

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

LPA-594-2021

Date of Decision:-5.8.2021

Nirbhay Singh Sohi and another

... Appellants

Versus

State of Punjab through Secretary and Others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Prateek Pandit, Advocates
for the appellants.

Ms. Monica Chhibber Sharma, DAG, Punjab.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The appellants have filed this appeal against the order dated
19.03.2021 passed by the learned Single Judge whereby CWP-12777-2017
(O&M) was disposed of in the following terms:-

“6. Having heard rival contentions, as aforesaid, it is directed
that the respondent/PSPCL shall notify exiting vacancies to all the
candidates on the merit list from Serial No.71 to 88 and make

them an offer to join. In the event, none of the candidates above to the petitioner(s) choose not to join, needless to say the petitioner(s) would be accorded the benefit of their merit against the available vacancies.

7. Let the needful exercise be done within a period of 90 days from today.

8. Both the petitions stand disposed of accordingly. ”

In brief, the facts of the case of the appellants are that they having degree in Bachelor of Engineering / Technology in Electrical Engineering, applied against 176 posts of Assistant Engineers / On Training (Electrical) which were advertised on 8.5.2015 by respondent No.2-Punjab State Power Corporation Limited. Out of the said posts, 66 posts were for general category whereas 64 posts were reserved for SC category, 12 posts were reserved for BC category and 16 posts were reserved for other categories. Only those candidates were eligible who were having minimum qualifying marks in GATE-2015 examination. The appellants who belong to general category, participated in the selection process and were placed in the merit list. They filed writ petition seeking appointment against the aforesaid posts as per order of merit.

The writ petition was contested by the respondents and was disposed of by learned Single Judge as has been detailed above. Being aggrieved by the said order both the appellants have filed the present appeal.

We have heard the counsel for the appellants and the State counsel who was having advance notice of the appeal.

The counsel for the appellants submitted that the appellants were placed at Sr. No.83 and 88 respectively in the merit list. That at the time of passing of the impugned order dated 19.3.2021, four vacancies were available, as per the statement made by the counsel for respondent No.2 in the Court. The last selected candidate was at Sr. No.71 of the merit list. The counsel for the appellants while referring to the impugned order, submitted that at this stage there is no need to give offer of appointment to the candidates who are at Sr. No.72 to 82 and at Sr. No.84 to 87 of the merit list, the reason being they never approached the Court seeking their appointment against the vacant posts. Now they have got no right to claim appointment against the aforesaid vacant posts. The counsel for the appellants further contended that candidates at Sr. No.72 to 82 and 84 to 87 who kept on watching the situation without approaching the Court, being fence sitters are not entitled to get any relief. So prayer is made that to that extent order dated 19.3.2021 passed by learned Single Judge deserves to be set aside and consequently out of the aforesaid vacant posts, two posts be offered to the appellants by the appointing authority. To substantiate his contentions the counsel for the appellants referred to **Vijay Kumar Kaul and others vs. Union of India and others, 2013(1) SLR 45** (Supreme Court).

On the other hand, the State counsel submitted that offer of appointment is to be given to all the left over candidates as per their merit as

has been rightly observed by the learned Single Judge. The State counsel further contended that the appeal filed by the appellants is totally misconceived and deserves to be dismissed.

We have considered the submissions made by counsel for the parties.

From the perusal of the impugned order dated 19.3.2021, it is clearly reflected that at the relevant point of time four posts were lying vacant. Also as per the impugned order, the last selected candidate was at Sr. No.71 in the merit list. Admittedly, the aforesaid four posts were available as some of the selected candidates did not join. It is well settled that once a post duly advertised has not been consumed, then a candidate next in order of merit as determined in a regular process of selection, has to be invited for filling up such vacancy. It being so, the appointing authority cannot pick and choose out of candidates placed at Sr. No.72 to 88 to fill the aforesaid vacant posts, by offering two of the said posts to the appellants by ignoring the candidates who are ahead of them in the merit list. So, the learned Single Judge rightly concluded that appellants (petitioner therein) cannot be given undue advantage by jumping the merit queue.

The judicial pronouncement in Vijay Kumar Kaul's case (supra) relied upon by the appellants is in totally different context and is not of any benefit to the appellants.

For the reasons stated above, we do not find any illegality or perversity in the impugned order dated 19.3.2021. Consequently, the present appeal is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

5.8.2021
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No