

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21347 of 2012

Date of Decision: 12.2.2015

Gurpreet Kaur

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Arora, Advocate for the petitioner

Mr.Inder Pal Goyat, Addl.A.G., Punjab

- 1.To be referred to the Reporters or not?
- 2.Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

Mr. R.K. Arora, the learned counsel for the petitioner submits that this matter is covered by the decision of this Court in **Shabir Khan and another vs. State of Punjab and others** [CWP No.21387 of 2011, decided on 29th February, 2012] which was followed by a coordinate Bench of this Court in **Baljeet Singh vs. State of Punjab and others** [CWP No.2998 of 2013 decided on 22th May, 2013] which in turn has been upheld by a Division Bench of this Court in LPA No.1927 of 2014, **State of Punjab and others vs. Baljeet Singh** decided on 21st November, 2014. The Division Bench has noticed the decision of this Court in **Shabir Khan's**

case, *supra* and upheld the decision of the learned Single Judge delivered in *Baljeet Singh* case on the question of award of 5 extra marks to Backward Class candidates to their credit to draw merit in the Punjab State Teachers Eligibility Test (PSTET).

It may be noticed that reservation was made available only to Scheduled Castes and Scheduled Tribes candidates in the PSTET, but not to Backward Class candidates or for that matter to any other vertical reservation. Indisputably, the petitioner is a Backward Class candidate for which category there was no reservation provided in the PSTET, and therefore, the status of Backward Class candidates and General Category candidates was measured on the same footing. It was for this reason that in the online application form for the PSTET, the petitioner wrote the word “General” in the column, "Category", but by doing so it did not mean that she had deprived herself of her rights to depend on the result of the test while applying for the advertised post of S.S.Mistress and Punjabi Mistress where the PSTET result forms part of the criteria of selection. The petitioner secured 86 marks in the PSTET and was short by four marks to qualify the criteria adopted for appointment to the posts against which she had applied as a Backward Class candidate within the reservation offered to this Category. Following the decision in **Shabir Khan's** case, the petitioner made a representation to the respondent-Department that 5 marks were required to be added to her aggregate marks as weightage towards reservation as a Backward Class candidate in terms of the policy of reservation. This request was turned down by the department which declared her ineligible for recruitment since she could not make the grade of 90 marks out of 150 marks.

Aggrieved by the action of the respondent-Department, the petitioner approached this Court on 18th October, 2012 praying that when 5% marks are added to her score in the PSTET, she would secure appointment on merits in her reserved category.

The State has filed written statement and has contested the case. The defence is that the petitioner, like all other applicants, was fully aware of the specific conditions of eligibility while submitting the online application forms for the PSTET-2. The category of such candidates as the petitioner is cannot be changed at any stage afterwards or during the selection process as it will cause prejudice to other candidates who have generally applied in the correct category. It is further mentioned in paragraph 3 of the preliminary submissions, which has been pressed vehemently by the learned Counsel for the State before this Court, that the option of applying under the Backward Class category was available to the candidates who applied for the PSTET-2. The Court is sought to be impressed by figures which reveal that Backward Class category candidates who appeared in the test were as large as 17630 in numbers in the qualifying PSTET-2011 while 1342 candidates passed the test. It is further submitted that the appointment process regarding advertisement dated 7th May, 2011 is over and appointment letters have already been issued to all selected candidates. Therefore, the claim of the petitioner is not maintainable and is made belatedly and thus the petition does not call for interference.

Mr.Arora, learned counsel for the petitioner refutes that the recruitment is a dead ball and points out that last counselling process was held on 21st September, 2012 vide public notice dated 10th September, 2012 while the present petition was filed on 18th October, 2012.

When the State makes these submissions, it fails to notice and implement the law down by this Court in **Shabir Khan** and **Baljeet Singh's** cases, *supra*, the latter of which has been upheld in appeal while noticing the former case which covers the present case squarely. Besides, the moot issue has been reiterated by the learned Single Judges of this Court in **Shaveta Kamboj vs. State of Punjab and another** [CWP No.6134 of 2014 decided on 7th July, 2014], **Monika and others vs. State of Punjab and others** [CWP No.3581 of 2014 decided on 23rd April, 2014]. In **Shabir Khan's** case, *supra* this Court took the view that Backward Class candidates are entitled to re-fixation up to 5% as Backward Class candidates and a direction was issued to treat all similarly situated persons in a similar manner. The interim directions issued by this Court on 18th November, 2011 permitting Backward Class category candidates to attend the counselling was made absolute and part of the final order. To sum up the position, what this Court had vide the aforesaid order culled out is that in the PSTET-2011, where there was no reservation for BCs and a BC candidate had competed as a general category candidate he cannot be treated as a general category candidate in the selection process where he could compete within the reservation meant for Backward Class candidates, if he or she applied there for. Therefore, if the petitioner is a Backward Class candidate duly certified by the competent authority in the Punjab Government and caste certificate issued such as the copy of which have been collectively placed on the writ file as P-1, then the petitioner's score of 86 marks would need to be raised to 91 to accommodate the extra advantage of 5% marks given by the Punjab Government to Backward Class candidates. Undisputedly, the petitioner applied as a Backward Class

candidate against the posts advertised.

In the opinion of this Court, the petitioner has been wronged by the respondent-Department in not being given the additional weightage of 5% marks for Backward Class candidates to secure over the minimum 90 marks out of total 150 marks required to satisfy the criterion and qualify for appointment. When they are added, it cannot be disputed that the petitioner would make the grade on merits and come within the zone of consideration.

Consequently, the writ petition is allowed. The remarks that the petitioner is ineligible are ordered to be deleted from the record. The petitioner is declared eligible for consideration for appointment to the post of SS Mistress and Punjabi Mistress in the Backward Class category, pursuant to the advertisement dated 7th May, 2011. Her case be considered against both the posts by treating her marks either as $86+5=91$ or $86+7.5=93.5$ marks [5% calculated as consolidated marks or 5% of 150 marks] i.e. whichever way the State interprets 5% to be applied. In case the petitioner finds a berth on her merit in the Backward Class category, then her case may be considered for appointment. In case a Backward Class candidate by such offer to the petitioner faces displacement, then the last candidate in the Backward Class category will not be affected by this order and would have a right to continue on the post as he/she would not be at any fault or be put to disadvantage. In case she is found deserving on her own merit with 5% added to her existing score she may be offered appointment against an existing vacancy. If there are no posts available presently, then either, one of them be deducted from future vacancies to satisfy the claim of the petitioner or failing which, a supernumerary post be created for the

petitioner and these would be subject to all other conditions of appointment to public service being satisfied.

It is directed that the exercise be completed within two months from the date of receipt of a certified copy of this order. The petition stands disposed of. The parties to bear their own costs.

12.2.2015
MFK

(RAJIV NARAIN RAINA)
JUDGE