

**(2013) 01 P&H CK 0262**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No's. 8962, 20317, 21185, 21247, 2310 and 23947 of 2011 (O and M)

Puneet Sharma

APPELLANT

Vs

Punjab State Agricultural  
Marketing Board and Another

RESPONDENT

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**Date of Decision:** Jan. 8, 2013

**Citation:** (2013) 172 PLR 66 : (2013) 1 SCT 835

**Hon'ble Judges:** Rajesh Bindal, J

**Bench:** Single Bench

**Advocate:** Puneet Gupta in CWP Nos. 20317 and 23497 of 2011, Mr. S.K. Sharma in CWP Nos. 21185, 23110 and 8962 of 2011 and Mr. Vivek Sharma in CWP No. 21247 of 2011, for the Appellant; P.K.S. Gill for Respondent Nos. 1 and 2 in CWP No. 23110 of 2011, Mr. G.S. Harika in CWP No. 20317 of 2011, for Respondent Nos. 1 and 2 in CWP Nos. 21185 and 23497 of 2011 and for Respondent No. 1 in CWP Nos. 8962 and 21247 of 2011, Ms. Amandeep Kaur for the Respondents Nos. 4, 6, 8, 12 to 17, 19, 22, 24 to 27, 29 to 31 and 34 to 41 in CWP No. 23497 of 2011 and Mr. Nilesh Bhardwaj, D.A.G., Punjab for State, for the Respondent

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**Judgement**

Rajesh Bindal, J.

This order will dispose of CWP Nos. 8962, 20317, 21185, 21247, 23110 and 23497 of 2011, as challenge in all the petitions is to the selection to the post of Junior Engineer (Civil/Public Health) made by the Punjab State Agricultural Marketing Board (for short, "the Board"). Briefly, the facts are that the respondent-Board issued advertisement dated 2.5.2011 inviting applications for various posts including 54 posts of Junior Engineers (Civil/Public Health).

2. As per the procedure prescribed in the advertisement, the selection had to be made purely on the basis of merit position in the written examination with no interview. The petitioners though were higher in merit but were not offered appointment on the plea that they were not eligible as per Rules. The qualification

required was diploma in Civil Engineering of a recognized institute whereas the petitioners are degree holders. It is how the petitioners have approached this court with a grievance that merely because they are better qualified, they could not be denied appointment as they were higher in merit.

3. Learned counsel for the petitioners submitted that the qualification prescribed in the advertisement for recruitment to the post of Junior Engineer (Civil/Public Health) was Diploma in Civil Engineering of a recognized Institute. The petitioners are holding degree in Civil Engineering from recognized Institutes. As per the procedure prescribed in the advertisement for selection, the only criteria was marks obtained in the written examination conducted for the purpose. There was no interview. In the present case, in the written examination the petitioners have secured marks higher than the selected candidates but still they have been denied appointment merely on the plea that they were more qualified as against the required qualification of Diploma in Civil Engineering as the petitioners are degree holders in Civil Engineering. Relying upon judgment of Full Bench of this court in *Manjit Singh v. State of Punjab and others*, 2010(3) S.C.T. 703, it was submitted that a candidate possessing higher qualification than the one prescribed in the advertised cannot be declared ineligible for appointment.

4. Learned counsel for the petitioners further referred to the instances where the persons with higher qualification were appointed as Junior Engineers.

5. Another plea raised by learned counsel for the petitioners is that number of seats reserved for each category is much more than the prescribed percentage of reservation. Out of the total 54 posts advertised for the post of Civil Engineer (Civil/Public Health), 37 were reserved, whereas only 17 were meant for General category. The reservation was provided more than 50%. It was submitted that in the category of Scheduled Castes the reservation is 25%. Out of total 54 posts, 17 posts have been reserved for Scheduled Castes Category, whereas it should have been 13. Similarly in the Backward Class category, the reservation provided is 12%, where against 6 posts, 7 posts have been reserved. The reservation of 13 posts in Ex-serviceman category is also on higher side. In support of arguments, reliance was placed upon Full Bench judgment of this court in *Kuldip Singh v. State of Punjab and others*, 1997(3) S.C.T. 454.

6. On the other hand, learned counsel for the respondents submitted that the appointments have been made strictly as per the Rules applicable for the posts. The same does not give any liberty to the Board to appoint a person possessing higher qualification. The vires of the Rules as such have not been challenged. The qualification meant for filling up of promotional quota is not relevant for direct recruitment. As far as the persons in service having better qualification is concerned, the submission is that those may have been appointed on promotion or may have improve their qualification after appointment. Hence, the petitioners do not gain anything therefrom.

7. Heard learned counsel for the parties and perused the paper book.

8. Before proceeding to consider the case of the petitioners on merit, this court would like to firstly deal with the legal issue as to whether a person who has better qualification than the one prescribed in the advertisement can be rejected even if higher in merit. The issue has been considered by a Full Bench of this court in Manjit Singh's case (supra), wherein it has been categorically opined that candidate possessing higher qualification in the same line cannot be excluded from consideration for selection. He/she may not be entitled to any additional weightage for higher qualification but cannot be denied consideration at par with a candidate possessing minimum prescribed qualification. Denying consideration to a candidate having better qualification is arbitrary and discriminatory. Hence, non-consideration of candidature of the petitioners on the ground that they are possessing Degree in Civil Engineering as compared to the prescribed qualification in the advertisement of Diploma in Civil Engineering cannot stand in judicial scrutiny, hence, declared illegal.

9. Now coming to the merits of the controversy.

10. Total 54 posts were advertised for the post in question. As per the advertisement, the posts were reserved for different categories. The relevant extract is as under:-

11. As per the procedure prescribed in the advertisement, the selection had to be made purely on the basis of merit position in the written examination with no interview. The selection procedure as prescribed in the advertisement is reproduced as under:-

Selection Procedure:

Selection will be based purely on the merit prepared on the basis of marks obtained in the written examination. There will be no interview.

12. As per the merit list prepared, the petitioners fall at the following numbers in the merit list of General Category in the written examination:-

CWP No. 8962 of 2011

Petitioner was not called for written test being higher qualified.

13. A perusal of the list of selected candidates as produced in CWP No. 23497 of 2011 Sukhdeep Singh and another v. Punjab State Agricultural Marketing Board and others, and extracted below, shows that some of the selected candidates though lower in merit in the written examination were possessing Diploma in Civil Engineering. Meaning thereby that the candidates who were having Degree in Civil Engineering though had secured more marks in the written examination had been totally ignored:-

As the action of the respondent Board is not in conformity with law, hence, the same is held to be illegal and arbitrary. A fresh merit list of all the candidates in terms of the marks obtained in the written examination is required to be drawn irrespective of the fact that the candidate is possessing the minimum qualification as prescribed in the advertisement or the higher qualification in the same time.

14. As far as contention raised by learned counsel for the petitioners regarding excessive reservation provided in the category of Scheduled Castes, Backward Classes and the Ex-serviceman is concerned, the number of posts advertised and the percentage of reservation is not in dispute. The number of posts as reserved in each category are not in consonance with the percentage of reservation provided for that category. Nothing has been pointed to show that there was any backlog of vacancies in the reserved category. Be that as it may, this court is not expressing any final opinion thereon but it is directed that in case there is any error in calculation of the vacancies in each reserved category, the same be also corrected and appointments be made accordingly. Accordingly, the writ petitions are allowed. The action of the respondent Board in not treating the candidatures of the petitioners for the post of Junior Engineer (Civil/Public Health) as eligible being better qualified, is declared illegal. The respondent Board is directed to prepare a fresh merit list on the basis of marks obtained by each of the candidate in the written examination. The number of posts in each reserved category be also re-drawn considering the percentage of reservation in accordance with law and the applicable rules and regulations.