

(2016) 11 P&amp;H CK 0106

## High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 23107 of 2014

Amandeep Singh Bawa

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Nov. 15, 2016**Acts Referred:**

- Constitution of India, 1950 - Article 14, Article 16

**Citation:** (2017) 1 SCT 489**Hon'ble Judges:** Daya Chaudhary, J.**Bench:** Single Bench**Advocate:** L.S. Virk, Addl. AG, Punjab, for the Respondent; Puneet Bali, Senior Advocate with Ms. Monika Thakur, Advocate, for the Petitioner**Final Decision:** Allowed

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**Judgement**

**Daya Chaudhary, J.** (Oral)—The prayer in the present petition is for issuance of a writ in the nature of Certiorari for quashing selection and appointment of respondent Nos. 3 to 9 as Sub Inspector in Punjab Police at District Cadre Police in General Category on the ground that said respondents have already taken benefit of reservation in relaxation of their age at the time of entry into service being the candidate of reserved category. A further prayer has also been made for direction to respondents to consider and select the petitioner in General Category as Sub Inspector.

2. Brief facts of the case, as made out in the present petition, are that petitioner being eligible submitted his application for the post of Sub Inspector (Male) in Punjab Police at District Cadre in General Category in pursuance of advertisement (Annexure P-1) whereby applications were invited for recruitment of Sub Inspectors from male and female candidates. He was called for written examination. Thereafter, the result was published and on the basis of provisional merit list, interview was held and final merit list of all categories was published.

3. The grievance of the petitioner is that he applied in General Category but did not figure in the final merit list published by respondent No.2. However, the respondents No.3 to 9 who belonged to reserved category i.e. SC/ST were shown to have been selected in spite of the fact that they were in the age group of more than 25 years of age and had already taken benefit of reservation in relaxation of age. It is also the grievance of the petitioner that in case respondents No. 3 to 9 were considered in reserved category, the petitioner should have been selected in the General Category as he was at Sr. No.3 of the waiting list.

4. Learned Senior Counsel for the petitioner, at the very outset, submits that the petitioner was at Sr. No.3 of the waiting list and the candidate who was at Sr. No.1 of the waiting list has approached this Court by way of filing CWP No. 24324 of 2014 titled as Ronnie Singh Salh v. State of Punjab and another, decided on 23.08.2016 by claiming his right of consideration for appointment. Said petition has been allowed and respondents have been directed to consider the case of the petitioner for appointment on the post of Sub Inspector within a period of two months from the date of receipt of copy of the order passed on 23.8.2016. He further submits that two posts are still lying vacant and petitioner has a right to be considered against those vacant posts. Learned Sr. counsel further submits that petitioner would be satisfied in case the claim of the petitioner is considered at par with Ronnie Singh Salh against the second vacancy as the candidate who was at Sr. No.2 of the waiting list has not approached this Court.

5. In response to notice of motion, reply has been filed on behalf of respondents-State counsel which is on record.

6. Learned State counsel on the basis of reply, has opposed the submissions made by learned counsel for the petitioner on the ground that only two posts were there and candidate, who was at Sr. No.2 of the waiting list, has also submitted his application. Learned State counsel also submits that the respondent-State is considering to file LPA against said decision in Ronnie Singh Salh's case (supra).

7. Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the documents available on the file.

8. Admittedly, name of the petitioner was at Sr. No.3 of the waiting list and two posts are lying vacant. It is also not disputed that the candidate at Sr. No.1 of the waiting list, namely, Ronnie Singh Salh has approached this Court by way of filing CWP No. 24324 of 2014 which has been allowed by this Court on 23.8.2016 with a direction to consider the case of the petitioner for appointment on the post of Sub Inspector within a period of two months against vacant post. The candidate at Sr. No. 2 of the merit list, has not approached this Court and case of the petitioner can be considered against second vacant post. The claim of the petitioner has been opposed on the ground that the second candidate, who is higher in merit, has made representation for consideration of his case for promotion against the second

vacant post. It is not disputed that said candidate has filed representation after filing of this petition. The claim of the petitioner has been opposed only on the ground that the State is considering to file LPA against decision passed by this Court in Ronnie Singh Salh's case (supra) but no LPA has been filed so far. The judgment passed by this Court in said case has not been stayed and that judgment is still in existence and the legal issue has been discussed at length in said judgment. The relevant portion of said judgment is reproduced as under:-

"Admittedly, in pursuance of advertisement dated 28.7.2011, the petitioner applied for the post of Sub Inspector in General Category. The name of the petitioner was at Sr. No. 69 in the final merit list of the General Category after qualifying the physical test as well as written test. It is also not disputed that the candidates from Sr. No. 61 to 70 secured same marks and were kept in the merit list as per their age. As per information sought under RTI Act, total 61 candidates were selected but 8 did not join. Thereafter seven candidates were offered appointment from the waiting list and even one candidate from the waiting list refused to join. It has also been informed during arguments that two posts are still lying vacant. The petitioner being next in merit has claimed his right over one out of two vacant posts. The claim of the petitioner has been rejected only on the ground that his name has neither been reflected in the list of selected candidates nor in the waiting list. The argument of learned counsel for the respondent-State is that the waiting list cannot subsist for a long period and the petitioner was not even in the waiting list. Moreover, the purpose of waiting list is only to appoint the person against the post which fell vacant due to non-joining of the selected candidate.

Similar controversy was dealt with in CWP No. 13492 of 2010 titled as Ranjit Singh v. State of Punjab and others, decided on 11.3.2015. In that case, applications for filing up of 5293 vacancies were invited, which were later on enhanced to 5578 vide subsequent advertisement. The petitioner in that case belonged to BC category and was at Sr. No. 3 in the waiting list. Two candidates before him in the waiting list were already recruited but four posts were lying vacant. The petitioner in that case claimed his right to be appointed in the category of BC as the post was lying vacant. The writ petition was disposed of with a direction to respondents to consider his claim against BC category in case the post was lying vacant. In **Vinay Singh v. State of Haryana, 1993 (1) SCT 730**, the petitioner was selected and appointed as an Excise and Taxation Officer. He claimed that on the basis of his merit, he was entitled to be appointed to HCS (Executive Branch) as person at Sr. No. 7 in the merit list did not join. The petitioner was at Sr. No. 8 and he claimed his right to the vacancy which had originally been offered to the person, who did not join. The petitioner was held entitled to be appointed to the post of HCS (Executive Branch) being the next in the merit list.

Undoubtedly, the selection does not confer any indefeasible right to be appointed but the State cannot deny the appointment to a person, who has duly been selected.

Nothing has been pointed out as to how the petitioner has been denied the appointment against the post, which has fallen vacant due to non-joining of the candidates. Simply it has been rejected on the ground that the petitioner was not part of the selected list or the waiting list. It is also not disputed that the petitioner was next in merit to the candidate who refused to join duty. The argument of learned counsel for respondent-State cannot be accepted that there was delay in making claim on the post as this petition was filed in the year 2014 and last candidate, namely, Ankardeep Singh, who was appointed from waiting list was given appointment two months back only.

Same view was taken by this Court in the cases of **Sarabdeep Kaur v. State of Punjab and another 2016 (1) S.C.T. 83** and **Satwinder Singh v. State of Punjab and others 2016 (1) S.C.T. 268**, wherein, it was held that in case the vacancies remain unfilled by reason of non-joining of selected candidates, then the candidate next below in the merit deserves to be considered against unfilled vacancy.

In view of the facts as well as law position as explained above, there is merit in the contentions raised by learned senior counsel for the petitioner. Since two posts are still lying vacant, the petitioner has right to be considered against vacant posts.

Accordingly, the present petition is allowed and the respondents are directed to consider the case of the petitioner for appointment on the post of Sub Inspector within a period of two months from the date of receipt of copy of the order."

9. Accordingly, in view of facts and law position as mentioned above, the present petition is allowed and respondents are directed to consider the case of the petitioner for appointment against second vacant post, in case, the candidate at Sr. No.2 of the waiting list, has not approached.

10. The necessary exercise be done within a period of two months from the date of receipt of copy of this order.