



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 212)

(1) CWP-758-2017 (O&M)
Date of Decision : 05.09.2024
Harwinder Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

(2) CWP-788-2017 (O&M)
Parnam Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.S. Seemar, Advocate for the petitioner(s).
Mr. Swapan Shorey, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. By this common order, two writ petitions, the details of which have been given in the heading, are being decided as both these petitions involve the same question of law on similar facts.
2. In the present petitions, the grievance of the petitioner(s) is that they competed for the post of Surveyor in department of Soil & Water Conservation, Punjab in pursuance to the Advertisement No. 6 of 2015 dated 29.12.2015 (Annexure P-1) but despite the fact that the petitioners were



higher in merit keeping in view the number of posts advertised and the candidates having lower in merit have already been appointed, still the claim of the petitioners is being declined and that too without any valid justification.

3. Learned counsel for the petitioner(s) argues that the petitioner(s) competed for the post of Surveyor and appeared for scrutiny of the documents. The selection was to be made on the basis of the marks obtained in the qualifying examination and thereafter, the documents of the candidates were to be scrutinized. The counseling date was fixed as 03.10.2016 vide Notice dated 23.09.2016 (Annexure P-7). It is the case of the petitioner(s) that the said date was not notified in a manner to be communicated to all the candidates, hence, the petitioner(s) could not appear for scrutiny on 03.10.2016 and the candidates lower in merit were appointed.

4. Feeling aggrieved against the said decision, the petitioner(s) approached this Court raising a grievance that the candidates having lower merit than the petitioner(s) have been appointed ignoring their claim and especially once, the selection was to be made on the basis of the marks secured in the qualifying examination, the petitioner(s) are entitled to be appointed, especially when the advertised posts in the category in which the petitioner(s) are competing, are still lying vacant.

5. While issuing notice of motion, the Co-ordinate Bench of this Court directed to the respondents to keep two posts vacant for the petitioner(s). The said posts are still lying vacant as of now.



6. The respondents have filed the reply taking an objection that as the petitioner(s) failed to appear in the scrutiny of the documents, their documents could not be verified on the basis of which the claim was made that they have a higher merit a compared to the candidates already appointed and hence, once the petitioner(s) choose not to appear in the scrutiny, no grievance can be raised.

7. Keeping in view the facts, Co-ordinate Bench of this Court passed the following order on 25.08.2022 :-

“Learned counsel for the petitioners has pointed out that total 556 candidates were called for counselling in pursuance of the public notice dated 17.12.2015 (Annexure R-1); but only 293 appeared due to the fact that there was no proper intimation by the concerned quarter. If that be so, let an affidavit be filed by respondent no. 1, Principal Secretary, Department of Agricultural, giving the complete details of persons who appeared for counselling, selected and appointed in pursuance of the advertisement in question. Respondent no. 3 shall also disclose about the total number of writ petitions regarding this selection. Posted on 18.01.2023. Till the next date of hearing, interim order to continue. A photocopy of this order be placed on the file of the other connected case.”

8. After the passing of the order dated 25.08.2022, the candidates were called for scrutiny once again, keeping in view the fact that posts were lying vacant. It is the case of the petitioner(s) that the petitioner(s) were not allowed for the said scrutiny again whereas, learned counsel for the respondents argues that the petitioner(s) had a higher merit than the candidates who were called for the scrutiny and only the candidates who's



documents could not be scrutinized earlier as all the posts were filled up, were to be given a chance to compete for the vacant posts the petitioner(s) were not allowed to participate in the said scrutiny.

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

10. It may be noticed that the present order is being passed keeping in view the fact that the respondents themselves appointed the persons in pursuance to the Advertisement dated 29.12.2015 (Annexure P-1) concerned after conducting a scrutiny as late as 31.08.2022 and also the fact that two posts out of the advertised posts have already been kept vacant by the interim order dated 18.01.2017 passed by the Co-ordinate Bench of this Court.

11. From the facts which have been narrated here-in-before, it is clear that the selection is to be made on the basis of the marks obtained by a candidate in the qualifying examination. The merit of the petitioner(s) is not being disputed and it is also not being disputed by the learned counsel appearing on behalf of the State that the candidates having lower merit than the petitioner(s) have already been appointed against the post of Surveyor. Learned counsel for the respondents also conceded to the fact that after the filing of the present petitions in the scrutiny which was conducted on 31.08.2022, the candidates lower in merit were considered for appointment and have been appointed and petitioner(s) were not allowed to appear for scrutiny.

12. That being the factual position, once the candidates having lower marks than the petitioner(s) have been appointed, the petitioner(s) have prior



right of consideration for appointment against the advertised posts. The only objection being taken by the learned State counsel is that the petitioner(s) are not eligible to be called for the scrutiny which was held on 31.08.2022 as the same was only for the candidates, who could not be called for scrutiny on the first occasion keeping in view the fact that all the posts were filled up and against the vacant posts only the candidates who's claim was not considered earlier were to be allowed.

13. Once, the petitioner(s) were having a higher merit and the respondents themselves were conducting a scrutiny of the candidates having the lower marks on 31.08.2022, denying the said scrutiny to the petitioner(s) despite higher merit is arbitrary and illegal. Once, the petitioner(s) could not get the due notice of the first scrutiny but were very much available on the date of the second scrutiny on 31.08.2022, the respondents were bound to consider the claim of the petitioner(s) especially when it is a conceded position that the candidates having lower marks than the petitioner(s) have been considered for appointment and have also been appointed as Surveyor.

14. Keeping in view the above, the claim of the petitioner(s) for the grant of appointment needs to be allowed. The respondents are directed to scrutinize the documents of the petitioner(s) and in case, they are found in order and candidates lower in merit have been appointed in the category in which the petitioner(s) are competing, the petitioner(s) be given appointment on the post of Surveyor against which the petitioner(s) are competing as two posts of Surveyor have already been kept vacant by an interim order dated 18.01.2017 by Co-ordinate Bench of this Court.



15. Learned counsel for the petitioner(s) very fairly submits that if the petitioner(s) are found entitled for the appointment, the petitioner(s) be given appointment from the date candidates lower in merit have been appointed and the petitioner(s) will forego their arrears of salary in case the consideration and consequent appointment is extended to them within a period of three months of the receipt of copy of this order by the respondents but the petitioner(s) be given notional benefit from the date the candidates lower in merit were appointed.

16. The said proposal needs to be accepted and is accordingly accepted.

17. It is directed that in case the petitioner(s) are found entitled for appointment being eligible in all respects having higher merit than the candidates already been appointed, the petitioner(s) be given appointment from the date the candidates lower in merit have been appointed. The petitioner(s) will be given notional appointment from the date candidate lower in merit have been appointed but without arrears as undertaken by the petitioner(s). Let the consideration with regard to the claim of the petitioner(s) be finalized within a period of three months of the receipt of copy of this order.

18. The petitioner(s) are directed to appear in the office of the respondent-department for scrutiny of their documents on 17.09.2024 at 10.00 a.m.

19. Petitions are disposed of in above terms.



- 20. Pending miscellaneous application, if any, also stands disposed of.
- 21. A photocopy of this order be placed on the file of connected cases.

September 05, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No