

the petitioner and if found entitled, as per the merit list, issue her an appointment letter, in accordance with law.

Let a decision on the same be taken within a period of 1 month from the date of receipt of a certified copy of this order.

Allowed in the aforesaid terms.

12.07.2019
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No