

CWP No. 22006 of 2012
Date of decision: 30.11.2015

Sukhnandan 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. Vaibhav Sharma, DAG,Punjab.

Mr. Harinder Sharma, Advocate
for respondent No. 4.**Rajiv Narain Raina, J.(Oral)**

1. In an identical situation relief has been granted to candidate Parminder Kaur in CWP No. 14796 of 2011 decided by learned Single Bench on 15.02.2013. The question there was whether Parminder Kaur belongs to the Kamboj Sikh caste which is recognised as a backward class in the State of Punjab for the purpose of appointment of civil service. She had applied for the post of Art and Craft Teacher in pursuance to an advertisement issued on 27.09.2009 inviting applications from eligible candidates for the post of Punjabi, Mistress. The cutoff date for receipt of applications was 9.10.2009. At the time of applying for the post, Parminder Kaur possessed a backward class certificate issued by the Tehsildar dated 29.10.2008 which was considered stale since condition No. 24 of the advertisement required candidates to furnish backward class certificates no more than a year old. Aware that she would have been declared ineligible Parminder Kaur quickly retraced her steps and obtained a backward class

certificate from the Halqa Patwari, Fatehgarh Panjoor, District Moga, who reported that the petitioner was a backward class person. The declaration came on 1.10.2009 before the cutoff date. The case of Parminder Kaur hung on a delicate balance where the declaration by the Halqa Patwari had come before the cutoff date but the actual certificate was issued after the cutoff date by the competent authority, the Tehsildar, and the same was submitted for the consideration of the department. This became the reason for the State Government to decline the candidature of Parminder Kaur taking the view that the final certificate was presented after the cutoff date.

2. Aggrieved, Parminder Kaur approached this Court in the aforesaid civil writ petition which was allowed by the learned Single Judge and the decision of the State Government was set aside and direction was issued to the Director Public Instructions (Secondary Education), Chandigarh to consider the candidature of the petitioner for appointment to the post of Punjabi, Mistress in the backward class category, in case a post is available out of the selection process. In implementation of the order dated 15.02.2013, the competent authority offered appointment to Parminder Kaur. She joined and is working.

3. Mr. R.K.Arora, learned counsel appearing for the petitioner submits that his case is on a firmer footing because the Naib Tehsildar, Tanda declared the petitioner as a member of the Backward Class (Lohar) before the cutoff date. The formal certificate was issued by the Tehsildar dated 5.10.2009 i.e. four days before the cutoff date and therefore, the case of the petitioner could not have been rejected on the ground that she did not produce proof as a backward class candidate. Since the petitioners case was not considered in the backward class category, her result was declared in the

general category where she could not make the grade on merits since her marks were lower than the last general category candidate appointed. It may be mentioned that the petitioner secured 62.4615 marks whereas the last general category candidate secured 66.2332 and the case of the petitioner was not considered in the category applied for. Otherwise she would have made it to the zone of selection and appointment since her merit was substantially higher than the last backward class candidate appointed to service in the category applied for.

4. The question now remains is as to what relief is to be granted? After this Court has come to the conclusion that the case of the petitioner and Parminder Kaur has no distinguishing features and both are candidates identically placed then parity of treatment is required to be maintained. The Court is informed that in the advertisement 350 posts of the teachers were advertised out of which 35 posts were earmarked for the backward class category. It may also be mentioned that the petitioner approached this Court for the first time in the year 2011 in CWP No. 272 of 2012 which was disposed of on 5.01.2012 (Annexure P-12) with the direction to the respondent to consider her case for appointment in the backward class category as per her representation. That request was not accepted by the competent authority which has led to the filing of the present writ petition claiming similar relief as was claimed by and was granted to Parminder Kaur by court orders. Therefore, there is no delay in the case of the petitioner from agitating her rights promptly and in the first opportunity claiming relief in the first instance and without delay or laches. Therefore her rights have to be declared from the date of the first petition.

5. When both are identically situated then in order to prevent

unfair discrimination which would violate the mandates of Article 14 of the Constitution then this petition deserves to be disposed of in the same terms as in CWP No. 14796 of 2011(supra). Consequently, a direction is issued to the Director Public Instructions (Secondary Education), Chandigarh to consider the candidature of the petitioner for appointment to the post of Art and Craft Teacher in the backward class category in case a post is available out of the original selection process. In carrying out this exercise, the private respondent No. 4 who has been appointed from the backward class category and is lower in merit than the petitioner, though not the last candidate in the list of backward class, will not be disturbed. Mr. Harinder Sharma, learned counsel appearing for respondent No. 4 states that there are three other candidates below the merit and rank achieved by respondent No. 4. Thus, in order to secure the ends of justice completely and to guard against the State taking an unfair stand that vacancy is not available even then to cure unfair discrimination caused by wrongdoing by the department, the respondent State/Administration would still consider appointment of the petitioner by creation of supernumerary post, if no other method is possible. The petition is allowed in the above terms.

30th November, 2015.
Shivani Kaushik

(RAJIV NARAIN RAINA)
JUDGE