



CWP-29463-2018 (O&M)

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

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Date of Decision :10.09.2024

Vikram Singh**..Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Ashok Bhardwaj, Advocate for the petitioner.

Mr. Satnam Preet Singh Chauhan, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present petition, grievance being raised by the petitioner is that he is entitled for the grant of appointment to the post of Block Extension Educator in the general category against the vacant post.

Upon notice of motion, the respondents have filed reply wherein, the respondents have stated that all the advertised posts in general category were filled up keeping in view the recommendations made and the petitioner could not be given appointment.

On the last date of hearing, the respondents were directed to file a specific affidavit as to how many candidates have been appointed in the general category .

Today, the respondents have filed an affidavit of Dr. Hitinder Kaur, Director, Department of Health & Family Welfare, Punjab, wherein, details of the candidates, who were offered appointment has been depicted.

Learned counsel appearing on behalf of the petitioner submits



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that by perusing the details given in the affidavit, still one post remained vacant as against 26 advertised post of general category, 25 candidates are working as one of the candidate namely, Naveen Kumar whose name was mentioned at serial No.16 though, joined but his services were terminated on the ground that he remained absent from duty and hence, a post which has been vacant by Naveen Kumar should be offered to the petitioner.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The claim of the petitioner is that one post out of the 26 advertised post in the general category is still vacant, which should be offered to the petitioner.

From the facts, it is clear that 26 posts of Block Extension Educator in the general category were advertised by the respondents. It is also conceded position that 26 candidates have joined the said posts also. That being so, upon joining of 26 candidates in the general category on the post of Block Extension Educator, no further post could have been filled up.

So far as the argument of the learned counsel for the petitioner that one Naveen Kumar who though, joined but his services were terminated on the ground that he remained absent from duty, the said post is vacant, it may be noticed that it is a settled principle of law that in case, a selected candidate joins and, thereafter, resigns or abandon the job or his services are terminated, the said post cannot be treated to be vacant to be filled up from the waiting list. Reliance can be placed upon the judgment of Hon'ble Supreme Court of India in **Civil Appeal No.10861-2013, titled as**

**Sudesh Kumar Goyal vs. State of Haryana and others, decided 21.09.2023**

wherein, it has been held that in case, a candidate joins the service but thereafter resigns or abandon the job or his services are terminated, the said post is not to be filled up from the waiting list. Relevant paragraphs are as under:-

“17. In view of the reasoning given by the respondents for appointing only 13 selected candidates leaving the appellant who was at Sl. No.14, we are of the opinion that the respondents have justified the appointments and have not acted in an arbitrary manner. The respondents have acted fairly and logically without any malice against the appellant. Thus, on the touchstone of the decision cited on behalf of the appellant himself, we do not find any arbitrariness on the part of the respondents. Therefore, the decision of the Division Bench of the High Court is not liable to be disturbed on the above count, more particularly when the appellant has not acquired any indefeasible right to be appointed because he qualified in the selection process.

18. This takes us to the second argument that the appellant could have been easily adjusted against the vacancy caused due to resignation of one of the selected candidates. The argument per se is bereft of merit inasmuch as all the vacancies notified stood filled up initially. However, if one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process. The Division Bench has rightly dealt with the above contention in the light of the precedent of the various decisions of this Court and we do not feel that any error has been committed in this context.”

At this stage, learned counsel for the petitioner submits that under similar circumstances, the benefit has been given to a candidate keeping in view the averments made in paragraphs 13 and 14 of the written



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statement of the respondents.

It may be noticed that any act done by the respondents in contravention of settled principle of law will not give right to the petitioner to claim the said benefit. No law permits negative discrimination.

As per the settled principle of law, once, a post is filled up and candidate joins and, thereafter, said post becomes vacant on account of resignation, abandonment or termination of the said service of said candidate, the same cannot be filled up from the waiting list.

Keeping in view the fact that all the advertised posts have already been filled up by the respondent-State, no ground to accept the claim of the petitioner is made out and the present petition is accordingly dismissed.

Civil miscellaneous application pending, if any is also disposed of.

September 10, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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