

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

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**CM-13382-CWP-2020 in/and
CWP-15541-2016
Decided on : 12.02.2021**

Deepak

... Petitioner

Versus

Union of India & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Malkiat Singh, Advocate, for the applicant/petitioner.

Mr.Anil Chawla, Advocate, for the respondents.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

CM-13382-CWP-2020

Application for preponing the hearing of the main case from 05.03.2021, is allowed, in view of the averments made in the application, duly supported by affidavit. Main case is taken on Board today itself.

CM stands disposed of.

CWP-15541-2016

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India is for consideration to the post of Constable (Pioneer) in the trade of Plumber and to appoint him against the vacant post.

It is the case of the petitioner that there were 90 posts advertised out of which 13 were for Scheduled Caste. The petitioner was an aspirant against the reserved category and had secured 21 marks in the written examination out of 35 and 46 out of 60 marks in trade test. He had been awarded 4 marks in interview out of 5 and thus, secured 71 marks in total. It is his case that his name had been included in the 25% General (Un-reserved) Category and placed at Sr.No.6 and not in the Scheduled Caste Category. The respondents had only filled up 10 of the Reserved Category seats and 3 posts were still lying vacant and therefore, the writ petition had been preferred.

The stand of the respondents is that the cut-off marks in the un-reserved Category was 73 in the main list and 72 in the Reserved List and therefore, the petitioner was not selected in the main reserved category having

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secured only 71 marks. Petitioner was put in under the 25% Extra List (Reserved/waiting List) of the General Category and the selection was subject to the availability of the unfilled vacancies arising due to unfitness of the main list candidate(s) of the Un-reserved General Category after re-medical examination. In the General Category, only 2 candidates were declared unfit and one did not report and candidates at Sr.Nos.1, 2 & 3 of the reserve list were upgraded and brought to the main list and the petitioner could not be selected. In the General 25% extra/waiting list, there was a tie between Vikas Sharma and the petitioner since both had 71 marks. Since Vikas Sharma was having more marks in the Trade Test, therefore, as per the ITBPF Guidelines, he was rightly selected.

A perusal of Annexure R-1 would also go on to show that for the Reserved Category, 13 candidates having 72 marks had been short-listed and for the 25% Extra Reserve List also, the cut-off was 72 marks. In such circumstances, it is apparent that the petitioner did not make the cut as he had only 71 marks. The respondents have also treated the case of the petitioner in the General Category as per Annexure R-2 since the 48 candidates therein short-listed had a cut-off of 73 marks. For the 25% waiting list, 12 candidates were put in the Reserve List who had secured marks ranging from 72-71 and the candidates who had more marks in the Trade Test were put at a higher serial numbers. Therefore, petitioner's case was also considered under the General Category in the merit but he could not make the cut.

To answer to the query put to the respondents on 10.05.2019 by the Co-ordinate Bench as to why only 10 posts were filled up, an affidavit has also been filed by Sanjay Kumar Chowdhary, Deputy Inspector General, Central Frontier, ITBPF, Bhopal (MP) wherein it has been averred that 16 candidates were short-listed for detailed medical examination. Out of the 13 candidates (Main), 8 candidates were declared unfit and one found absent during detailed medical examination. Out of the 3 wait-listed persons all of them were declared unfit. Thereafter, out of the 8 main and 3 reserved unfit candidates, 6 main + 2 reserved candidates applied for review of medical examination. Out of them 4 main and 2 reserved candidates were

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declared fit whereas one remained absent and one was declared unfit. Thus, only 10 candidates were recruited under the SC category and the remaining 3 vacancies were surrendered before the Director General.

Thus, the facts would go on to show that the petitioner has been very fairly treated as his case was also considered in merit in the General Category also. It is settled principle that the petitioner is only entitled for consideration and has no right of appointment. Reliance can be placed upon **Shankarsan Dash Vs. Union of India 1991 (3) SCC 47**, wherein it has been held that only if the State's action is arbitrary and without any reason, vacancies can be permitted to be filled up. As noticed above, petitioner was considered on both sides considering his merit but he has failed to make the cut.

Resultantly, in view of the above, no writ of mandamus is liable to be issued to fill up the unfilled vacancies, in view of the law laid down by the Three Judges Bench of the Apex Court in Shankarsan Dass (supra) and law laid down in **Commissioner of Police Vs. Umesh Kumar (2020) 10 SCC 448**. The relevant portion of the judgment reads as under:

“19. The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In Punjab SEB vs. Malkiat Singh, this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Court held: (SCC p.26, para 4)

“4. ...the High Court committed an error in proceeding on the basis that the respondent had got a vested right for 10 (2005) 9 SCC 22 13 appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in Shankarsan Dash v. Union of India which reads: (SCC pp. 50-51)

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“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in [State of Haryana v. Subash Chander Marwaha](#), [Neelima Shangla v. State of Haryana](#) or [Jatinder Kumar v. State of Punjab](#) . (emphasis in original)”

Accordingly, in view of the above, the present writ petition is, dismissed.

FEBRUARY 12, 2021

sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No