
Harinder Pal Singh Vs State of Punjab and Others

C.W.P. No. 18419 of 2013

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 3, 2014

Acts Referred:

Constitution of India, 1950 – Article 144, 16(4), 16(4-A), 162

Citation: (2015) 1 SCT 167

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Rajvinder Singh Bains, Advocates for the Appellant; Anshul Gupta, AAG, Advocates for the Respondent

Judgement

Rajiv Narain Raina, J.

Having heard the learned counsel for the parties at some length for final disposal of the matter I would allow this

petition with costs for the reasons following. The petitioner belongs to the Ramdasia (R&O) category notified in the list of Scheduled Castes in the

State of Punjab for employment in public service. He competed for direct recruitment to the post of Junior Engineer (Mechanical) advertised in the

Irrigation Department, Punjab, Chandigarh. 9 posts in the general category were advertised in the Mechanical Branch while 6 posts were

advertised in the scheduled caste category. There was a Note in the advertisement that from the scheduled caste vacancies, 50% would go by way

of preference to Majbi and Balmiki Sikh candidates. The Note is derived from Section 4(5) of The Punjab Scheduled Castes and Backward

Classes (Reservation of Services) Act, 2006 (for short "the Act").

2. Therefore, by giving effect to the preference, 3 out of 6 advertised posts fell to the share of R&O. When the result of the selection was

declared, the petitioner had secured 74.5 merit points as against merit points 91.5 secured by the topper in the list of Scheduled Caste (R&O)

Category. It transpires that the 3rd respondent-Navtej Singh belongs to the general category and secured 82 merit points and became the last

candidate selected and appointed in his category.

3. It is the contention of Mr. Rajvinder Singh Bains, the learned counsel appearing for the petitioner, that one Varun Kumar in the R&O category

secured higher merit points than Navtej Singh-the last general category candidate selected and appointed. By applying the rule of reservation, he

submits that Varun Kumar had to be considered first in the general category and accordingly offered appointment on his open merit position. He

could not be counted towards the reserved category posts. As a result of Varun Kumar's reallocation to the general category, he would be

deemed to vacate one post in the Scheduled Caste R&O Category to be filled by the next available person in the reserved category. In this

manner, the petitioner would shift from merit position No. 4 in the Scheduled Caste R&O Category to merit position No. 3 which would bring him

within the zone of consideration for appointment as a Junior Engineer (Mechanical) against the 3 vacancies advertised and falling to the share of

R&O. There is merit in the submission of Mr. Bains which is in line with the reservation law that the reserved quota has to be maintained and filled

up by available candidates in the reserved category without counting such reserved category candidates who make it on merit in the open general

category.

4. The consequence of such shifting would immediately make respondent No. 3, Navtej Singh fall out of the zone of appointments from the 9 posts

advertised in the general category. It is informed by the respondents that Navtej Singh was offered appointment and joined the service on 20

September, 2013 and has been serving in the department since then. The impact of not considering a scheduled caste candidate on his own merit

first in the open general category has resulted in the creation of a right in the wake of abject misapplication of the scheme and rule of reservation by

the functionaries of the State who were responsible: for drawing up the merit list category-wise in terms of the reservation policy of the State to

give effect to the constitutional scheme of reservation as formulated, framed and explained by the Supreme Court in the celebrated Constitution

Bench rulings in *Indira Sawhney v. Union of India*, *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, and (1999)7 SCC 209

respectively]. In *Ashok Kumar Gupta and Another Vs. State of U.P. and Others*, it has been laid down that rights of reserved category candidates

under Article 16(4) and 16(4-A) are fundamental rights and not merely statutory in nature which are normally operated by executive instructions

issued under Article 162 of the Constitution which have to be read into rules as authoritatively held in *Indira Sawhney*.

5. Needless to say, no fault than be attributed to Navtej Singh, respondent No. 3, in securing an appointment. Nor can he be accused of making

any; misrepresentation; deceit or the kind and therefore, it would be rather unfair and unjust to disturb his appointment after a year. Accordingly,

the Government would take all necessary steps to protect his appointment either by counting him on an available vacancy or by subtracting one

post from future vacancies and adjusting him accordingly but with a right to retention and seniority on his ranking in the present batch of direct

recruits. If this is not found feasible, then the State may consider creating a supernumerary post for his fitment. But at the same time the petitioner

cannot be denied his rightful due and place in filling the advertised vacancies in his category resulting from the process of shifting Varun Kumar

(R&O) to the general category in accordance with law.

6. Denial of such rights to the petitioner as have been violated in the present case amount to a constitutional tort committed by public servants in the

appointments" process. Amends made by Court to undo the wrongdoing of the officers of the State would burden the State with the cost of one

extra post beyond the advertised vacancies till the service career lasts. Wrongful action of Government functionaries will also result in breach of

principles laid down in Hoshiar Singh Vs. State of Haryana and Others, where the Supreme Court declared for the first time that the Public Service

Commission cannot recommend names in excess of the number of vacancies advertised or mentioned in the requisition. Any appointments in

excess of the advertised number would be arbitrary as it would deprive candidates who were not eligible for appointment to the posts on the last

date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being

considered for appointment on the additional posts. If the said additional posts are advertised subsequently those who became eligible for

appointment in the meanwhile would be entitled to apply for the same. This inflexible principle was evolved for the first time by the Supreme Court

in Hoshiar Singh has been proliferated in a line of decisions that followed. However, the view was softened a little in Prem Singh and Others Vs.

Haryana State Electricity Board and Others, and chain of cases by observing at p. 331, para 25:--

The State could deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in

an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the

court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to

strike a just balance between the interest of the State and the interest of persons seeking public employment.

7. In the result, the petition is allowed. A mandamus is issued to the official respondents to shift Varun Kumar to the general category as per his

open general merit which would actually bring him at Sr. No. 3 of the list of general category candidates which is higher than 6 other general

category candidates who have secured appointments and stand above Navtej Singh. Consequently, the petitioner would be offered appointment as

Junior Engineer (Mechanical) subject to medical and police verification etc. while Navtej Singh would be relieved of the agony of discharge from

service on having fallen from the list of 9 general category candidates in the manner indicated above and as a consequence of this protective order.

He would however not have a right to claim arrears of salary for the period prior to joining/appointment but will take all consequential benefits from

the date of appointment of his batch-mates. The petitioner be offered appointment on the expiration of the period of limitation to call this order in

question has expired. If the appointment is delayed thereafter right to salary would accrue on the expiration of one month thereafter. The petitioner

will have costs of Rs. 25,000/- from the State to defray expenses incurred on this unwarranted and necessary litigation forced upon him and being

compelled to come to Court to vindicate his fundamental rights on a genuine grievance in order to secure relief for himself. If there is any other

adverse fallout on any third party as a result of this order which may involve readjustment of a reserved category candidate etc. as may have

secured higher merit points than Navtej Singh, it is for the Government to look into this aspect benevolently since the mess created is of its own

making by grossly misapplying the scheme of reservation. The State would be free to recover the costs from erring officials found responsible and

remiss in discharge of their sacrosanct constitutional duty to give effect to the reservation policy of the State as there has been an apparent failure to

act honestly and faithfully despite the law on the subject matter having been settled and reiterated time and again by the Supreme Court and this

Court in a large number of rulings to which no reference is necessary as it would unnecessarily burden this order with what is well established by

law and long settled involving, coincidentally, in some major cases originating from the State of Punjab itself as in Sabharwal and Ajit Singh II

cases. The same is the position in Punjab Government policy circulars on reservation issued from time to time and the provisions of Act, 2006

which all have been breached with impunity. Insofar as erring officers are concerned, the Secretary to Government in the respondent department

would keep in mind the provisions of section 8 of the Act which deal with punishments on guilt established, in the event action is contemplated. He

would also ensure that such acts of omission and commission are not repeated in the future failing which this Court may consider in writ jurisdiction

increasing imposition of costs to a level which is far more than merely compensatory in nature and which might hurt pockets and then to meet out

by itself appropriate punishments on erring officials including initiation of proceedings in contempt of the judgments and orders of the highest Court

of the land and this Court which civil authorities are duty bound to implement and act in aid of under article 144 of the Constitution of India.