

**(2013) 11 P&H CK 0310**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 6264 of 1994**

Kanwaljeet Singh

APPELLANT

Vs

Haryana Vidyut Parsaran Nigam Ltd.

RESPONDENT

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**Date of Decision :** 15-11-2013

**Acts Referred:**

**Citation :** (2014) 3 SCT 402

**Hon'ble Judges :** Rameshwar Singh Malik, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Rameshwar Singh Malik, J.—The instant writ petition is directed against the impugned selection of private respondents to the post of Meter Reader. While issuing notice of motion on 17.5.1994, a Division Bench of this court directed the respondent-board to furnish the particulars of selected candidates alongwith their addresses to the counsel for the petitioners within one week. Thereafter, in compliance of the order dated 17.5.1994, respondent C.W.P. No. 6264 of 1994 2 board supplied the particulars of selected candidates to learned counsel for the petitioners and they were impleaded as party-respondents. The writ petition was admitted vide order dated 4.8.1994 and was directed to be put up for hearing in the month of November, 1994. However, actual hearing could not materialise. That is how, this court is seized of the matter.

2. Learned Senior counsel for the petitioners at the very outset, fairly states that in the normal circumstances, this petition would have been rendered in-fructuous because of efflux of time. He further submits that the present writ petition, as a matter of fact, has been rendered infructuous qua petitioners No. 2, 4, 8 and 9. However, he submits that the present writ petition, in view of the categoric averments taken in the additional affidavit dated 2.7.2012 filed alongwith C.M. No. 8383 of 2012, survives qua petitioners No. 1, 3, 5, 6 and 7. Learned Senior counsel for the petitioners also submits that petitioners No. 1, 3, 5, 6, and 7 are ready and willing to forego their claim for back wages and will be satisfied, if

they are considered for appointment, from the date their batchmates were appointed, for all other intents and purposes, except arrears of salary.

3. When this case came up for regular hearing on 22.12.2011, following order was passed in the presence of learned counsel for the parties, which reads as under:-

"On asking of the court Mr. Narender Hooda, Advocate accepts notice on behalf of respondent No. 1 and seeks time to get instructions in the matter.

Learned Senior counsel for the petitioners submits that petitioners No. 1 to 6, 7 and 8 got 14 marks, whereas the last candidate who was selected also got 14 marks and still the said petitioners were not appointed. He further submits that if the vacancies are there, the petitioners can be adjusted and they are ready to forego their back wages.

On request of learned counsel for respondent No. 1, adjourned to 18.1.2012."

Again on 10.2.2012, the following order was passed on the request of learned counsel for the respondents, which reads as under:-

"Learned counsel for the respondents wants to seek instructions, as to if the candidate who secured 14 marks in the interview, could be considered for appointment by way of relaxation.

Adjourned to 23.3.2012."

4. So far as the C.M. No. 8383 of 2012 is concerned, notice was issued therein, vide order dated 20.7.2012 and it was ordered to be heard alongwith the main writ petition. Thereafter, when the case was again taken up on 8.10.2013, the case was adjourned on the request of learned counsel for the respondents for today, for filing reply to C.M. No. 8383 of 2012. However, despite granting repeated adjournments and enough time, respondents have not filed any reply to C.M. No. 8383 of 2012.

5. Further, during the course of hearing, learned counsel for the respondent-board could not dispute the factual position brought out in the affidavit dated 2.7.2012 filed on behalf of the petitioners, including the vacancy position of the posts of Meter Reader. He also could not dispute the fair submission made by the learned Senior counsel for the petitioners.

6. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the given fact situation of the present case, the instant writ petition deserves to be partly allowed qua the surviving claim of Kanwaljit Singh petitioner No. 1, Atul Ahuja-petitioner No. 3, Riyasat Ali-petitioner No. 5, Ashwani Singla-petitioner No. 6 and Ajitpal Singh-petitioner No. 7. To say so, reasons are more than one, which are being recorded hereinafter.

7. Before proceeding further, it would be appropriate to refer to the specific averments taken in the affidavit dated 2.7.2012, which have gone un-rebutted on the record and the same read as under:-

"1. That the above writ petition has been filed by 9 petitioners. One of the grievance of the petitioners is that out of 9 petitioners, 5 petitioners have obtained 14 marks. The detail of those 5 petitioners is given below for ready reference:-

2. That it is necessary to mention here that the petitioner Kanwaljit Singh and Ajitpal Singh have obtained 14 marks and they were not appointed on the other hand some BC category candidates namely Mohan Kumar S/o. Hukam Chand whose date of birth is 10.2.1974 and he had also obtained 14 marks and he has already been appointed and working. It is necessary to mention here that when 2 candidates have obtained equal marks then elder in age is entitled to be appointed. Since both Kanwaljit Singh and Ajitpal Singh were elder to Mohan Kumar in age, so the petitioners Kanwaljit Singh and Ajitpal Singh have prior right in comparison to Mohan Kumar. So there is no justification to deny the appointment to Kanwaljit Singh and Ajitpal Singh.

3. That similarly there are many candidates of general category who had obtained less marks or many candidates who have obtained equal marks but they are younger in age in comparison to the petitioners. The detail of some persons is given below for ready reference:-

It is necessary to mention here that all the above 6 candidates belonging to general category and obtained 14 marks have been selected and appointed and on the other hand the petitioner No. 6 Ashwani Singhal who had obtained 15 marks has not been considered for appointment. So appointing the candidates lower in merit to him and ignoring his claim is on the face of it violative of Articles 14 and 16 of the Constitution of India. Even candidates who had obtained 14 marks and younger in age have been appointed. When there are equal marks of 2 candidates then elder in age has to be preferred. So, the petitioners No. 5 Riyasat Ali is elder in age to most of the above mentioned candidate, so the petitioner No. 5 being elder in age has to be appointed in comparison to the candidate who had secured equal marks and younger in age.

4. That since the above petitioners namely Kanwaljit Singh (petitioner No. 1), Atul Ahuja (petitioner No. 3), Riyasat Ali (petitioner No. 5), Ashwani Singhal (petitioner No. 6) and Ajitpal Singh (petitioner No. 7) have preferential right and they had already given undertaking that they will not claim the backwages and they are satisfied if their appointments be considered from the date other batch mates have been appointed for all intents and purposes except salary.

5. That the petitioners have also obtained information under RTI Act, 2005 regarding the position of posts of Meter Reader lying vacant. The letter dated 17.1.2012 is reproduced below for ready reference:-

"From Chief Engineer/OP UBHVN, Rohtak

To

Regd.

Sh. Surinder Singh S/o. Sh. Nanak Singh,

H. No. 112, New Ram Nagar Karnal.

Memo No. 2/RTI/Act-314 Dated 17.1.2012

Sub: Supply of information under RTI Act, 2005-

Sh. Surinder Singh.

Please refer to your application on the subject cited above.

The information as desired vide your application referred above is as under, please.

This information is as per monthly manpower statement for the month ending on 31.12.2001 supplied by circle offices.

Sd/- Admn. Officer cum SPIO O/o. CE/OP UBHVN Rohtak"

So from the above detail it is clear that posts are lying vacant and already selected and appointed candidates will not suffer in any manner and the above mentioned petitioners could be adjusted against these vacant posts."

8. As noticed herein above, despite repeated opportunities having been granted, no reply has been filed to the above said affidavit. Thus, the specific and strong averments taken therein have gone un-rebutted on record, which amounts to implied admission by the respondents. This court has found force in the arguments raised by learned Senior counsel for the petitioners that since some of the selected candidates were lower in merit as well as younger in age, petitioners had a preferential right of consideration, which was illegally denied to them. So far as the availability of vacancies is concerned, the above said vacancies as pointed out in the affidavit have not been denied. Further, the petitioners have given an undertaking to forego their claim for back ages. In this view of the matter, petitioners are declared entitled for consideration of their claim for appointment with effect from the date their other batch-mates were appointed, however, without any back wages.

No other argument was raised.

9. Considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that in the peculiar fact situation of the case discussed hereinabove, petitioners No. 1, 3, 5, 6 and 7 deserve to be granted the limited benefit, as pointed out in the preceding paragraphs.

10. Consequently, the present writ petition is partly allowed. The respondent authorities, whosoever is competent, are directed to consider the preferential right of the petitioners for appointment to the posts of Meter Readers with effect from the date their other batch mates were appointed. However, it is made clear that the petitioners shall be entitled for all other service benefits except the arrears of salary. Let the necessary exercise be completed by the competent authority within a period of one month from the date of receipt of a certified copy of this order. Resultantly, with the observations made and directions issued, as herein above, instant writ petition stands partly allowed, however, with no order as to costs.