

In the High Court of Punjab and Haryana at Chandigarh.

**CWP No. 18766 of 2012
Decided on 12.03.2015**

Rajneesh Kumar

--Petitioner

Vs.

State of Punjab and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Whether Reporters of Local Newspapers may be allowed to see
the judgment ?
To be referred to Reporters or not ?
Whether judgment should be reported in the Digest ?

Present: Mr. Saurabh Arora, Advocate, for the petitioner

Mr.Anant Kataria, AAG,Punjab, for the respondents

Rakesh Kumar Jain,J: (Oral)

The petitioner has challenged the appointment of respondent
no.4 to the post of Soil Conservation Officer.

In brief, the post of Soil Conservation Officer is governed by
the Punjab Soil Conservation and Water Land Development Class III
Service (Non-Ministerial) Rules, 2001 (for short,'the Rules”).

Vide advertisement Annexure P-1, 25 post of Soil Conservation

Officers in the pay scales of ₹10300-34800+GP ₹5000/- were advertised.

The basic qualification for the said post was B.Sc Agriculture or B.Sc. Agricultural Engineering or B.Sc./B. Tech. Civil Engineering degree from a recognized University or institution or Pass in Punjabi up to Matric Standard. The age of the candidates was required to be not less than 22 years and not more than 35 years as on 01.01.2011. 40% quota in the said service was to be filled up from the candidates possessing degree of Civil Engineering and Agricultural Engineering and out of three posts of Soil Conservation Officer in the Backward Class category, one being 40% was to be filled up from those degree holders. Similarly, out of 11 posts meant for General Category, five were to be filled up from Engineers category. Otherwise, 25 posts were advertised as under:-

General:	11
S.C.	06
B.C	03
ESM:	03
SP:	01
PH:	01

Total:	25

The petitioner, who belongs to Backward Class and was fully eligible having Engineering Degree, applied for the said post and was to be considered in the 40% quota. After selection, notice regarding counseling was published and the result of the selected candidates was shown vide notice dated 16.6.2012 in which Roll Number of the petitioner (18047) was at Serial No.2 in the Backward Class candidates of Engineering Category. The person having Roll Number 18019 was at Serial

No.1.

The case of the petitioner is that the provisional result was prepared in the Engineer's category wherein Charanjit Singh with Roll No. 18019, a backward Class category candidate, was shown to have secured 36.89 marks and his name was included in the list of General Category candidate as respondent No.4/Avtar Singh Mehta, a General Category candidate in Engineering Category with Roll No.18069, obtained 36.84 marks was ranked in the provisional list at Sr. No.2 and was next to Charanjit Singh.

The case set up by the petitioner is that Charanjit Singh, though a Backward Class candidate, having more merit than the General Category candidate, should have been adjusted in the General Category as he falls in the vertical reservation and the seat vacated by him in the Backward Class category should have been offered to him.

Notice of motion was issued on 20.9.2012 and at that time, on the asking of the Court, learned State Counsel had accepted notice on behalf of respondent Nos. 1 to 3 but respondent no.4.was allowed to be served through dasti notice.

On the next date of hearing, an order was passed that in the memo of parties the name of respondent No.4 be read as Avtar Krishan Mehta instead of Avtar Singh Mehta. Amended memo of parties was taken on record. Fresh dasti notice to respondent No.4 in the name of Avtar Krishan Mehta was issued.

On the next date of hearing, the petitioner produced dasti notice issued to respondent No.4, according to which respondent No.4 had shifted to his village. Learned counsel for the petitioner prayed for two

weeks' time to submit fresh address of respondent no.4 and notice was issued to respondent No.4 for 26.8.2013. On that date, the Court had recorded in the order that *“as per office report, respondent No.4. stands duly served. However, no one appears on his behalf. Respondent no.4. Is, accordingly, proceeded ex-parte”*.

Learned counsel for the petitioner has argued that Charanjit Singh, who was at Serial No.1 in the Backward Class candidate of Engineering Category, should have been adjusted in the General Category and he should have been given the seat vacated by him in the Backward Class category. In support of his submission, he has relied upon judgments of the Supreme Court in the cases of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others** 2007 (4) S.C.T.99 ; **A.P.Public Service Commission Vs. Baloji Badhavath & Ors.** 2009 (4) SLR 635; **Ritesh R.Sah Vs. Dr.Y.L.Yamul** 1996 (2) **Mh.L.J. 174**; **Bhupinder Kaur and others Vs. Vanita and others** 2011 (3) S.C.T.130 PB & Hry (D.B) and a Single Bench judgment of this Court in the case of **Braham Dutt Vs. State of Haryana and others** 2014 (1) S.C.T.791.

Learned counsel for the respondents has though contested the petition by filing reply but he could not cite any law, contrary to the one cited by the learned counsel for the petitioner, that in case of vertical reservation if a candidate from reserved category is having more marks than the candidate in the General Category, he would be adjusted first in the General Category and other candidate of the reserved category would take his place.

After hearing learned counsel for the parties and examining the

record, I am of the considered opinion that there is merit in the submission made by learned counsel for the petitioner.

There is hardly any dispute on facts, therefore, this petition has to be decided on question of law. In the case of **Rajesh Kumar Daria** (Supra), the Supreme Court has held that "Social reservations in favour of SC,ST and OBC under Article 16 (4) are 'vertical reservations' and Special reservations in favour of physically handicapped, women etc. under Articles 16 (1) or 15 (3) are 'horizontal reservations'. It is further held that if the number of SC candidates, who by their own merit, get selected to open competition, vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. In this regard, the Supreme Court has relied upon judgment in the case of **R.K.Sabharwal Vs. State of Punjab**, 1995 (2) SCT 646 and **Ritesh R.Sah Vs Dr.Y.L.Yamul**, 1996 (2) SCT 524. However, it is held that the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Caste, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'.

Be that as it may, the law is very clear on this issue as held by the Supreme Court in the case of **Rajesh Kumar Daria** (Supra) which favours the present petitioner in this case.

In view of the aforesaid discussion, the present petition is thus allowed and selection and appointment of respondent No.4 is hereby quashed.

12.03.2015
RR

(Rakesh Kumar Jain)
Judge