

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

Sr. No.212

**CWP No.29876 of 2018
DATE OF DECISION: April 19, 2021**

SUNDER SOKHAL

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Harparteek Singh Sandhu, Advocate, for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

SUDHIR MITTAL, J. (ORAL)

Pursuant to advertisement dated 24.10.2016, the petitioner applied for the post of Sub-Divisional Engineer (Civil) in the Department of PWD (B&R), Government of Punjab. A total number of 29 posts had been advertised in the said advertisement, out of which 04 posts were meant for BC Category candidates. The application of the petitioner was as a BC Category candidate. Result was declared on 25.04.2017 and the petitioner was placed 5th in the order of merit prepared for BC Category candidates. Since there were only 04 vacancies, the petitioner did not receive any offer of appointment. The name of the petitioner was maintained on the waiting

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list and vide communication dated 28.07.2017, Chief Engineer (HQ)-cum-Nodal Officer for joint counselling sought preference of a particular department from the candidates. The petitioner mentioned PWD (B&R) Department as his first choice. On 30.10.2017, the 4th candidate in the BC Category list namely Harshant Kumar was offered appointment. One of the terms of the offer was that the same had to be accepted within 15 days of the issuance of the letter, failing which the offer would lapse. The said Harshant Kumar did not join within the stipulated 15 days and finally sent the communication dated 05.03.2018 stating his unwillingness. Thus, the petitioner submitted a representation dated 27.12.2017 to appoint him against the vacant seat but no reply was received. The representation was followed by another representation dated 15.02.2018 which was followed by a third representation dated 05.03.2018, whereupon, the Punjab Government wrote to the Chief Engineer (HQ), Public Works Department vide its communication dated 23.03.2018 directing him that the case of the petitioner be considered in the upcoming joint counselling meeting. However, instead of considering the case of the petitioner, the same was rejected vide communication dated 01.08.2018 on the ground that more than one year had elapsed since the commencement of the selection process and that a candidate who has joined on any other post cannot be considered for a second post.

Learned counsel for the petitioner submits that reasoning mentioned in the impugned communication is patently erroneous as the petitioner has not joined any other post. Moreover, the vacancy occurred

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prior to one year period having elapsed since the commencement of the selection and thus, the said ground is also fallacious. Still further, it is submitted that there is no rule which bars filling up of a vacancy after one year and thus, the impugned order deserves to be set aside.

Learned State counsel does not dispute the facts. It is admitted that the vacancy occurred as aforementioned Harshant Kumar did not join pursuant to letter of offer of appointment dated 13.10.2017 and that internal communication dated 23.03.2018 was issued requiring the case of the petitioner to be considered in the forthcoming joint counselling meeting. He, however, submits that the impugned order was passed on the basis of advice obtained from the Punjab Public Service Commission. It is also not disputed that the petitioner had not joined any other post pursuant to the aforementioned selection process.

Since, the facts are admitted, it has to be held that the ground mentioned in the impugned order that a candidate who has joined another post cannot be appointed against a vacant post, is patently fallacious. Further, no rule has been brought to my notice, which bars filling up of a vacancy after a period of one year has elapsed. In any case, the vacancy occurred 15 days after the issuance of letter of offer of appointment dated 30.10.2017 to Harshant Kumar and at that point of time only 06 months had elapsed since the declaration of the merit list. The petitioner should have been called up at that very moment, however, the department slept over the matter for no valid reason.

For the aforementioned reasons, the writ petition is allowed and impugned order dated 01.08.2018 (Annexure P-20) denying appointment to the petitioner, is quashed. The appointing authority is directed to consider the case of the petitioner afresh against the existing vacancy within 04 weeks from the date of receipt of a certified copy of this order and in case, there is no impediment, appointment letter be issued to him thereafter.

April 19, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

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