

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

CWP No. 15920 of 2013
Date of decision: 20.11.2015

Avtar Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. A.K. Walia, Advocate,
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

Mr. Ajay Pal Singh, Advocate,
for respondents no. 6 and 7.

G.S.SANDHAWALIA, J. (Oral)

The present petition has been filed for declaring the entire promotion process conducted by respondents no. 1 and 2 to the post of Superintendent Grade-I as illegal and unconstitutional. The ground taken is that respondent no. 4-Kuldeep Kaur had been promoted against a backlog in the Scheduled Caste category quota and the petitioner was the only candidate after respondent no. 4, was entitled to be considered for promotion against roster point no. 15, which was reserved for the Scheduled Caste category. The said point has wrongly been given to a general category official and the petitioner has been wrongly denied promotion to the post of Superintendent Grade-I vide the order dated 07.02.2013 (Annexure P-7). The agenda and the decision of the DPC dated 28.01.2013 (Annexure P-5) is also challenged alongwith the reply to the

legal notice dated 05.03.2013 (Annexure P-9). Accordingly, the petitioner claims promotion to the post of said post in the Scheduled Caste category w.e.f. 07.02.2013 with consequential benefits.

It was the case of the petitioner that he is working as a Senior Assistant in the office of respondent no. 2 and belongs to the Scheduled Caste category and was appointed as a Clerk on 23.09.1986. He was promoted on 22.05.2002 to the post of Senior Assistant on regular basis. There were 4 posts of Superintendent (Grade-I) in the department and one post was reserved for Scheduled Caste category, which are to be filled up 100% by way of promotion from amongst Senior Assistants who had a minimum period of 10 years' experience. As per the seniority list (Annexure P-2), Balbir Singh was at Sr. No. 8, Smt. Kuldeep Kaur was at Sr. No. 9 and Malkiat Singh at Sr. No. 10 whereas, the petitioner was at Sr. No. 16. Kuldeep Kaur, who was figuring at Sr. No. 9, was also a Scheduled Caste category. On account of the 3 vacancies of Superintendent Grade-I in the year 2012, a proposal was made for making promotions to the 3 posts from amongst the eligible Senior Assistants and the roster point nos. 14, 15 and 16 were to be consumed. Roster point no. 15 was earmarked for Scheduled Caste category whereas roster point nos. 14 and 16 were for general category. A panel of 7 Senior Assistants was prepared, out of which, two were from the Scheduled Caste category and their names were mentioned separately as per Annexure P-3. However, reference was made to respondent no. 3 for checking the roster and a wrong report was got prepared that there was a backlog of one vacancy in the Scheduled Caste category existing since the year 2009 on 24.01.2013 (Annexure P-4) to oust the petitioner. Accordingly, on 28.01.2013, the DPC recommended the

promotion of Kuldeep Kaur as against the backlog of one post in the Scheduled Caste category and Balbir Singh and Malkiat Singh, who figured at Sr. Nos. 8 and 10. The petitioner was not granted any benefit and was wrongly denied promotion on account of the fact that Kuldeep Kaur was adjusted against roster point no. 15, which was reserved for Scheduled Caste category and Balbir Singh and Malkiat Singh consumed the other two vacancies. Thereafter, vide order dated 22.03.2013, further promotions were made to others as per the seniority, which are also subject matter of challenge.

A legal notice was thereafter served, which was replied and rejected on 05.03.2009 (Annexure P-9) on the ground that there was a backlog of one Scheduled Caste category and, therefore, Kuldeep Kaur was adjusted against the said backlog and the percentage of reservation was complete. Resultantly, the present writ petition was filed.

The respondents have admitted in the reply that there was a cadre of 4 posts of Superintendent Grade-I and 3 vacancies were to be filled up against roster point nos. 14, 15 and 16, as contended by the petitioner. On account of the backlog, Kuldeep Kaur was adjusted being senior to the petitioner and after her placement, the representation of the Scheduled Caste category was complete and the roster ceases to exist. It is, however, further also admitted by the respondents that the recommendation of the Roster Committee on 24.01.2013 was wrong and there was no backlog of one vacancy. A specific averment was made in para no. 19 that there was no backlog in the Scheduled Caste category so as to facilitate promotion of Malkiat Singh as General category on the ground that the percentage of reservation was complete. In the written statement, this fact has been

admitted, which reads thus:-

“It has been inadvertently mentioned in memo No. Roaster Committee No.1/2 dated 24.1.2013, Annexure P4 that from 16-7-1975 to 19-8-2009, 11 points had been filled up and at that time, 4 vacancies were filled up out of which 1 Scheduled Caste vacancy was filled up by Sh. Sher Singh and due to this, backlog of Scheduled Caste was shown nil and due to retirement of above official, there is backlog of one vacancy.

*Sh. Sher Singh, Superintendent retired on superannuation on 30-6-2009. Sh. Charan Singh had filed CWP No. 11551 of 1998 which was decided on 21-11-2007. After retirement of Sh. Sher Singh on 30-6-2009, the reserve point automatically went to Sh. Charan Singh, in view of Hon'ble High Court's order dated 21-11-2007, copy of which is **Annexure R2**. As such, no backlog remained after retirement of Sh. Sher Singh which went to Sh. Charan Singh. Earlier advice was given taking the reserve point vacant after retirement of Shri Sher Singh. In fact, it went to Sh. Charan Singh. Therefore earlier advice was based upon wrong facts. Now the matter has been reconsidered by respondent no. 3 and it has been found that on 24-1-2013 when earlier advice was conveyed, only one post was filled up by general category candidate and at that time there was no backlog of Scheduled Caste category.”*

Thus, it is apparent that the State is blowing hot and cold at the same time. It has firstly taken the plea that Kuldeep Kaur was being adjusted against the backlog and, therefore, had consumed the roster point no. 15. Now, it has admitted that the said backlog did not exist. The other

two persons had consumed roster point nos. 14 and 16 as general category candidates on that ground. Admittedly, as per the seniority list, Kuldeep Kaur being at Sr. No. 9 was second in the seniority list and against the 3 vacancies would have been entitled for promotion on her own right and, therefore, would not have consumed the Scheduled Caste category seat at roster point no. 15. Malkiat Singh-respondent no. 6 was at Sr. No. 10 would necessarily have to give way to the petitioner, who was at Sr. No. 16 since the reserved seat would come down to roster point no. 16 and the petitioner would be entitled for promotion on the strength of being a Scheduled Caste category against the reserved seat. It is also apparent that initially, the agenda was prepared whereby, candidates from the general category and from the Scheduled Caste category had been shown separately but when the DPC proceedings took place, the petitioner was left out of the zone of consideration.

In such circumstances, since Kuldeep Kaur was being promoted on her own right and not as a Scheduled Caste candidate, she could not be held to be consuming the roster point and the petitioner would have been entitled for promotion on 07.02.2013 when the said persons were promoted.

Resultantly, the present writ petition is allowed and the promotion of respondent no. 6-Malkiat Singh is set aside and the petitioner is directed to be promoted w.e.f. the said date as Superintendent Grade-I. The needful be done within 2 months from the date of receipt of certified copy of the order. The petitioner will be entitled for all the consequential benefits from the said date.

20.11.2015
shivani

(G.S. SANDHAWALIA)
JUDGE