

CWP No.19960 of 2011 (O&M)

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

**CWP No. 19960 of 2011 (O&M)
Date of Decision: February 20, 2023**

Gurinder Pal Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. D.S. Patwalia, Sr. Advocate assisted by
Mr. A.S. Chadha, Advocate,
for the petitioner.

Mr. R.K. Kapoor, Additional Advocate General, Punjab.

Ms. Rakhi Sharma, Advocate,
for respondent No.4.

Mr. Surinder Garg, Advocate,
for respondent No.5.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned selection as well as consequent appointment of respondents No.4 & 5 to the post of Drug Inspector; further prayer is to direct respondents No.1-3 for appointment of petitioner against the aforesaid post as per his merit position under Backward Class (for short 'BC ') category.

2. Facts are not in dispute.

3. Department of Health & Family Welfare, Punjab-respondent No.1 issued a Public notice dated 02.05.2010 for filling-up various posts,

CWP No.19960 of 2011 (O&M)

including 37 Drug Inspectors and relevant part of the same reads as under:-

**“GOVERNMENT OF PUNJAB
DEPARTMENT OF HEALTH AND FAMILY WELARE PUNJAB
(HEALTH-1 BRANCH) CHANDIGARH**

PUBLIC NOTICE-RECRUITMENT

Medical Officer (Specialist): 128 Medical Officer (General): 214

Medical Officer (Dental): 34 Drug Inspector: 37

Applications are invited for recruitment on regular basis to 128 posts of Medical Officer (Specialist), 214 posts of Medical Officers (General), 34 posts of Medical Officers (Dental) and 37 posts of Drug Inspectors which are lying vacant in the institutions of Health Department Punjab. Number of posts may increase or decrease.

The details of posts in various categories and their pay scale is as per Annexure-A and B.

No person shall be appointed to the services by direct recruitment, unless he passes the following educational qualifications and experience:-

1 to 3.....

4. Educational and other Qualifications for Drug Inspector:.....

5. Age Limit:- 18 to 37 years.

.....

6. Other Terms and Conditions:

1. Candidates will be considered in the category in which they are applying on merit i.e. General Category & Reserve category.

2. Reservation Policy will be applicable as per instructions of the State Government. Candidates who have applied against Scheduled Caste Category but if he/she comes in merit at par with General Category will be selected against the General Category seats.

3. Application should be submitted by post/by hand as per the

CWP No.19960 of 2011 (O&M)

format along with the attested copies of testimonials/Degrees etc. Addressed to Director Health and Family Welfare Punjab Room No. 219, 1st Floor, Parivar Kalyan Bhawan, Sector 34-A, Chandigarh Pin Code 160022 (Tel. 0172-5074351, Mobile 98720-74403).

4. The candidates are requested to send attested copies of their testimonials. Attested copies of certificates having Date of Birth, Having Punjabi Passed upto Matriculation or above, a copy of Punjab Domicile certificate a copy of caste certificate in case of S.C/B.C. candidates. B.C. candidates must attach the required certificate of current year.....

5. The application forms complete in all respects, must reach before 5 p.m., on or before dated 12.06.2010. The applications received later than the prescribed date shall be summarily rejected. Wrongly filled or incomplete applications shall also be summarily rejected and the candidature cancelled.

6. Incomplete applications and incomplete educational qualifications will not be considered/entertained.

7. CANDIDATES APPLIED EARLIER NEED NOT TO APPLY AGAIN.

*Sd/-
Principal Secretary to Govt. of Punjab
Department of Health and Family Welfare Punjab.”*

Annexure-A (Tentative)

S N	Name of Post	Ge n	SC (M& B)	SC (M &B) ES M	SC (M &B) Spor ts	SC Oth ers	SC Oth ers ES M	SC Others Sports	B C	BC ESM	ESM	Handi- Capped	Freedom Fighter	Sports Person	Total
3	Drug Inspector	18	4	-	-	4	1	1	4	1	2	1	1	-	37

4. In pursuance of the aforesaid Public Notice, various candidates including petitioner as well as respondents No.4 & 5 applied for consideration. Later on, respondent No.1, vide notification No. 1/33/10-HB.1/2995, dated 24.06.2010 constituted a Departmental Selection Committee and also framed selection criteria for recruitment to the posts in

CWP No.19960 of 2011 (O&M)

question.

5. On 08.08.2010, written test was conducted and result thereof was declared on 23.08.2010. After conducting interviews on 21.09.2010 & 22.09.2010, the combined-merit list as well as category-wise merit lists were prepared by the Selection Committee.

6. As per combined-merit list, respondents No.4 & 5 were at Sr. No. 21 & 20 respectively; whereas, petitioner was shown at No.47. Still further, according to category-wise merit list, respective position of all three candidates i.e. petitioner, as well as respondents No.4 & 5, can be tabulated as under:-

Petitioner	BC (No.3).
Respondent No.4	Physically Handicapped(No.1).
Respondent No.5	General [Waiting list (No.2)].

7. Respondents No.4 & 5 have been appointed as Drug Inspectors; but, petitioner remained unsuccessful. Hence, present writ petition.

8. CONTENTIONS:

(a) On behalf of petitioner:-

- (i) Contended that respondent No.4 (Ramnik Singh) applied under Physically Handicapped (for short PH) category; recommended by the Selection Committee under this category; but, he has been appointed in BC category and which resulted into ousting the petitioner for appointment as a BC candidate;
- (ii) Further contended that sole post meant for PH category, against which respondent No.4 was recommended by the Selection

CWP No.19960 of 2011 (O&M)

Committee, had allegedly been converted to General pool and later on consumed by the respondent No.5, who actually belongs to General category.

- (iii)** Again contended that action of the respondents while appointing respondent No.4 against BC category; conversion of 01 post from PH category to General pool and consequent appointment of respondent No.5 against this post amounts to depriving the lawful claim of petitioner; hence, legally unsustainable.

(b) On behalf of State:

- (i)** Contended that although respondent No.4 is a Person with Disability, but actually he belongs to BC category; since his merit position was higher than the petitioner; therefore, respondent No.-4 was considered and appointed under BC category.
- (ii)** Further contended that except respondent-4, there was no other PH candidate available; therefore, 01 post reserved for this category was converted to General category and ultimately consumed by respondent-5 as per his merit.

(c) On behalf of respondent No.4:

- (i)** Ld. Counsel for respondent-4 contended that he applied under two categories i.e. (i) BC, as main category (ii) PH, being sub-category; since merit position of respondent-4 was higher than petitioner, therefore, he had rightly been considered under BC category.

CWP No.19960 of 2011 (O&M)

(d) On behalf of respondent No.5:-

- 1) Ld. Counsel for respondent-5 contended that Ramnik Singh (respondent No.4) applied under BC as well as PH category; but, being higher in merit than petitioner, he has been appointed in BC category.
- 2) Again contended that except respondent No.4, no other PH candidate was available for consideration; therefore, 01 post meant for PH was converted to General category and respondent No.5, being next in merit has rightly been appointed from General category
- 3) Also submitted that respondent No.5 secured 57% marks; whereas two other candidates with lesser marks from General category; namely, Rohit Kalra and Amit Bansal (55.5% & 55%) respectively, have also been appointed as Drug Inspectors; but, none of them is arrayed as party-respondent.

9. Heard learned counsel for the parties and perused the paper-book.

10. Points for consideration of this Court would be :-

- (a) As to whether in view of the facts and circumstances of the present case, appointment of respondent No.4 under BC category is legally sustainable?
- (b) Whether action of the official respondents, firstly converting 01 post meant for PH category to General pool and then appointing respondent No.5 against this post is valid in law?
- (c) Whether petitioner was/ is entitled to be appointed

CWP No.19960 of 2011 (O&M)

as Drug Inspector under BC category?

11. At the outset, it is quite dis-heartening to observe that despite repeated asking, the official respondents have failed to produce the original list dated 15.07.2011 (P-16) as well as the records relating thereto. Present litigation is going on since 2011 and as such they were well aware about the importance of the original records for adjudication of the matter in controversy. Neither any original file dealing with the conversion of 01 post of PH to General pool; nor, decision of the competent authority in this regard was produced, as to how this post had been consumed by respondent-5? Of course, respondent-2 came present; but, he expressed helplessness on the premise that, except proceedings of the Selection Committee, no other original record is available with them.

12. This Court has gone through the proceedings of the Selection Committee (67pages), containing combined merit list as well as category-wise merit lists. For reference, the relevant part of the same would be as under:-

“PROCEEDINGS OF THE SELECTION PROCESS OF INTERVIEW OF DRUG INSPECTOR HELD FROM 20.09.2010 TO 22.09.2010 AND 30.09.2010 IN THE OFFICE OF PUNJAB HEALTH SYSTEMS CORPORATION, PHASE-VI, S.A.S. NAGAR MOHALI.

Govt. of Punjab Department of Health and Family Welfare issued one advertisement in leading newspapers as per Annexure A-1 and detailed advertisement on the website of health department www.pbhealth.gov.in and www.pbnrhm.org. A2 regarding recruitment of 37 posts of Drug Inspectors in the pay scale of Rs.10,300-37800+ Rs.4200 Grade Pay + allowances as per Punjab Government Rules. The last date of sending applications was 12.06.2010. A corrigendum was issued on 22.05.2010 (copy attached as Annexure 'B') displayed on the websites of Health Department www.pbhealth.gov.in and www.pbnrhm.org. The last date for receiving applications was extended upto 12.06.2010.

CWP No.19960 of 2011 (O&M)

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Govt. of Punjab, Department of Health and Family Welfare (Health-I Branch) through a notification No.1/33/10-1HB.1/2995 dated 24.06.2010 (As per Annexure 'C') constituted a Departmental Selection Committee bearing following members:-

Sr. No.	Name and Designation	
1.	<i>Dr. J.S. Chopra H.O.D (Retired) Neurology, Post Graduate Institute of Medical Education and Research, Chandigarh</i>	<i>Chairman</i>
2.	<i>Dr. S.S. Gill H.O.D., Deptt of Orthopaedics, Post Graduate Institute of Medical Education & Research, Chandigarh. Now Vice Chancellor Baba Farid University, Faridkot.</i>	<i>Member</i>
3.	<i>Satish Chandra Principal Secretary, Deptt. Of Health & Family Welfare Punjab</i>	<i>Member</i>
4.	<i>Dr. J.P. Singh Director Health & Family Welfare Punjab</i>	<i>(Member Secretary)</i>
5.	<i>Prof. C.S. Gautam Prof. & Head Deptt. Of Pharmacology Govt. Medical College & Hosp. Sector 32, Chandigarh</i>	<i>(Specialist Member)</i>
6.	<i>Principal Secretary Welfare Department</i>	<i>Member</i>
7.	<i>Secretary Defence Services Welfare, Punjab</i>	<i>Member</i>
8.	<i>Secretary Sports, Punjab</i>	<i>Member</i>
9.	<i>Commissioner Handicapped/Disabled Persons</i>	<i>Member</i>

The criteria of recruitment for the post of Drug Inspectors is as under:-

- | | | |
|----|--|-------------------|
| 1. | <i>Multiple choice written test</i> | <i>= 80 marks</i> |
| 2. | <i>Rural Background (8th and 10th)</i> | <i>=5 marks</i> |
| 3. | <i>Publication and Experience</i> | <i>=5 marks</i> |
| 4. | <i>Interview</i> | <i>= 10 marks</i> |

According to Govt. of Punjab, Department of Health and Family Welfare (Health-1 Branch) through a notification No. 1/33/10-

CWP No.19960 of 2011 (O&M)

1HB/2995 dated 24.06.2010 (As per Annexure 'C') a written test for the post of Medical Officer (General), Medical Officer (Dental) and Drug Inspector was conducted by the Department of Health and Family Welfare Punjab through Panjab University, Chandigarh on 08.08.2010.

The provisional merit lists of written examinations were displayed on our website i.e. www.pbhealth.gov.in and www.pbnrhm.org.

A scrutinizing committee was constituted with the orders of Principal Secretary Health & Family Welfare Punjab vide order No.D.S.C. PB-2010/241-54, dated 24.08.2010 (Copy enclosed as Annexure 'D') to check the eligibility of the candidates in merit.

No. of forms scrutinized = Five times of the no. of posts.

The list of eligible and non-eligible candidates have been displayed on our websites www.pbhealth.gov.in and www.pbnrhm.org and the objections were invited from the ineligible candidates.

The objections raised by the candidates were scrutinized by the committee. The candidates declared eligible were called for interview as per Schedule given below:-

S.N.	Date	Category	No. of Students
1.	20-09-2010	General	34
2.	21-09-2010	General	22
		Physically Handicapped	3
		BC ESM	1
		Gen ESM	2
		SC others (Sports)	2
		Freedom Fighter	3
3.	22-09-2010	SC other	12
		SC Maj/Bal	12
		BC	11
4.	30-09-2010	General	5
		SC/Maj/Bal	1

The proceedings of the daily interview is as under:-

20-9-2010:-

On 20-09-2010 34 General Category Candidates were called for interview on 20.09.2010. The list of called candidates is attached herewith at Annexure E. All candidates were present except Neha Aggarwal D/o Prem Shankar Aggarwal at S. No. 21. Candidate at

CWP No.19960 of 2011 (O&M)

S.No. 17 Sh. Vikas Kumar Garg son of Mahesh Chand Gupta was found ineligible as he is not Punjabi Pass up to matriculation standard.

21-09-2010

On 21-9-2010 22 General Candidates, 3 Physically Handicapped candidates, 1 BC Ex-Serviceman Candidate, 2 General Ex-Serviceman candidates and 2 SC Others (sports), 3 freedom fighter, total 33 candidates were called for interview as per list attached at Annexure 'F'. The candidates at S.No. 14 Ruchika Saihgal D/o Sh. A.K.Saihgal (General category) and the candidate at S.No.29 Charanjit Kaur D/o Avtar Singh (SC Other Sports Category) were found absent.

The candidate at S.No.30 Sharanjeet Kaur d/o Palwinder Singh (SC Other Sports Category) was rejected as she has not the prescribed Sports Gradation Certificate for the said post as per instructions of the Sports Department (Produced the 'C' Grade Certificate)

22-09-2010:-

On 22-09-2010 12 SC other candidates, 12 SC Maj/Bal Candidates and 11 BC candidates were called for interview as per list attached at Annexure 'G'. Candidates at S.N. 14 Jupinder Kaur d/o Sukhwant Singh (SC Maj/Bal Category), Candidate at S. No. 18 Parminder Singh s/o Kirpal Singh (SC/Bal category) and candidate at S.No. 33 Prince I.S. Judge S/O Balbir Singh Judge were found absent.

The candidate at S. N. 7 Rajnish Kumar S/o Sansar Chand (SC Others Category) is found ineligible as he is already a Punjab Govt. Employee, the candidate at S. N. 22 Pinderjit Singh s/o Dhanjit Singh (SC Maj/Bal category) is found ineligible as he is also already a Punjab Govt. Employee and the candidate at S.N. 32 Braj Bhushan s/o Badri Naryan Mahto (BC Category) was also found ineligible as he is not Punjabi Pass upto matriculation standard.

30-9-2010:-

A corrigendum (Annexure 'H') was issued on 23-09-2010 the candidate for the post of Medical Officer (General), Medical Officer (Dental) and Drug Inspector who fulfills the educational

CWP No.19960 of 2011 (O&M)

qualifications and registration upto the date of interview will be eligible. Such Drug Inspector candidates were called for interview on 30.09.2010 vide our advertisement dated (Copy enclosed as per Annexure 'T').

Suneel Kumar Garg s/o Bhagwan Dass Garg and Chander kant Sharma s/o Madan Lal which were not Punjabi pass upto Matriculation standard and were found ineligible. They were interviewed as per the orders of the Hon'ble Punjab and Haryana High Court dated 21-09-2010 in CWP No. 17007 of 2010 (Copy enclosed as Annexure 'J').

A list of candidates which were interviewed on 30.09.2010 is attached here with at Annexure 'K'. The candidate at S.N. 6 Mamta Sood D/o Rajesh Sood is found ineligible as she is not Punjabi Pass upto matriculation standard.

The videography of the candidates in merit done at the time of Examination has been compared with the videography done at the time of interview by Dr. J.S. Chopra, Chairman of the Departmental Selection Committee and Dr. J.P. Singh Director Health and Family Welfare Punjab-cum-Member Secretary of the Departmental Selection Committee.

The Combined merit list of the Eligible candidates which includes the Marks obtained by the candidates in the written examination and interview is attached here with at Annexure 'L'. The category wise merit lists are attached as follows:-

<i>S.N.</i>	<i>Category</i>	<i>Annexure</i>
<i>1</i>	<i>General</i>	<i>M</i>
<i>2</i>	<i>Physically Handicap</i>	<i>N</i>
<i>3</i>	<i>BC Ex-Serviceman</i>	<i>O</i>
<i>4</i>	<i>General Ex-Serviceman</i>	<i>P</i>
<i>5</i>	<i>Freedom Fighter</i>	<i>Q</i>
<i>6</i>	<i>SC Others</i>	<i>R</i>
<i>7</i>	<i>SC Maj/Bal</i>	<i>S</i>
<i>8</i>	<i>BC</i>	<i>T</i>
<i>9</i>	<i>List of Absent Candidates</i>	<i>U</i>
<i>10</i>	<i>List of Rejected Candidates</i>	<i>V</i>

CWP No.19960 of 2011 (O&M)

The list of rejected candidates is attached here with as Annexure ‘W’ and the list of Absent candidates is attached here with as Annexure ‘X’”

13. It would be appropriate to mention here that as per combined merit list, total 95 candidates were shortlisted and which are as under:-

COMBINED MERIT FOR THE POST OF DRUG INSEPCTOR

ANNEXURE ‘L’

SN	Name	Cat.	Sub cat	Marks obtained in written test	Proof of Rural Background 8 th and 10 th	Publication	Experience	Marks of interview	Total	Remarks
1	SudhaDehal	SC- others		67	0	0	1	5	73	
2	Santosh Kumar	GEN		58	0	2.5	2.5	7	70	
3	Parabhdeep Singh	GEN		54	5	1	1	7	68	
4	Gurpreet Singh Sodhi	GEN		56	0	2.5	1	6	65.5	
5	Ramandeep Gupta	GEN		54	5	0	0	6	65	
6	Amit	GEN		59	0	0	0	5.5	64.5	
7	Karuna Gupta	GEN		57	0	1	1	3	62	
8	Anupama Kalia	GEN		52	0	1	2	7	62	
9	Suneel Kumar Garg	GEN		54	5	0	1	2	62	Interview taken as per orders of Punjab and Haryana High Court but Punjab not passed upto matric so not eligible
10	Akan tPriya Singla	GEN		54	0	2.5	0	5	61.5	
11	Shishan Kumar	GEN		59	0	0	0	2	61	
12	Manpreet Kaur	GEN		55	0	0	0	6	61	
13	Lajwinder Kumar	GEN		51	0	2.5	2.5	4.5	60.5	
14	Ravi Gupta	GEN		54	0	0	2	4	60	
15	Sonia Gupta	GEN		48	5	2	1	3	59	
16	Sandeep Kaushik	GEN		54	0	0	0	5	59	
17	Sukhvир Chand	BC		49	5	0	2.5	1.5	58	
18	Chandrakant Sharma	GEN		52	0	1	2	3	58	Interview taken as per orders of Punjab and Haryana High Court But Punjabi not passed upto Matric so not eligible
19	Jai Jai Kar Singh	GEN		52	0	0	0	5	57	
20	Gundeep Bansal	GEN		45	5	0	0	7	57	
21	Ramnik Singh	BC	PH	46	0	2.5	2.5	6	57	
22	Rohit Kalra	GEN		49	0	2.5	0	4	55.5	
23	Ashok Kumar	GEN		50	0	0	1	4	55	
24	Amit Bansal	GEN		48	0	0	2.5	4.5	55	
25	Pankaj Thukral	GEN		52	0	0	1	2	55	
26	Manu Sharma	GEN		45	0	0	2.5	7	54.5	

CWP No.19960 of 2011 (O&M)

27	Amar Pal Singh Malhi	BC		45	5	0	2	2.5	54.5	
28	Gurpreet Singh	GEN		48	0	0	1	5	54	
29	Pooja Sharma	GEN		49	0	0	0	5	54	
30	Shruti Jain	GEN		52	0	0	0	2	54	
31	Sameer Bhandari	GEN		46	0	0	2.5	4.5	53	
32	Vishal Maingi	GEN		49	0	0	0	4	53	
33	Veenu	GEN		49	0	0	1	3	53	
34	Sandeep Walia	GEN		48	0	0	2	3	53	
35	Bimaldeep Kaur	GEN		48	0	0	0	5	53	
36	Sonia Pahuja	GEN		45	0	1.5	2.5	3.5	52.5	
37	Mandeep Kaur	GEN		45	0	1	1	5.5	52.5	
38	Rosy Batta	GEN		46	0	0	2.5	4	52.5	
39	Bhawna Mittal	GEN		47	0	0	2	3	52	
40	Dinkar Sharma	GEN		47	0	0	2	3	52	
41	Love Goyal	GEN		50	0	0	0	2	52	
42	Amarjit Singh	SC-Others		40	5	1	2	4	52	
43	Tajinder Singh	BC		45	0	2.5	1	3.5	52	
44	Abhinav Kapoor	GEN		45	0	0	2.5	4	51.5	
45	Sachin Saggar	GEN		45	0	1	2.5	3	51.5	
46	Ankur Bansal	GEN		48	0	0	2	1.5	51.5	
47	Gurinder Pal	BC		50	0	0	0	1.5	51.5	
48	Aman Deep	GEN		45	0	0	1	5	51	
49	Gaurav Arora	GEN		48	0	0	0	3	51	
50	Rajiv Kumar	GEN		49	0	0	0	2	51	
51	SumitGarg	GEN		48	0	0	2	1	51	
52	Vaneeta Bansal	GEN		49	0	0	0	2	51	
53	Amit Kumar	GEN		46	0	0	0	4.5	50.5	
54	Rohit Makkar	GEN		46	0	0	0	4.5	50.5	
55	Rimpi	GEN		45	0	0	1.5	4	50.5	
56	Nisha Rani	SC-Others		47	0	0	0	3.5	50.5	
57	Amandeep Kaur	GEN		46	0	2	0	2	50	
58	Parminder Singh	SC-Others		42	5	1	0	2	50	
59	Roop Preet Kaur	SC-Others		42	0	2.5	2.5	3	50	
60	Arun Kumar	GEN		45	0	0	2.5	2	49.5	
61	Harmanjit Kaur	SC-Others		46	0	0	0	3.5	49.5	
62	Navpreet Singh	SC-Others		44	0	0	2.5	3	49.5	
63	Rajveer Singh	GEN		46	0	0	0	3	49	
64	Varinder Singh	GEN		45	0	0	0	4	49	
65	Balmeet Mohinder Jaggi	GEN		45	0	0	1	3	49	
66	Bhupinder Kapoor	SC-Others		44	0	0	1.5	3	48.5	
67	Rupinder Kaur Bhamber	SC-Maj/Bal		42	0	2	2	2.5	48.5	
68	Poonam	GEN		44	0	0	0	4	48	
69	Gurpreet Arora	GEN		44	0	0	0	4	48	
70	Madhu Bala	GEN		45	0	0	0	3	48	
71	Anil Kalra	GEN		45	0	0	1	1.5	47.5	
72	Tarun Kumar	BC		43	0	0	1	3.5	47.5	
73	Omkar Singh	BC	ESM	36	5	0	2	4	47	
74	Anjana Bali	SC-Others		41	5	0	0	1	47	
75	Anurag Rakhii	BC		41	0	1	1	4	47	
76	Inderpreet Kaur	GEN		45	0	0	0	1	46	
77	Harjinder Singh	SC-Maj/Bal		40	0	0	1	3	44	
78	Savita Kumari	SC-Others		39	0	0	2	2.5	43.5	
79	Randeep Kaur	SC-Others		41	0	0	0	2.5	43.5	
80	Sukhdeep Singh	GEN	FF	40	0	0	0	2.5	42.5	
81	Amrinder Singh	BC		40	0	0	1	1.5	42.5	
82	KanuPriya	SC-Others		40	0	0	0	2	42	

CWP No.19960 of 2011 (O&M)

83	Mohd. Zamid Jamal	BC		36	0	0	2.5	3	41.5	
84	Karamjit Singh	SC-Maj/Bal		40	0	0	0	1	41	
85	Mohit Mahajan	GEN	FF	37	0	0	0	3	40	
86	Bableen Kaur	SC-Maj/Bal		39	0	0	0	1	40	
87	Balbir Singh	BC		37	0	0	1	1	39	
88	Navdeep Singh	GEN	ESM	30	0	2.5	2	4	38.5	
89	Parneet Kaur	SC-Maj/Bal		33	0	0	1	3.5	37.5	
90	Kamal	SC-Maj/Bal		31	0	0	1	3	35	
91	Rajneesh Kumar	SC-Maj/Bal		32	0	0	0	2	34	
92	Navdeep Kaur	GEN	ESM	29	0	0	1	3	33	
93	Renu Bala	SC-Maj/Bal		27	0	0	2	2	31	
94	Ankush Khokhar	SC-Maj/Bal		26	0	0	2	2	30	
95	Amandeep Kaur	SC-Maj/Bal		27	0	0	0	1	28	

14. As already noticed, for General category, there were 18 posts; for PH- 01; and for BC category, 04 posts were reserved.

Thus, for adjudication of the matter, it is also necessary to recapitulate the category-wise merit list of the above three categories and which are as under:-

GENERAL CATEGORY MERIT FOR THE POST OF DRUG INSPECTOR (M)

SN	Name	Cat	Sub cat	Marks obtained in written test	Proof of Rural Background 8 th and 10 th	Publication	Experience	Marks of interview	Total	Remarks
1.	Sudha Dehal	SC-Others		67	0	0	1	5	73	
2.	Santosh Kumar	Gen		58	0	2.5	2.5	7	70	
3.	Parabhdeep Singh	Gen		54	5	1	1	7	68	
4.	Gurpreet Singh Sodhi	Gen		56	0	2.5	1	6	65.5	
5.	Ramandeep Gupta	Gen		54	5	0	0	6	65	
6.	Amit	Gen		59	0	0	0	5.5	64.5	
7.	Karuna Gupta	Gen		57	0	1	1	3	62	
8.	Anupama Kalia	Gen		52	0	1	2	7	62	
9.	Suneel Kumar Garg	Gen		54	5	0	1	2	62	Interview taken as per order of Punjab & Haryana High Court, but Punjabi not passed upto

CWP No.19960 of 2011 (O&M)

										<i>matric so not eligible</i>
10.	Akant Priya Singla	Gen		54	0	2.5	0	5	61.5	
11.	Shishan Kumar	Gen		59	0	0	0	2	61	
12.	Manpreet Kaur	Gen		55	0	0	0	6	61	
13.	Lajwinder Kumar	Gen		51	0	2.5	2.5	4.5	60.5	
14.	Ravi Gupta	Gen		54	0	0	2	4	60	
15.	Sonia Gupta	Gen		48	5	2	1	3	59	
16.	Sandeep Kaushik	Gen		54	0	0	0	5	59	
17.	Sukhvir Chand	BC		49	5	0	2.5	1.5	58	
18	Chandrakant Sharma	GEN		52	0	1	2	3	58	<i>Interview taken as per orders of Punjab and Haryana High Court But Punjabi not passed upto Matric so not eligible</i>

WAITING LIST OF GENERAL CATEGORY FOR THE POST OF DRUG INSPECTOR (M-1)

SN	Name	Cat	Sub cat	Marks obtained in written test	Proof of Rural Background 8 th and 10 th	Publication	Experience	Marks of interview	Total	Remarks
1.	Jai JaiKar Singh	Gen		52	0	0	0	5	57	
2	Gundeep Bansal	Gen		45	5	0	0	7	57	
3.	Rohit Kalra	Gen		49	0	2.5	0	4	55.5	
4.	Ashok Kumar	Gen		50	0	0	1	4	55	
5	Amit Bansal	Gen		48	0	0	2.5	4.5	55	
6.	Pankaj Thukral	Gen		52	0	0	1	2	55	
7.	Manu Sharma	Gen		45	0	0	2.5	7	54.5	
8.	Gurpreet Singh	Gen		48	0	0	1	5	54	
9.	Pooja Sharma	Gen		49	0	0	0	5	54	
10.	Shruti Jain	Gen		52	0	0	0	2	54	

PH CATEGORY MERIT FOR THE POST OF INSPECTOR (N)

SN	Name	Cat	Sub category	Marks obtained in written test	Proof of Rural Background 8 th and 10 th	Publication	Experience	Marks of interview	Total	Remarks
1	Ramnik Singh	BC	PH	46	0	2.5	2.5	6	57	

CWP No.19960 of 2011 (O&M)

BC MERIT FOR THE POST OF DRUG INSPECTOR (T)

S N	Name	Cat	Sub cat	Marks obtained in written test	Proof of Rural Backgroun d 8 th and 10 th	Publication	Experience	Marks of interview	Total	Remarks
1	Amar Pal Singh Malhi	BC		45	5	0	2	2.5	54.5	
2	Tajinder Singh	BC		45	0	2.5	1	3.5	52	
3	Gurinder Pal	BC		50	0	0	0	1.5	51.5	
4	Tarun Kumar	BC		43	0	0	1	3.5	47.5	

15. Although, as per combined merit list, petitioner was placed at No.47, but in category-wise merit list of BC, he was at serial No.3 and there were 04 posts reserved under this category. Again, as per combined merit list, respondent No.4 (Ramnik Singh) was at serial No. 21, but as per category wise merit list, he is the only candidate under PH category and there was 01 post meant for this category.

16. According to combined merit list, respondent No.5 was at serial No. 20; whereas in the category-wise merit list (M-1), he was in the waiting list of General category (Serial No.2). Also specifically observed here that despite repeated asking by the court, learned State counsel was not able to show any rule or instruction for maintaining the waiting list in such like matter and consequent appointment of respondent -5 on the basis thereof.

As discussed above, there were total 04 posts reserved under BC category and as per category wise merit list(T), petitioner was at serial No.3; therefore, he had a legitimate claim for appointment to the post of Drug Inspector under this category.

17. Thus, in such a scenario, it cannot be countenanced that respondents 1-3 have faithfully acted upon the recommendations of Selection Committee. Rather, it seems that in order to accommodate

CWP No.19960 of 2011 (O&M)

respondent No.5, firstly they have shifted respondent No.4 (Ramnik Singh) from PH to BC category; then converted the sole post of PH to General pool in an illegal manner and ultimately adjusted respondent -5 from general category for the reasons best known to them; but, failed to substantiate as to what weighed with them for taking such a recourse.

18. Above all, as per the provisions of Section 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995, (for short 'the Act'), [applicable at relevant point of time], *'W(w)here in any recruitment year any vacancy under Section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that Year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability'*

However, the official respondents have nowhere disclosed that in the present case, the procedure envisaged under Section 36 of the Act has been followed by the quarter concerned. There is not even a whisper to the effect that 01 post reserved for PH, had been carried forward from the previous year. In fact, the recommendations of the Selection Committee have been completely ignored and the whole exercise is only an eye wash.

19. Moreover, it is quite discernable from records that respondent No.4 applied under PH category; appeared for written test as well as faced

CWP No.19960 of 2011 (O&M)

interview under this category; the Selection Committee recommended his name at No.1 under PH category; yet, the official respondents have appointed him against the post reserved for BC category and as such illegally deprived the petitioner from his lawful claim for the post of Drug Inspector under BC category.

20. Although, respondent No.5 tried to argue that two other candidates namely, Rohit Kalra & Amit Bansal, who were lower in merit have also been appointed from general category; but in the opinion of this court, such a plea would be of no help. Reason is obvious, that as per the conceded position, it was respondent No. 5 who actually consumed the sole post meant for PH category and not Rohit Kalra or Amit Bansal. In such a peculiar situation, at best, the respondent No.5 may challenge the appointment of aforesaid two persons, if feeling aggrieved.

21. No doubt, ld. State counsel while making reference to the affidavit dated 15.03.2017 of Additional Chief Secretary, Government of Punjab, Department of Health & Family Welfare, tried to justify their action on the premise that there would be no reservation available in PH category if a candidate belongs to Scheduled Caste or Backward Class community, but that cannot be accepted in view of the definition of “Person with disability” under Section 2(t) of the Act. As per Section 2(t) of the Act, ‘Person with disability’ means a person suffering from not less than forty per cent of any disability as certified by a Medical Authority. Therefore, the plea raised that SC/BC cannot be considered under PH category is un-acceptable and liable to be rejected. In the opinion of this court, if any post is earmarked for PH category and a candidate is otherwise eligible, including bench mark of 40%

CWP No.19960 of 2011 (O&M)

permanent disability, then certainly would be considered, for the same irrespective of the fact that he/she belongs to SC/BC community.

22. Undisputedly, in the present case, respondent No.4 did produce his medical certificate with bench mark of 40% permanent disability; there is no dispute regarding his eligibility, therefore, he ought to have been considered under the PH category.

23. In view of the above discussion, it is held that action of official respondents while appointing respondent No.4 under BC category was legally unsustainable. Similarly, appointment of respondent No.5 against 01 post reserved for PH category was bad in law as the conversion of this post to General pool was totally unwarranted. Also held that petitioner was/is entitled to be appointed as Drug Inspector under BC category. The questions framed in para No. 10 (*supra*), are answered accordingly.

24. As a result thereof, writ petition is allowed; impugned selection as well as appointment of respondents No.4 & 5, from the respective categories, noticed in para 23, are quashed and set-aside. Since respondents No.1-3 made appointments to the post in question *de-hors* the recommendations made by the Selection Committee and negated the Rule of Law being contrary to Article 14 & 16 of the Constitution, therefore, the quarter concerned is directed to re-examine the matter. Necessary exercise be carried out strictly in accordance with the recommendations made by the Selection Committee, noticed here in above, on or before 31st of July, 2023.

25. Needless to say that in case any person is likely to be affected with the fresh exercise, he/she be afforded opportunity of hearing before taking any adverse decision against him/her.

CWP No.19960 of 2011 (O&M)

Also clarified that in case the competent authority comes to the conclusion that appointment(s) was/were made on account of some extraneous consideration, there would be no bar to initiate legal action against the erring person(s).

Compliance report be sent to the Registry.

February 20, 2023

(MAHABIR SINGH SINDHU)
JUDGE

SN

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