

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

CWP No. 1888 of 2014

Date of decision: December 2, 2015

Sukhwinder Singh and others

..... Petitioners

versus

Punjab State Power Corporation Limited and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr. Naveen Kaushik, Advocate,
for the petitioners.

Mr. Rohit Goswami, Advocate,
for respondents No.1 to 3.

Mr. H. S. Sethi, Advocate,
for respondents No.4 and 5.

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

AMOL RATTAN SINGH, J.

The three petitioners in this case are working as Linesmen with the respondent Corporation. In response to a letter issued on 05.12.2011 (Annexure P-1) from the office of the Secretary/Recruitment Part-I, addressed to various authorities within the Corporation, they made applications for appearing in the departmental examination for promotion to the post of Junior Engineer-2/Electric.

As per the petition, they were all eligible for applying for the post, as the basic requirement was that they should possess a Diploma in Electrical Engineering and have been working in different capacities with the Board for at least three years, or they should be matriculates with a certificate from an Industrial Training Institute (ITI) and should have been working with the Board as Linesmen for eight years. Additionally, they were required to have studied Punjabi and passed an examination in the subject till the 10th class.

Though the petitioners have not referred to the specific rule under which the recruitment/promotion was initiated by the respondents, the reply of the respondents annexes as Annexure R-1, an order dated 21.08.2006 (Circular No.12), which states that in partial modification of an earlier order dated 03.05.2005, the posts of J.E. (Electrical) would be filled up in the following manner:-

i)	By direct recruitment from the open market	25 per cent	
ii)	By promotion from Diploma Holder LM	5 per cent	
iii)	By promotion from Board employees having Diploma in Elect. Engg. And workinn as SSA, LM, MR, ALM/RTM Test Mechanic, Telephone Mechanic, Telephone Attendants and other Technical categories with an experience of 3 years on their respective posts and Matric with ITI and experience of 8 years as LM.	30 per cent	i) By conducting departmental recruitment test, annually for preparing panel. ii) It shall continue temporary till the under employed Diploma Holders are adjusted and thereafter diverted to direct recruitment.
iv)	By promotion from LM, on seniority-cum-merit basis as per existing provisions of Tech. Services Class -III Regulation, 1996 as amended till date	40 per cent	

Though again not referred to in the reply of the respondents, this order would seem to be in terms of Regulation 9 of the Punjab State Electricity Board Technical Services (Class III) Regulations, 1996, which also states exactly to the above effect, at Sr. No.7 in the appendix annexed with the said Regulations, pertaining to the mode of recruitment to various posts.

2. The petitioners all belong to the reserved category (Scheduled Castes) and applied as such for the 153 posts that were to be filled up, including those reserved for various categories.

It needs to be noticed that though it is the common case of the petitioners' and respondents, that in the advertisement/letter dated 05.12.2011 (Annexure P-1), 31 posts were reserved for employees belonging to the Scheduled Castes, factually there is no specific reservation shown qua any number of posts even in the said letter dated 05.12.2011, Annexure P-1.

The petitioners are stated to have applied and to have appeared in the examination conducted, however, they could not succeed and all the posts of the Scheduled Castes Category were filled up by those employees of the same category, as were higher in merit than them.

3. 62 posts of the General Category remained unfilled due to candidates not qualifying the examination and as such, the said (62) posts were again "advertised" to be filled up from amongst employees of the Corporation itself, vide a notice of demand issued for a supplementary departmental examination for the year 2011 (Annexure P-3 with the petition). In the said notice, it was given that on-line registration for appearing in the examination would start on 27.05.2013 and such process

would end on 10.06.2013.

A perusal of the said letter/notice (Annexure P-3), shows that the same qualifications were prescribed therein for the 62 posts in question but there was no reservation of any kind shown, for any number of posts, in the said notice/advertisement also.

4. In the application form filled in by the petitioners in response to notice/advertisement, Annexure P-3, for the supplementary examination, they showed themselves to be of the General Category, as can be seen from the copies of the forms filled in by them (collectively annexed as Annexure P-4).

5. The petitioners appeared in the supplementary examination conducted by the respondents and each of them secured the following marks out of a total of 200 marks:-

Petitioner No.1	Sukhwinder Singh	130 Marks
Petitioner No.2	Gurjinder Singh	118 Marks
Petitioner No.3	Parshotam	114.5 Marks

They were placed at Sr.Nos.16, 46 and 60 respectively, as per the list of candidates displayed by the respondents, as were to be called for document checking in respect of the supplementary examination conducted on 29.09.2013. A copy of the said list has been annexed as Annexure P-5 with the petition.

Thereafter, all the successful candidates, including the petitioners, were called for checking/verification of documents on 14.10.2013 and 15.10.2013. As per the petition, at that time also, they were found eligible for promotion to the posts of Junior Engineers, on the basis of the examination conducted.

However, after the final merit list was issued on 03.01.2014

(copy not annexed with the petition), no promotion orders were issued to the petitioners. They filed a representation to the Chairman of the respondent Corporation on 09.01.2014, a copy of which is annexed as Annexure P-7 with the petition.

Yet, without heeding the representation made by the petitioners, four more candidates were called for document checking on 24.01.2014, two of which included respondents no.4 and 5 (impleaded as such on their application, vide an order of this Court dated 18.07.2014).

6. Consequently, the petitioners filed the present writ petition on 31.01.2014, praying therein that their names be included in the final list of promoted employees and they be allotted places of posting on the promoted posts, as they had all passed the departmental examination that is required to be passed for such promotion/appointment.

They also prayed for maintenance of *status quo* as regards the promotions to be made to the posts of Junior Engineers, from that of Linesmen, on the basis of the supplementary examination conducted by the respondents.

7. When the matter came up for hearing before a co-ordinate Bench on 03.02.2014, notice was issued to the three respondents as had been impleaded at that time (i.e. the official respondents) and it was also ordered that three posts of Junior Engineer (Electrical), as were to be filled up by way of such promotion, be kept vacant.

Subsequently, respondents no.4 and 5 moved Civil Miscellaneous Application No.6261 of 2014, seeking to be impleaded as such respondents, which was allowed vide order dated 18.07.2014, as already noticed.

8. In the written statement filed by the respondent Corporation, the essential facts with regard to the calling of applications for the departmental examination, vide letter, Annexure P-1 and the notice/advertisement, Annexure P-3 in respect of the supplementary examination, have not been denied. Nor is it denied that the petitioners, on appearing in the supplementary examination, obtained the positions in that examination, as have been stated in the writ petition.

It has been stated in the reply that though the letter, Annexure P-1 (referred to as CRA 109/11 in the reply), inviting applications for filling up 153 posts of Junior Engineers, included 49 posts to be filled up by the General Category and 42 of the Scheduled Castes Category (of which 31 were of (the then current) roster points and 11 were of a backlog of vacancies accruing to the Scheduled Caste Category); however, the subsequent notice, Annexure P-3 (referred to as CRA 109/11/Supplementary in the written statement), was not meant for filling up any posts of the Scheduled Castes Category but only for the remaining 62 posts of the General Category, as could not be filled up as a result of the examination earlier held pursuant to letter, Annexure P-1.

It is further stated in the reply, that though the petitioners had correctly mentioned that they belonged Scheduled Castes Category, in the application forms filled in by them in response to letter, Annexure P-1, they misled the Corporation by filling in that they belong to the General Category, in the application forms filled in by them pursuant to the notice/advertisement, Annexure P-3, in respect of the supplementary examination. Hence, as per the respondents, the petitioners, firstly, not being eligible to apply for the said examination which was only for the General

Category candidates, also did not deserve consideration, as they had filled in the wrong category to which they belong, in their application forms for the supplementary examination.

9. Further explaining the break up of vacancies among the General and Scheduled Caste categories, it has been stated in paragraph 5 of the preliminary objections raised in the written statement, that 80% promotional posts are to be filled in from the General Category and the remaining from the Scheduled Caste category. As such, within 153 posts to be originally filled in, though all 42 (31 by roster point and 11 by backlog of vacancies in the reserved category) were filled up by the Scheduled Castes category candidates, only 49 posts of the General Category could be filled up by the General Category candidates, thereby leaving 62 posts of the General Category still remaining to be filled. As such, as per the respondents, nobody from the Scheduled Castes category could even be considered for appointment to those 62 posts, the entire Scheduled Castes' reservation roster having been filled up by the candidates who were appointed not just to the (then current) available vacancies, but also by filling up of the backlog of 11 vacancies existing in the Scheduled Castes category.

The reply on merits repeats the same rationale for not giving appointment to the petitioners.

10. Mr. Naveen Kaushik, learned counsel appearing for the petitioners, while reiterating the arguments raised in the petition, cited the judgment of the Constitution Bench in **Indra Sawhney v. Union of India** (AIR 1993 SC 477), to submit that the reasoning given by the respondents is wholly against the ratio of the said judgment and all law laid down since then, in view of the fact that any reserved category candidate, who secures

more marks than the last selected General Category candidate (on the merit list of the General Category), is to be treated as having been selected as a General Category candidate for the purpose of appointment to a post, and the remaining reserved category candidates, as have secured lesser marks than the last candidate who filled in the General Category posts, are to be treated as selectees to the reserved category vacancies as were advertised, as per the *inter se* merit of such reserved category.

As regards the petitioners having stated that they belong to the General Category, in the application forms submitted for appearing in the supplementary examination, Mr. Kaushik submitted that by declaring that they belong to the General Category, the petitioners derived no extra benefit, inasmuch as, whether or not they are Scheduled Caste category candidates, they necessarily have to be considered, as per merit, first *inter se* all candidates and only if they do not come in the merit for the posts available for the General Category, that they are to be considered for appointment to the posts falling to the Scheduled Caste category. Thus, though they may derive benefit by filling in that they are Scheduled Caste candidates, in the application form, no extra mileage can be derived by them by showing that they are of the General Category.

11. In reply, Mr. Rohit Goswami, learned counsel appearing for respondents no.1 to 3, i.e. the Corporation, and Mr. H.S. Sethi, learned counsel appearing for respondents no.4 and 5, submitted that, firstly, even the fact that the petitioners filled in that they belong to the General Category whereas they actually belonged to the Scheduled Castes category, amounted to a fraud upon the Corporation, and secondly, as regards *Indra Sawhneys' case* (supra), that rationale can only apply to the posts which are

not a residue of the General Category posts that remained unfilled, i.e. the ratio of that judgment can only apply when both General Category and reserved posts are advertised to be filled in together and not when the residue of the General Category posts are advertised. Such advertisement/notice would necessarily exclude all reserved category candidates, as per learned counsel, as they would have already filled in all the posts originally advertised for their category.

Thus, as per both learned counsel for the respondents, the writ petition deserves to be dismissed.

12. However, after hearing learned counsel for the parties and having gone through the pleadings, I have no doubt that the writ petition deserves to be allowed.

The reasoning given by the Corporation in its reply and as was argued by both learned counsel for the respondents, is wholly devoid of merit and is unacceptable.

The rationale behind reservation, as is well settled at least since *Indra Sawhneys' case*, is that those reserved category candidates as would not qualify in open merit, are to be considered for appointment qua their *inter se* merit within their own respective reserved categories, against the number of posts reserved for each such reserved category, as were advertised in the advertisement/notice etc.

Thus, had the petitioners qualified in the first examination held pursuant to letter Annexure P-1, by obtaining the requisite number of minimum marks in the examination, and had obtained higher marks than the General Category candidate last considered for selection, they would, obviously, have filled in the General Category posts advertised and only

after the posts in the open merit category had been exhausted, would the posts reserved for Scheduled Castes candidates have been filled up from amongst the candidates of that category, as per their *inter se* merit.

Just because all the posts falling to the reserved category got filled up pursuant to the examination first held in response to letter Annexure P-1, but all the General Category posts did not get filled up by competition on open merit, does not mean that the rationale applicable on the basis of the ratio of *Indra Sawhneys' case* would stop applying.

The unfilled open category posts, as were to be filled up on the basis of the supplementary examination, would be open to being filled up by way of an open competition amongst all eligible employees, regardless of their category. Hence, when the initially advertised open/general category posts are to be filled up by all categories of persons, regardless of reservation, as per the ratio laid down in *Indra Sawhenys' case*, the same rationale would obviously apply to all open/general category posts as are advertised to be filled in at any point of time, thereafter too. To repeat, all eligible candidates (only employees of the Corporation in this case), as are otherwise eligible in terms of the eligibility criteria given in Annexures P-1 and P-3, would be eligible to apply for such posts and to be considered for appointment, if they fall within the merit list upto the extent of advertised posts.

13. An argument, that the posts in question are not to be filled up by direct recruitment but by promotion from amongst the Corporations' own cadres in different capacities and as such the ratio of *Indra Sawhneys' case* would not apply, is also an argument to be rejected, even if raised. Such an argument would fail even if there was no examination on the basis of which

appointment/promotion was to be made to the posts in question, (or to any post for that matter). This is so in view of the fact that, if a reserved category candidate from a feeder cadre, is the senior most in that cadre, he has to be considered for promotion to the promotional post, as per his seniority *inter se* all other employees, whether of any reserved category or not, *de hors* the fact that the promotion is to be made on a non-reserved roster point. Thus, a reserved category candidate who is the senior most as per *inter se* seniority of all categories, would still have to be so appointed to the promotional cadre, even on a non-reserved roster point.

Therefore, even if promotion is to be made to a higher post, on a non-reserved roster point of that higher post, on the basis of a departmental examination, a reserved category candidate, would still be entitled to such promotion, if he obtains higher marks in such examination amongst all categories, reserved or non-reserved, if the criteria for such promotion/appointment, is the examination alone.

Hence, just because there is a departmental examination for promotion/appointment to a higher post, on a non-reserved roster point, does not mean that reserved category candidates cannot compete in such departmental examination.

14. Coming to the issue of the petitioners having not shown that they belonged to the Scheduled Caste category. Though, otherwise, it would have been more appropriate for them to fill in the column correctly showing the category that they belong to, I see complete merit in the argument raised in this regard by learned counsel for the petitioners, inasmuch as, they knew that the posts to be filled in on open merit, were those for which all candidates were eligible. As such, they did not show the specific category to

which they belong because for appointment to posts available to the General Category, anybody otherwise qualified for the post in question, is eligible to be appointed, regardless of caste and category. Had they shown that they are from the Schedules Castes, they would still have been eligible to compete amongst General Category candidates, for posts available on open merit. Hence, no special benefit has been derived by the petitioners by showing themselves to be of the general category.

The rationale pleaded on behalf of the respondents, that General Category posts are only meant for those who do not belong to any reserved category, is a basic mis-conception. The General Category, as already discussed, is a category of persons who compete on open merit, regardless of any special category that a person may belong to, i.e. Scheduled Castes, Backward Classes, Handicapped, Ex-Servicemen etc.. If any candidate makes it, on merit, to the open category posts available (to the General Category), he/she has to be treated as a person of the General Category and not belonging to any particular reserved category. He/she, therefore, has to be appointed as per merit, to the General Category/open category post, if otherwise eligible.

On the other hand, reserved category posts are only for those who belong to a particular reserved category and as such, the competition for those reserved category posts is confined only to the *inter se* merit of the candidates eligible, as belong to each particular category.

15. In view of what has been discussed hereinabove, this petition is allowed. The petitioners are ordered to be appointed, if otherwise eligible, (regardless of the fact that they belong to a reserved category), to the post of Junior Engineer (Electrical), as per their merit in the supplementary

examination held for appointment to 62 such posts, pursuant to the notice/advertisement/letter annexed as Annexure P-3 with the petition.

Though non appointment of the petitioners to the said posts is fully on account of the wholly unreasonable stand taken by the respondents, however, the petitioners not having actually worked on the said posts, they shall not be paid salary for the period, but would be entitled to all other benefits, taking them to have been appointed to the posts of Junior Engineers (Electrical), as per their merit, from the same date as appointment letters were issued to the other employees who were appointed pursuant to the supplementary examination held on 29.09.2013.

Since the law on this issue is well settled since *Indra Sawhneys'* case in 1993, i.e. for the past 22 years, and the respondents, who are obviously well aware of it being a large public sector Corporation faced with such like issues on a regular basis, I deem it appropriate to saddle the Corporation with costs of Rs.25,000/-, for taking a wholly unreasonable stand to deny the petitioners' benefit of their service and forcing them to approach this Court to obtain their right.

The directions to appoint the petitioners, subject to their meeting all other required criteria, of verification etc., be made within a period of two months from the date of receipt of a certified copy of this order.

December 2, 2015

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[AMOL RATTAN SINGH]
JUDGE