

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

CWP No.24314 of 2017 (O&M)

Reserved on:- 23.01.2020

Date of Decision:-05.02.2020

Nippy Garg

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Pawan Kumar, Senior Advocate, with
Mr. Surya Kumar, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Mr. Sanjeev Soni, Advocate for respondent No.3.

TEJINDER SINGH DHINDSA J.

Challenge in the instant petition is to the order dated 10.10.2014 (Annexure P-6) whereby the claim of the petitioner seeking appointment to the post of Building Inspector under the Department of Local Government, Punjab, has been rejected. Writ of mandamus is sought to direct the official respondents to issue in her favour appointment letter to the post in question with all consequential benefits in relation to a recruitment process that was initiated vide Public Notice dated 25.09.2013 and in which the petitioner had participated.

Brief facts may be noticed. The Department of Local Government, Punjab, issued a public notice dated 25.09.2013 (Annexure P-1) inviting applications for filling up 50 posts of Building Inspector (Technical) under various Municipal Corporations. 25 posts were to be filled up from the General Category candidates. Selection was to be made as per merit drawn on the basis of a written test. Petitioner belongs to the

General Category and being eligible for the post submitted her application form. The written test was conducted on 16.11.2013 in which the petitioner duly participated. Result was declared on 03.12.2013. On the basis of the merit list prepared category-wise, short listed candidates were directed to appear before the Selection Committee on 11.12.2013 for purpose of verification of the original educational certificates and other relevant documents. Petitioner was one of the short listed candidates in the General Category and duly appeared before the Selection Committee. It transpires that in the deliberations held by the Selection Committee in its meeting on 11.12.2013, a representative of the Office of the Director, Scheduled Castes and Backward Castes, Punjab, informed that in view of the rules/instructions and as per roster points the reservation for the Schedules Castes Category had to be 13 posts instead of 12 posts out of the total 50 posts advertised. Accordingly, the Selection Committee took a decision that instead of the 25 posts earmarked for General Category, 24 would now be filled up from the General Category candidates. Such decision apparently was in consonance with the stipulation contained in the public notice dated 25.09.2013 stating that reservation would be as per policy of the State Government and the number of vacancies can be increased/decreased. The last candidate selected under the General Category as Building Inspector (Technical) was Dinesh Joshi who had obtained 42.00 marks in the written test and was placed at Sr. No.28 in the merit list. One Sh. Rajat Jain was placed at Sr. No.29 having obtained 41.75 marks and thereafter the name of the petitioner appeared at Sr. No.30 in the merit list having secured 41.25 marks. Petitioner had preferred CWP No.12306 of 2014 (Nippy Garg Vs. State of Punjab and ors) raising a

claim that a candidate namely Omesh Thakral son of Rampal Thakral and who was at Sr. No.27 in the merit list under General Category had filed a writ petition and in which one post had been kept reserved but since he had withdrawn his writ petition and the post had become available, the same must be offered to the next candidate in order of merit. It was further asserted in such writ petition that since the next candidate in order of merit namely Rajat Jain at Sr. No.29 is not inclined to accept appointment to the post, it is the petitioner who ought to be issued the appointment letter. CWP No.12306 of 2014 filed by the petitioner was disposed of by this Court on 30.06.2014 in the following terms:-

xx xx xx

“Accordingly, without adverting to the merits of the case, this petition is disposed of with a direction to respondent No.2 to dispose the representation (Annexure P-4), moved by the petitioner, expeditiously, in accordance with law by passing a speaking order, preferably within three months from the receipt of the verified copy of this order.”

Claim of the petitioner was considered and declined in terms of impugned order dated 10.10.2014 (Annexure P-6).

Learned Senior Counsel submits that out of the 50 posts advertised, only 47 posts have been filled up and out of which 24 have gone to the share of General Category. A post which had been reserved under orders of this Court in favour of Omesh Thakral at Sr. No.27 in the merit list and subsequently his writ petition having been withdrawn, such post had to be filled up by offering the same to the next candidate in merit namely Rajat Jain, who is at Sr. No.29. It is urged that since Rajat Jain has

not claimed such post till date, the petitioner who is next in order of merit at Sr. No.30 has a vested right to be offered appointment under the General Category. In support of such contention, reliance has been placed upon judgement of this Court in *Navdeep Garg Vs. State of Punjab and ors. 2008 (3) SCT 113*. It has also been argued that as per initial public notice 50 posts of Building Inspectors were advertised and out of which 25 were earmarked for General Category candidates. The process of selection had already commenced, written test was conducted and at the stage of counselling/verification of documents i.e. on 11.12.2013 one post was taken out of the purview of General Category and as such the posts were reduced from 25 to 24 and such post was given to SC Balmiki/Majabi Sikh. Contention raised is that as a result thereof reservation has exceeded 50% and which is not permissible. It is prayed that selection and appointment of private respondent No.3 on such post be quashed and the quota of 25 posts for General Category be directed to be kept intact as per initial public notice dated 25.9.2013 (Annexure P-1).

Per contra learned State counsel submits that the impugned order dated 10.10.2014 (Annexure P-6) declining the claim of the petitioner for the post of Building Inspector (Technical) was already a subject matter of challenge in a previous round of litigation filed at the hands of the petitioner. Such order already stands upheld and as such the instant writ petition is not even maintainable.

Having heard counsel for the parties and having perused the pleadings on record, this court is of the considered view that the instant writ petition is wholly misconceived and deserves to be dismissed.

Petitioner had earlier filed CWP No.27455 of 2015 raising a

challenge to the same very order dated 10.10.2014 whereby her claim for consideration and appointment as Building Inspector against the General Category quota had been rejected. Such writ petition was dismissed by the Writ Court on 05.01.2016 in the following terms:-

“ Challenge in the present writ petition is to the order dated 10.10.2014 (Annexure P6), passed by respondent No.2, whereby the claim of the petitioner for consideration for appointment as Building Inspector, against General Category quota, has been rejected. The said respondent had noticed, in the impugned order that the petitioner has got 41.25 marks in the written test and is at Sr.No.30, in the merit list. The last person who has joined in the General Category was at Sr.No.28 in the merit list, having obtained 42 marks. Therefore, no person has been appointed below the petitioner, in the merit.

Counsel for the petitioner has placed reliance upon the observations made in para No.9 of the impugned order that one Umesh Thukral, at Sr.No.15 in the merit list, had filed a writ petition and one vacancy had been kept for him. It is stated that the said writ petition has been dismissed as not pressed and therefore, there is a vacancy.

There is no averment made in the writ petition that the said person has not joined, on the basis of which, the petitioner is entitled for consideration. Even otherwise, there was no wait-list prepared and therefore, the petitioner does not have any vested right of appointment. The impugned order does not suffer from any infirmity which would merit consideration by this

Court, as the merit of the candidates has been kept in consideration while making appointment. The order is dated 10.10.2014 and the present writ petition has been filed after more than a year. In such circumstances, there is no scope for interference in the present writ petition.

Dismissed in limine

Petitioner then preferred LPA No.560 of 2016 against the judgement dated 05.01.2016 of the learned Single Judge. LPA No.560 of 2016 was also dismissed on 19.01.2017 affirming the judgement passed by the Writ Court. The order passed by the Letters Patent Bench reads as follows:-

The instant Letters Patent Appeal has laid challenge to the order dated 05.01.2016 vide which learned Single Judge has dismissed the appellant's writ petition, seeking his appointment on the post of Building Inspector.

[2] The uncontroverted facts are that 50 posts of Building Inspectors were advertised on 25.09.2013 and the appellant also applied for those posts. According to the appellant, merit list of 125 candidates of general and reserved category candidates was prepared but out of them only 48 candidates were declared to have been selected. The appellant further claims that two out of those selected candidates did not join in the general category and she being the immediate next candidate in the order of merit, is entitled for appointment.

Learned Single Judge has turned down the appellant's claim on the ground that no wait-list was prepared and that the

appellant does not have any vested right to seek appointment.

Learned State counsel reiterates that no wait-list was prepared as per record. It is further pointed out that respondent No.5 (Rajat Jain) secured more marks than the appellant and if at all there is a waiting list, respondent No.5 being higher in merit than the appellant, has a preferential rights for appointment. Learned counsel for respondent No.5 also reiterates his superior claim for appointment.

In the light of these facts, no case to issue the desired directions is made out.

Dismissed.”

Apparently, petitioner approached this Court yet again filing a review application in LPA No.560 of 2016 and which was dismissed by the Division Bench of 15.09.2017 in the following terms:-

“RA-LP-33-2017

This application seeks to review/recall the order dated 19.01.2017 vide which LPA preferred by the review-applicant/appellant was dismissed.

Having heard learned counsel for the review-applicant/appellant, we do not find any error apparent on record and as such no case to review/recall the order dated 19.01.2017 is made out. However, if there is any subsequent cause of action in favour of the review-applicant/appellant due to non-joining of respondent No.5 or for any other reason, she may avail her remedy in accordance with law.

Dismissed with liberty aforementioned.

Learned Senior Counsel has vehemently justified the filing of the instant petition by contending that the same would be maintainable in the light of the liberty granted by the Division Bench while dismissing the review application vide order dated 15.09.2017. It has been urged that Rajat Jain candidate at Sr. No.29 in the merit list was respondent No.5 in the LPA and while dismissing the review application on 15.09.2017 the Division Bench had granted liberty to the petitioner herein to avail of her remedies in accordance with law in the eventuality of non-joining of respondent No.5 (Rajat Jain) and for any other reason. Learned Senior Counsel submits that information had been sought under the provisions of the Right to Information Act as to whether Rajat Jain had submitted any application seeking his claim for appointment to the post of Building Inspector (Technical) in the General Category and a response was furnished vide memo dated 18.08.2017 (Annexure P-12) that no such application had been received from Rajat Jain by the Recruitment Cell of the Department. It is urged that the vacant post of Building Inspector in the General Category under such circumstances ought to be offered to the petitioner who was next in order of merit and such prayer has been raised by way of filing the instant writ petition in terms of the liberty granted by the Division Bench vide order dated 15.09.2017 (Annexure P-13).

The aforementioned contention of the learned Senior Counsel is not well founded.

Petitioner earlier filed CWP No.27455 of 2015 impugning the order dated 10.10.2014 which is a subject matter of challenge in the instant writ petition as well. In law it shall be presumed that petitioner at the stage of filing the previous petition had assailed the rejection of her claim for

appointment to the post in question on all grounds available. The order dated 10.10.2014 was upheld and the writ petition was dismissed. It was noticed by the Writ Court that the last person who has joined/appointed in the General Category was at Sr. No.28 in the merit list having obtained 42 marks and that no person lower in merit to the petitioner herein has been appointed. It had also been held that since no wait list had been prepared, as such petitioner would not have any vested right of appointment. Such view taken by the learned Single Bench was affirmed even by the Letters Patent Bench on account of dismissal of LPA No.560 of 2014 (Nippy Garg Vs. State of Punjab and others) vide order dated 19.01.2017. The review application preferred by the petitioner in LPA No.560 of 2016 was also dismissed on 15.09.2017 by recording that no case to review/recall the order dated 19.01.2017 is made out. Undoubtedly, liberty was granted that if there is any ***subsequent cause of action*** on account of ***non joining of respondent No.5*** or ***for any other reason***, the applicant/petitioner herein may avail her remedy in accordance with law.

In the facts of the present case no subsequent cause of action has arisen in favour of the petitioner herein. Non-joining of Rajat Jain, who was respondent No.5 in LPA No.560 of 2016 was an event even prior to dismissal of the previous writ petition i.e. CWP No.27455 of 2015 as also LPA No.560 of 2016. It is not the case of the petitioner that after dismissal of her LPA an offer of appointment had been made by the respondent authorities to Rajat Jain who was at Sr. No.29 in order of merit and he having declined to accept such offer that the petitioner is now vested with the right to be considered for appointment being next in order of merit at Sr. No.30. The instant writ petition can only be seen as an

attempt to re-open the issue and for the initial writ petition i.e. CWP No.27455 of 2015 filed by the petitioner to be reheard. The same would not be permissible. The facts and circumstances under which the instant writ petition has been filed are peculiar. The judgment of this Court in Navdeep Garg's case (supra) would as such have no applicability.

There is another vital and relevant aspect which would require notice. In the written statement filed on behalf of respondents No.1 and 2 it has been stated that 27 posts of Building Inspectors (Technical) including the vacant posts pertaining to the pervious recruitment process initiated vide public notice dated 25.09.2013 were advertised vide subsequent public notice dated 01.07.2015. It has also been averred in the written statement that in response to the subsequent public notice dated 01.07.2015, the petitioner herein has applied for the post and was issued Roll No.7220800200 by the examination conducting agency. Learned State counsel during the course of hearing has apprised the Court that the petitioner having participated in the subsequent selection process has not secured sufficient merit to secure appointment. The instant writ petition was filed in the month of September 2017. For reasons best know to the petitioner the factum of issuance of public notice dated 01.07.2015 advertising the posts of Building Inspectors (Technical) and the petitioner having applied and subjected herself to such recruitment process has not been disclosed. This Court would view the same as a deliberate concealment.

For the reasons recorded above, no intervention in the matter is warranted.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 05, 2020
shweta

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No