

LPA-212-2025 (O&M)

2025.PHHC:014854-DB



116-a

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

1.

LPA-212-2025 (O&M)
Date of Decision: January 30, 2025

**THE CHAIRMAN, SUBORDINATE SERVICES SELECTION BOARD,
PUNJAB AND OTHERS**Appellants

Versus

PARNAM SINGH Respondent

2.

LPA-231-2025 (O&M)

**THE CHAIRMAN, SUBORDINATE SERVICES SELECTION BOARD,
PUNJAB AND OTHERS**Appellants

Versus

HARWINDER SINGH Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. R.S. Pandher, Sr. DAG, Punjab.

Mr. Beant Singh Seemar, Advocate for the respondent(s).

LISA GILL, J.

**CM-480-LPA-2025 in LPA-212-2025 and
CM-532-LPA-2025 in LPA-231-2025**

1. Heard learned counsel for parties.
2. For the reasons mentioned in the application(s) as well as arguments addressed, delay of 106 days in filing the appeal(s) is condoned.
3. Application(s) are, accordingly, disposed of.

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LPA-212-2025 (O&M) and LPA-231-2025 (O&M)

1. This order shall dispose of LPA Nos. 212 and 231 of 2025 which are taken up together at request and with consent of learned counsel for parties, as both the appeals arise from common impugned order dated 05.09.2024 deciding CWP Nos. 758 and 788 of 2017 filed by writ petitioners (respondents).

2. Above said writ petitions were filed by respondent(s) (writ petitioners) being aggrieved of their claim to appointment to the post of Surveyor in the Department of Soil and Water Conservation, Punjab, being rejected while candidates lower in merit were statedly appointed. It was pleaded that pursuant to advertisement No. 6/2015 dated 29.12.2015, writ petitioner in LPA-212-2025 applied for appointment to the post of Surveyor under Backward Class category and writ petitioner in LPA-231-2025 applied for the said post under General category. Selection was to be carried out on the basis of marks secured in the qualifying examination and thereafter documents of candidates were to be scrutinized. It is stated that date or schedule for counselling was not published even after nine months of publication of the advertisement. In June 2016, some of the advertised posts were reduced from 347 to 323 vide a public notice (Annexure P5), on instructions of the Department. It is submitted that date for counselling was fixed as 03.10.2016 vide notice dated 23.09.2016 (Annexure P7). However, said date was not notified in a manner which could be communicated to all candidates due to which writ petitioners could not appear for scrutiny on 03.10.2016, resulting in candidates lower in merit being appointed.

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Representation(s) were submitted by writ petitioners stating that no intimation etc. had been received by them due to which they missed the counselling and they should be given one chance to submit their documents. When no action was taken, writ petitions in question were filed.

3. Writ petitions were opposed by the respondents with objection that once candidates/writ petitioners failed to appear for scrutiny of documents on the specified dates, their documents necessarily could not be verified, therefore, they are not entitled to raise the plea that candidates lower in merit had been selected or that they should be afforded another chance for counselling.

4. Learned Single Bench on considering the facts and circumstances, allowed the writ petitions while also taking note of the fact that two posts had been kept vacant pursuant to interim orders passed in said writ petitions. It was further noted that candidates had been called for scrutiny once again after passing of order dated 25.08.2022 in the writ petitions, keeping in view the fact that posts were lying vacant, however, petitioners were not allowed to participate in the subsequent scrutiny on the premise that this counselling was not meant for absent candidates. It was observed as under:-

“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

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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 whose 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.”

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5. Aggrieved of order dated 05.09.2024, present appeals have been filed.

6. Learned counsel for appellants submits that writ petitioners had not appeared in the counselling due to their own fault and negligence. Once they did not follow the instructions mentioned in advertisement and public notice dated 23.09.2016, there was no question of affording them another opportunity for scrutiny of documents. Candidates who were already selected and appointed as Surveyor were not impleaded, therefore, impugned order dated 05.09.2024 should be set aside on this ground alone. Appellants, vide public notice dated 29.08.2022, had indeed called the candidates of BC and SC (R&O) categories but none of the candidates, who were absent pursuant to issuance of public notice dated 23.09.2016, were permitted to participate. This by itself does not give any right to the appellants to claim consideration. It is sought to be clarified that public notice dated 29.08.2022 was issued in view of interim order dated 09.05.2022 passed in CWP-5770-2017 titled as Surjit Singh versus State of Punjab and others because cut off merit for candidates of BC and SC (R&O) category was 60.13 and 61.90 respectively. Cut off merit of these candidates was higher than the last recommended candidate in the open/General category with merit of 57.746. Therefore, candidates having lesser merit were called for counselling. It is, thus, prayed that these appeals be allowed. Impugned order dated 05.09.2024 be set aside and writ petitions i.e. CWP Nos. 758 and 788 of 2017 be dismissed throughout.

7. Though notice has not been issued in these appeals, Mr. Beant Singh Seemar, Advocate appears on behalf of respondent(s) (writ petitioners) and controverts averments on behalf of appellants. It is submitted that

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impugned order has been correctly passed as there is nothing on record which would indicate that there was proper publication of notice dated 23.09.2016. Moreover, no prejudice has been caused to any person as two posts were kept vacant by way of interim order passed by learned writ Court and admittedly, both the writ petitioners are higher in merit than the persons selected. Dismissal of appeal is sought.

8. We heard learned counsel for parties and have gone through the file with their able assistance.

9. At this juncture, it is pertinent to note that as far as merit of writ petitioners is concerned, the same is not disputed. Writ petitioner in LPA-212-2025 has secured 73.185 marks. Writ petitioner in LPA-231-2025 has secured 68.39 marks whereas last selected candidate in this category has secured 57.746 marks. Documents of writ petitioners, it is informed, have been scrutinized provisionally on 17.09.2024 in compliance of impugned order dated 05.09.2024. Learned counsel for writ petitioners further submits that they are in receipt of communication dated 29.01.2025 from the Department wherein they have been asked to reach the office of Chief Conservator of Soil, Punjab at Chandigarh on 31.01.2025 at 11.00 a.m. in respect to appointment to the post of Surveyor in Soil and Water Conservation Department.

10. Doubtlessly, in a given case if the candidate fails to appear for scrutiny on the stipulated dates/time, they cannot be considered subsequently for selection and consequent appointment and neither would they be entitled to raise grievance in this respect. However, in the peculiar facts and circumstances of the case as noted above, we do not find any ground which calls for interference. There is indeed nothing pointed out from the record

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which indicates proper publication/uploading of notice dated 23.09.2016. It is worthwhile to refer to interim order dated 25.08.2022 by the writ Court, duly reproduced in para 7 of impugned order dated 05.09.2024, wherein contention of petitioners that out of 556 candidates called for counselling, only 293 had appeared, due to factum of proper intimation not being given is duly noted and Principal Secretary, Department of Agriculture was called upon to file an affidavit giving complete details of persons, who had appeared for counselling, selected and appointed pursuant to advertisement in question. It was further directed that total number of writ petitions regarding selection should be intimated. It is further to be noted that candidates much lower in merit were admittedly called for counselling much later on 31.08.2022 vide public notice dated 29.08.2022 (Annexure A5) but writ petitioners were not permitted to participate. It is relevant to refer to clause 3 of this public notice, which reads as under:-

“3.0 In connection with the said advertisement, the candidates who have applied have been invited for counseling on the basis of category-wise cut-off merit keeping in mind the marks scored in the online form. But still if the merit after conversion in the percentage of the merit or grade of a candidates is as per the said category-wise merit, then such candidates should submit his online application form along with the documents mentioned in the schedule. Counseling at the office of the Board.

11. Bare perusal of this clause reveals that respondent had even permitted such other candidates to participate in counselling with their own application form with documents mentioned in the Schedule, though they may not be falling in the list of those invited but may be falling in category wise

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merit after conversion. There was, thus, no occasion for denying participation to writ petitioners. Stand of the Department that writ petitioners were not eligible to be called for scrutiny held on 31.08.2022 is totally unjustified. Argument that selected candidates were not impleaded, thus, writ petition should have been dismissed is devoid of any merit, hence rejected as two posts were admittedly reserved by virtue of interim orders in the writ petitions and none of selected candidates had higher merit. In the given peculiar facts and circumstances, learned Single Bench has correctly allowed the writ petitions.

12. Learned counsel for appellants is unable to point out any illegality, infirmity or irregularity in impugned order dated 05.09.2024 which calls for interference.

13. No other argument has been addressed.

14. Both the appeals being devoid of any merit are, thus, dismissed with no order as to cost.

15. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

January 30, 2025

Rts

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