

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.10866 of 2011
Decided on : 01.09.2015**

Surjit Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. R.S. Chauhan, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia , J. (Oral)

The direction sought in the present writ petition is for quashing the selection of respondent No.5 as Vocational Master/Mistress (Civil) on the ground that she was lower in merit. Further relief sought is that the petitioner be appointed as a Vocational Master (Civil) having been duly selected, but not appointed despite representations made.

The case of the petitioner is that he belongs to Ramdasia Caste, which is a recognized Scheduled Caste and certificate dated 30.03.2010 (Anneuxre P-2) issued by Tehsildar Gurdaspur has been relied upon.

The advertisement in question was dated 23.09.2009 when 78 posts were advertised. The petitioner being eligible had applied and submits that as per the merit list his name appeared at

Serial No.49 having merit of 47.6824. A perusal of the said merit list (Annexure P-9) goes to show that the petitioner has been held not eligible. The petitioner alleges to have made representations, thereafter for appointment.

The case of the State is that the last date of submission the application was 09.10.2009 and the Scheduled Caste Certificate has been issued in favour of the petitioner on 30.03.2010 and, therefore, the benefit could not be given. The residence certificate also which is one of the essential condition could not be produced at the time when candidate was called for scrutiny of documents and, therefore, the claim could not be considered in the category of Scheduled Castes. The claim of the petitioner was considered in General Category and the merit was 47.6824 and the last selected candidate of General Category was 50.13. The details of ineligibility given by the State in Annexure R-1, wherein it has been mentioned that the proof of Domicile and Scheduled Caste has not been attached.

The petitioner in his replication has clarified that the original Schedule Caste certificate was issued on 26.07.2006 and the new certificate was issued on 30.03.2010 and, therefore, the petitioner's candidature was erroneously declined. Similarly, regarding the residence certificate also his plea is that the same was issued on 27.12.2010 and updated on 11.04.2011.

The petitioner has relied upon the Scrutiny Form dated 07.12.2010 (Annexure P-8), on the date when the petitioner's documents were examined by the Committee to show that he was declared eligible by the Scrutiny Officer. Specific averment has been made to this effect in Paragraph No.7 and in the reply filed by the State regarding the factum of the scrutiny form which was in favour of the petitioner, it has not been denied by the State.

On January 13, 2015, this Court directed that let an additional affidavit be filed disclosing the marks obtained by the eight SC (R&O) candidates in order to know the *inter se* merit between those eight and the petitioner. It was observed that in case the marks of the petitioner are lower than the eight then he would have no case.

In pursuance of the said directions, the additional affidavit has been filed by Shri Jaswinder Singh, Deputy Director (School Administration), Office of Director of Public Instructions (Secondary Education), Punjab, Mohali. The detail has been mentioned and it has further been averred that respondent No.5 Sukhwinder Kaur who was at Serial No.8 had not joined in furtherance of her appointment. The waiting list prepared has also been cancelled on 09.08.2013 as per Annexure R-2 and the 8th post meant for the candidate has thus remained vacant. The relevant portion of the said affidavit reads as under:-

“4. The merit wise detail of these 8 selected candidates is as under:-

<i>Sr. No.</i>	<i>Registration No.</i>	<i>Name</i>	<i>Final Merit</i>
<i>1</i>	<i>30013473</i>	<i>Arvinder Pal Singh</i>	<i>55</i>
<i>2</i>	<i>30000190</i>	<i>Manjit Singh</i>	<i>52.2857</i>
<i>3</i>	<i>30016056</i>	<i>Neelam</i>	<i>52.2235</i>
<i>4</i>	<i>30015071</i>	<i>Sukhwinder Singh</i>	<i>51.9764</i>
<i>5</i>	<i>30010485</i>	<i>Mohan Lal</i>	<i>50.8706</i>
<i>6</i>	<i>30021891</i>	<i>Mandip Singh</i>	<i>48.8588</i>
<i>7</i>	<i>30015613</i>	<i>Mandeep Singh</i>	<i>48.3429</i>
<i>8</i>	<i>30002713</i>	<i>Sukhwinder Kaur</i>	<i>46.8</i>

5. That a perusal of above table reveals that all eight posts meant for the category of Scheduled Caste (Ramdasia and others) have already been filled up. The merit of the petitioner as per prescribed criteria is 47.6824. Moreover, the respondent No.5 namely Sukhwinder Kaur was an applicant in the category of Schedule Caste (R&O), hence her name has been rightly placed in selection list at Serial No.8 in the category of Schedule Caste (R&O) as per her merit. It is further brought in the notice of this Hon'ble Court that respondent No.5 i.e. Sukhwinder Kaur did not joined in furtherance of her appointment.

6. That no candidate except above mentioned eight candidates in the category of Scheduled Caste (Ramdasia and others) were issued

appointment letter for the post of Vocational Master/Mistress (Civil) in furtherance of Selection, which was carried out in furtherance of advertisement dated 23.09.2009, as the waiting list prepared was cancelled vide order dated 09.08.2013. A true copy of the order dated 09.08.2013 is appended as Annexure R-2. As a result the eight posts meant for candidates who belonged to Scheduled Caste (Ramdasia and others) Category remained vacant.”

Keeping in view the above facts, it is apparent that one vacancy remain unfilled in the category which the petitioner was entitled for appointment. A perusal of the vernacular of certificate issued for the Scheduled Caste and Scheduled Tribes in favour of the petitioner would gone to show that the original certificate was issued in the year 2006 by the Tehsildar Gurdaspur and, thereafter, the certificate was validated again on 30.03.2010. Thus, it is apparent that the petitioner was fully eligible and has been wrongly ignored on a technicality that the certificate was dated beyond the cut-off-date. Another aspect which is to be kept in mind is that it was not a case of backward class, where the certificate had to be of a band of income which the petitioner was earning for the period prior to the advertisement. The petitioner is born as a Ramdasia which is an recognized Scheduled Caste by the State and, therefore, the submission made that the certificate was after the cut-off-date would also have no weightage. The said

certificate attached also shows that it was issued way back on 26.07.2006 and validated on 30.03.2010 by the Tehsildar also shows the factum of residence of village Rawal District Gurdaspur.

In such circumstances, specially keeping in view the fact that the said post has also not been filled up as respondent No.5 did not join and the petitioner had approached this Court in the year 2011 prior to the decision being taken by the State to cancel the waiting list would have no affect. The petitioner was legitimately agitating for his grievance and, therefore, his right cannot be shut out on the account that the selection process has come to an end as argued by the State counsel.

In such circumstances, the present writ petition is allowed with the direction to the respondent to appoint the petitioner as Vocational Master (Civil), within a period of 2 months from the receipt of certified copy of this order.

SEPTEMBER 01, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE