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**(2013) 03 P&H CK 0163**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 5310 of 2013**

Satish Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 13-03-2013

**Acts Referred:**

**Citation :** (2013) 2 PLR 737

**Hon'ble Judges :** Augustine George Masih, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Augustine George Masih, J.—Petitioner has approached this Court praying for issuance of a writ of mandamus directing respondents to appoint the petitioner against the post of a Peon under the Backward Class-A Category. It has been asserted that the petitioner, in pursuance to an advertisement dated 29.09.2011 (Annexure P-1) published in the Indian Express, applied for the post of Peon against the Backward Class-A Category, for which out of the 18 posts, 8 were earmarked. In the said advertisement, it was mentioned that the number of vacancies may be increased or decreased on creation or withdrawal of the Courts or otherwise. In the merit list, which was prepared by the respondents, petitioner was placed at Sr. No. 10 under the said category. Krishan Kumar, whose Roll No. was 1112, was placed at Merit No. 3 under the Backward Class-A category but he was not eligible as the certificate of the Backward Class, which was produced by him, was of the State of Uttar Pradesh. The candidates up to Merit No. 9 were thus appointed against the 8 posts advertised for the Backward Class-A Category. The petitioner sought information under the Right to Information Act, according to which, on 31.03.2012, there were total 28 vacant posts of Peons in the Sessions Division, Faridabad. 18 posts have been filled up, therefore, there were 10 posts still available, against which the petitioner could be appointed. In the light of this fact, petitioner submitted a representation to the respondents. The District and Sessions Judge, vide letter dated 22.05.2012 (Annexure P-4),

sought permission to fill up the vacant posts of Peons available on the date of declaration of the result i.e. 03.04.2012. In this letter, it was specifically stated that after the withdrawal of the Court, there are now 7 posts of Peons still lying vacant, out of these, one post fell to the category of Backward Class-A Category. The claim of the petitioner was not considered. In the meanwhile, another letter dated 29.05.2012 (Annexure P-5) was addressed by the Sessions Judge, Faridabad to the Registrar of the High Court withdrawing the earlier letter dated 22.05.2012 on the ground that under the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, there is no provision for any waiting list for the post of Peons and further in the light of the judgment passed by this Court in C.W.P. No. 19046 of 2008 titled as Ashwani Goyal and others v. District and Sessions Judge, Mansa and another, decided on 08.02.2010, posts beyond the advertised posts cannot be filled up except in cases where a candidate has not joined the said post and if such a post remained unfilled then the next candidate in order of merit can be offered appointment. With the withdrawal of the earlier letter dated 22.05.2012 (Annexure P-4), right of the petitioner is stated to have been adversely affected leading to the filing of the present writ petition praying for quashing of the letter dated 29.05.2012 (Annexure P-5).

2. The contention of the counsel for the petitioner is that the action of the respondents in not appointing the petitioner especially when on the date when the result was declared i.e. 03.04.2012, there were 10 vacant posts of Peons available, out of which one fell in the quota of Backward Class-A Category, to which the petitioner belongs, cannot sustain in the light of the specific clause in the advertisement dated 29.09.2011 (Annexure P-1) that number of vacancies may increase or decrease on creation or withdrawal of the Courts or otherwise. The claim of the petitioner is based on the judgments passed by the Supreme Court in Prem Singh and Others Vs. Haryana State Electricity Board and Others, , Suvidya Yadav and others v. State of Haryana and others, (2002) 10 Supreme Court Cases 269, Sandeep Singh v. State of Haryana and another, (2002) 10 Supreme Court Cases 549 and a judgment passed by this Court in C.W.P. No. 19046 of 2008 titled as Ashwani Goyal and others v. District and Sessions Judge, Mansa and another, decided on 08.02.2010. He, on this basis, contends that the action of the respondents in not appointing the petitioner cannot sustain and, therefore, a direction be issued to the respondents to appoint the petitioner on the post of Peon under the Backward Class-A Category.

3. I have heard the counsel for the petitioner and have gone through the records of the case.

4. Admitted facts are that an advertisement dated 29.09.2011 (Annexure P-1) was issued by the District and Sessions Judge, Faridabad inviting applications for filling up 18 posts of Peons. Last date for receipt of the applications was 20.10.2011 up to 4 P.M. 8 posts out of these 18 posts of Peons were earmarked for Backward Class-A Category, to which the petitioner belongs. He applied for

the post and was placed at Merit No. 10. Krishan Kumar, who was at Merit No. 3 in the Backward Class-A Category, was found to be ineligible on the ground that the Backward Class Certificate produced by him was from the State of Uttar Pradesh. Next candidate in merit, namely, Raj Pal, who was placed at Sr. No. 9, was thus, appointed against the Backward Class-A Category. All 8 posts belonging to the Backward Class-A Category, therefore, stood exhausted. Apart from these categories, as a matter of fact, all 18 posts stood filled up from the respective categories, for which the posts were advertised. None of the advertised posts remained vacant.

5. Petitioner has asserted his claim on the 7 available posts at the time when the result was declared of the selection i.e. 03.04.2012, which were in addition to the 18 advertised posts on the ground that there was a specific mention in the advertisement dated 29.09.2011 that the number of vacancies may increase or decrease on creation or withdrawal of the Courts or otherwise. Once the posts have been found to be available, the District and Sessions Judge, Faridabad had rightly sought permission from the High Court to fill up the vacant posts of Peons available on the date of declaration of the result vide communication dated 22.05.2012 (Annexure P-4), wherein it was further mentioned that out of these 7 posts, one post belonged to the Backward Class-A Category. If such a post was available and that too belonged to the Backward Class-A Category, to which the petitioner belongs and the petitioner was next in merit i.e. Merit No. 10, he was entitled to be appointed to the said post. This assertion of the petitioner cannot be accepted in the light of the reasons assigned by the District and Sessions Judge, Faridabad in his communication dated 29.05.2012 (Annexure P-5), which reads as follows:--

I have the honour to submit that this office vide letter No. 10559/E.1 dated 22.5.2010 has sought permission to fill up 7 posts of peon from the next candidates according to merit from the elect list/waiting list as per the result declared on 3.4.2012. Those posts were existing on the date of result. The office has put up the noting before me on 20.4.2012 to this effect. In the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, there is no provision for any waiting list for the post of Peons. In a latest judgment titled as Ashwani Goyal and others versus District and Sessions Judge, Mansa and another, Civil Writ Petition No. 19046 of 2008 decided on February 08, 2010 our Hon"ble High Court has laid down that only in the event of non-joining of any candidate or if the selected candidate is found ineligible or for any other valid reason, if the advertised posts remain unfilled then the next candidate in order of merit can be offered appointment otherwise the select list stands exhausted and there remains nothing to be kept alive. In the instant case advertisement was issued to fill up 18 posts of Peons and after completing the recruitment procedure result was declared on 3.4.2012. All the 18 candidates against the advertised posts have already joined, so, the select list stands exhausted. Further candidates from the aforesaid list cannot be appointed in view of the ratio of law laid down in the aforementioned authority of our

Hon"ble High Court. A copy of the judgment is enclosed herewith.

6. The reasons assigned by the District and Sessions Judge, Faridabad being in consonance with the statutory Rules and the law laid down by this Court cannot be faulted with. The petitioner thus, cannot be granted the benefit, as has been claimed by him in the present writ petition. Reliance upon the judgments of the Supreme Court in Prem Singh and others, Suvidya Yadav and others and Sandeep Singh (supra) would not help the claim of the petitioner as in all those cases, during the process of selection, additional requisition was sent by the appointing authority to the selecting authority and the candidates have been duly selected and appointed, which was faulted with by this Court but was upheld by the Hon"ble Supreme Court.

7. It would not be out of way to mention here that there was no such clause as in the present case in the statutory Rules which would bar the maintenance and preparation of a waiting list which would entitle the claim, as has been made by the petitioner in the present writ petition. That apart, the ratio and the law laid down by the Supreme Court in those judgments would not be applicable to the present case as the facts and the statutory Rules governing the service in the present case are quite different and, therefore, would not be of any benefit to the petitioner. In view of the above, finding no merit in the present writ petition, the same stands dismissed.