

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP No.17735 of 2010**

DATE OF DECISION: AUGUST 14, 2015

MANISH AND OTHERS ...PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS ...RESPONDENTS

2. **CWP No.6688 of 2011 (O&M)**

LAKHWINDER KUMAR ...PETITIONER

VERSUS

UNION TERRITORY, CHANDIGARH ETC. ...RESPONDENTS

3. **CWP No.19981 of 2010**

DILBIR SINGH & OTHERS ...PETITIONERS

VERSUS

THE CENTRAL ADMN. TRIBUNAL & OTHERS ...RESPONDENTS

4. **CWP No.19982 of 2010**

AMARJIT KAUR ...PETITIONER

VERSUS

THE CENTRAL ADMN. TRIBUNAL & OTHERS ...RESPONDENTS

5. **CWP No.21592 of 2010**

NARESH KUMAR ...PETITIONER

VERSUS

THE CENTRAL ADMN. TRIBUNAL & OTHERS ...RESPONDENTS

6.

CWP No.21857 of 2010

AMARJIT KAUR

...PETITIONER

VERSUS

UNION TERRITORY, CHANDIGARH ETC.

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. KARAN NEHRA, ADVOCATE
FOR THE PETITIONERS IN CWP No.17735 of 2010.

MR. V.B.AGGARWAL, ADVOCATE
FOR THE PETITIONERS IN CWP NO.6688 OF 2011,
CWP NO.19981 OF 2010, CWP NO.19982 OF 2010,
CWP NO.21592 OF 2010 AND CWP NO.21857 OF 2010.

MR. SANJEEV SHARMA, SR.ADVOCATE
WITH MS. SMRITI DHIR, ADVOCATE
FOR THE RESPONDENTS IN CWP NO.17735 OF 2010,
CWP NO.19981 OF 2010, CWP NO.19982 OF 2010,
CWP NO.21592 OF 2010 AND CWP NO.21857 OF 2010.

MR. VIKAS SURI, ADVOCATE
FOR RESPONDENTS NO.1 TO 3 IN CWP NO.6688 OF 2011.

M. JEYAPPAUL, J.

1. All these writ petitions have been taken up together for common disposal as similar questions of fact and law have arisen for determination.

2. The writ petitioners belong to 'Saini' caste. They were selected as Constables (Executive) in the Police Department of Union Territory of Chandigarh in accordance with the Rules. But they have not been deputed for training by the Chandigarh Administration on the ground that 'Saini' caste was not included in the OBC list of Union Territory, Chandigarh,

despite the fact that the said caste has been included in the Central List of OBCs meant for U.T., Chandigarh. The writ petitioners have primarily prayed for treating them as OBC candidates and induct them for training.

3. The writ petitioners have contended that U.T., Chandigarh has misinterpreted its own communication informing the Authorities concerned on 14.9.2009 that inasmuch as 'Saini' caste does not find a place in the Central List as well as Union List, Chandigarh, the candidates belonging to the said caste are not entitled to claim reservation under OBC quota.

4. The respondents have contended that there was some confusion/ambiguity in the language used in the Instructions referred to by the writ petitioners and as a result of which some candidates belonging to 'Saini' caste had been appointed in the Chandigarh Administration against the post meant for OBC category. It is their contention that as clarified in their communication dated 14.9.2009 to the Authorities concerned, OBC caste/community should not only find a place in the Central List, but also in the Union Territory List, Chandigarh. Only then could they claim reservation under the OBC category. It is their further contention that correct and proper clarification has been given by the Department on 14.9.2009.

5. The policy decision of the Chandigarh Administration is found in the communication sent by Chandigarh Administration dated 23.12.2003 to all the Administrative Secretaries and the Heads of the Departments, Chandigarh Administration. The said communication is found appended as Annexure P-3 in CWP No.17735 of 2010. The contents of the

communication read as under:-

“I am directed to invite your attention to this Department's circular letter no.27/4/94-IH(7)-2003/23354, dated 16.12.2003 on the subject noted above and to state that it has been decided by the Chandigarh Administration, as a matter of policy, that for recruitment to the posts under the Chandigarh Administration, Scheduled Castes from all over India would be eligible for benefit of reservation on the pattern of the Central Government. In the case of Scheduled Tribes, the Union Public Service Commission which makes recruitment on all India basis, would provide for reservation as prescribed by the Central Government. For other recruitment/promotions in the Union Territory, Chandigarh there is no reservation for Scheduled Tribes in Group 'C' and 'D' posts prescribed by the Government of India. So far as OBCs are concerned, the benefit of reservation to this category would be extended on the pattern of the Central Government, wherein the OBC would have to be as is included in the Central List and the Union Territory, Chandigarh List.”

6. Learned counsel appearing for the writ petitioners vehemently contended that though the conjunction 'and' has been employed in between the expression Central List and the Union Territory, Chandigarh list in the aforesaid communication, the conjunction 'and' will have to be construed as 'or'. In fact such a construction was adopted by all the Authorities

concerned and as a result of which 'Saini' community though not included in the Union Territory Chandigarh List, but found a place in the Central List were given the benefit of reservation in the appointments made by U.T., Chandigarh right from the year 2003 to 2009.

7. Learned counsel appearing for the U.T., Chandigarh would submit that on account of misconstruction of the above communication dated 23.12.2003, it is true that 'Saini' caste which does not find a place in the U.T., Chandigarh list, but finds a place in the Central List, had availed the benefit of OBC reservation.

8. It is a well settled position of law that the conjunction 'and' can be read as conjunction 'or' if the context so warrants. On a careful reading of the communication sent by U.T, Chandigarh on 23.12.2003, we find that U.T., Chandigarh has proposed to extend the reservation which was in vogue in the Central Government to the appointments being made in the U.T., Chandigarh as well. In that context, though the expression 'and' has been used in between Central List and the U.T., Chandigarh List, we are of the considered view that Chandigarh Administration has actually meant that OBC community found included either in the Central List or in the U.T. Chandigarh List is entitled to OBC reservation in the matter of appointment to the U.T., Chandigarh. It is an admitted position that such a construction has been made by the Authorities concerned upto 14.9.2009. 'Saini' caste which did not find a place in the U.T., Chandigarh list had been extended the benefit of reservation as it found a place in the Central List. Therefore, we reject the submission made on the side of U.T., Chandigarh that only on

account of misconception benefit of reservation was extended to 'Saini' community in spite of the fact that it was included in the Central List and not in the U.T., Chandigarh List.

9. It was submitted by learned counsel appearing for the writ petitioners that the Administrator of Chandigarh acts as per the Instructions of the Union Government and therefore, U.T., Chandigarh cannot have a separate list for according benefit of reservation. *Per contra*, it was submitted by learned counsel appearing for U.T., Chandigarh that though the Administrator acts as per the Instructions of the Union Government, it could take independent policy decisions for the better administration of the U.T., Chandigarh.

10. In the entire country, not only the Central Government, but also the State Governments as well as the Union Territories maintain separate lists of communities for the purpose of extending reservation to the SC/ST/OBC communities in their respective domain. The State Government as well as the Union Territory will have to necessarily assess the educational, social and economic backwardness of the OBC community for the purpose of including it in their respective list. In other words, the list prepared by the State Government and U.T.s may slightly vary from the list of castes prepared by the Central Government.

11. In our considered view, though the Union Territories are, by and large, controlled by the Union Government, the Union Territories can take certain independent Policy decisions for the better administration of the Union Territory. Therefore, we are not in agreement with the submission

made by learned counsel appearing for the writ petitioners that Union Territories cannot prepare a different OBC List from that of the List already prepared by the Central Government. The Union Territory need not slavishly adopt the OBC List prepared by the Central Government focusing mainly on the social, economic and educational backwardness of OBC community in certain States before including that community in its List. Therefore, the Union Territory is entitled to prepare a separate OBC List for the purpose of extending benefit of reservation to the said community.

12. In **Indra Sawhney etc. etc. vs. Union of India and others, AIR 1993 SC 477**, 9 Judges' Bench of the Hon'ble Supreme Court has observed as follows:-

“117. We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be

composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances.”

13. Learned counsel for the U.T., Chandigarh brought to the notice of the Bench that a permanent body as contemplated in the above judgement was constituted and as per the recommendation made by the permanent body, 'Saini' caste has been included at S.No.65 as per the Notification issued by the Chandigarh Administration, Social Welfare Department on 26.3.2015. The copy of the said Notification was also placed on record for proper appreciation. Now the fact remains that 'Saini' community has been included as one of the OBC category communities as per the above Notification. It is found that only for the period from 14.9.2009 to 26.3.2015 'Saini' caste was kept at bay from claiming the benefit of reservation as an OBC category in the appointments made by U.T., Chandigarh. In our considered view, the benefit of reservation to 'Saini' caste as interpreted by U.T., Chandigarh Administration on 23.12.2003 should have been extended upto 26.3.2015 when the permanent body took a decision to include that caste also as one of the OBC categories.

14. The communication sent by Director General of Police, U.T., Chandigarh dated 25.9.2009 found appended as Annexure P-8 in CWP No.17735 of 2010 would reflect that Director General of Police has virtually lamented the incongruous stand taken now by the U.T., Chandigarh

in the matter of extending benefit of reservation to 'Saini' community. He had virtually exposed the hollow approach of the U.T. Chandigarh in suddenly issuing the clarification on 14.9.2009 that 'Saini' caste which does not find a place in the U.T., Chandigarh List, but finds a place in the Central List is not entitled to the benefit of reservation. The adverse impact emerged on account of such an arbitrary decision taken by the U.T., Chandigarh also has been highlighted by the Director General of Police, U.T., Chandigarh.

15. In the Standing Ordder No.41/2009 issued for the subject recruitment of Constables (Executive), it has been specifically notified that 27% of vacancies have been reserved for OBC candidates as per Central List and List issued by the U.T., Chandigarh Administration. But such a clear standing order issued for the current recruitment has been completely given a go by in the guise of fresh interpretation.

16. In our considered view, the U.T., Chandigarh has committed illegality by giving a new interpretation in the communication dated 14.9.2009. On this ground as well, the communication sent by the Social Welfare Department on 14.9.2009 is liable to be quashed.

17. In view of the above facts and circumstances, the impugned Clarificatory communication issued by the official respondents on 14.9.2009 stands quashed and the official respondents are directed to proceed with the selection of the petitioners from the stage at which it was given up treating them as OBC category entitled to avail the benefit of reservation, and issue orders of appointment within two months from the date of this order, if they are otherwise found fit and eligible. Accordingly,

the impugned order passed by the Central Administrative Tribunal, Chandigarh Bench stands set aside and the writ petitions are allowed in the aforesaid terms.

(M. JEYAPPAUL)
JUDGE

August 14, 2015
Gulati

(DARSHAN SINGH)
JUDGE