

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 20206 of 2014

Pronounced On :

Sunita Rani Petitioner

vs.

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. M. J. S. Bedi, Advocate
for the petitioner.

Mr. Sushant Maini, DAG, Punjab.

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DEEPAK SIBAL, J. :

The petitioner, who belongs to the Scheduled Caste category, applied for consideration of her candidature for appointment as a Computer Teacher (in District Patiala) on contract basis. The selection procedure prescribed for a written test followed by formal counseling. The petitioner appeared in the written test held on 15.06.2014 and on the declaration of results of the same, she was declared to have topped her category by securing 100 marks. Respondent no. 4, who also belongs to the Scheduled Caste category, appeared in the written test along with the petitioner and

secured 76 marks. In spite of the fact that the petitioner had much more marks than respondent no. 4, it was respondent no. 4, who was offered the post in question in preference to the petitioner, on the ground that respondent no. 4 was a Balmiki/Mazhbi Sikh. For giving preference to respondent no. 4, the official respondents rely upon the provisions of Sub Section (5) of Section 4 of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (hereinafter referred to as – the 2006 Act), which is reproduced below for ready reference :-

“Fifty per cent of the vacancies of the quota reserved for Scheduled Castes in direct recruitment, shall be offered to Balmikis and Mazhbi Sikhs, if available, a first preference from amongst the Scheduled Castes.”

In spite of the fact that respondent no. 4 had lower marks than the petitioner and was offered the post in preference to her, he did not even join the post, but in spite of that, when this post was not offered to the petitioner, she has knocked the doors of this Court through the present writ petition seeking appointment as a Computer Teacher in Patiala District in pursuance to the advertisement annexed with the petition as Annexure P-1.

I have heard learned counsel for the parties and have perused the record.

It is the admitted case that in District Patiala, there were three

posts of Computer Teachers, which were required to be filled up in pursuance to the advertisement Annexure P-1 and out of these three posts, two were meant to be filled up from General Category and one from the Scheduled Caste category. Thus, there was a solitary post to be filled up from the Scheduled Caste category i.e. from the category, to which the petitioner and respondent no. 4 belonged to. Once there was only one solitary post to be filled up from amongst the Scheduled Caste category, then the same could not have been reserved for the Balmiki/Mazhbi Sikhs. Reservation of a solitary post is not permissible in law. Giving preference to a category while filling up a solitary post in fact amounts to reserving that post for that category. This is clearly impermissible in law. That being so, the same should have been offered to a candidate in the Scheduled Caste category, strictly as per merit, without giving of any preference to anyone within that category. It is the admitted fact that in the Scheduled Caste category, the petitioner had secured the highest marks.

Even otherwise, respondent no. 4, when offered the post in question, did not even join the same. In that eventuality, even if preference was to be given to respondent no.4, as per the 2006 Act, as a Balmiki/Mazhbi Sikh, on his not joining the post in question, the petitioner, who was admittedly the next candidate, should have been offered the post. The stand taken by the respondents, that the post was not required to be offered to the petitioner as they had decided not to make a waiting list, is a stand which needs to be considered only to be rejected. Once respondent

no. 4 never joined the offered post, then the post in question always remained unfilled and had to be offered to the petitioner. The question of waiting list would arise only if a post in the first instance is filled up and then for some reason or the other, gets vacated.

Further, no provision/rule/regulation/instruction, governing the appointments in question, has been shown to me which would prohibit the making of a waiting list.

It is unfortunate that a candidate, who topped her category, was left high and dry and even after a person with lower marks than her had not bothered to join, she was never offered the post in question.

The following judgments were cited by the respondents in support of their case :-

1. **Kanwaljit Singh Sidhu P. C. S. (Executive) and others vs. State of Punjab and others** reported as **1980 (3) Services Law Reporter 34.**
2. **Raj Rishi Mehra and others vs. State of Punjab and another** reported as **2013 (12) Supreme Court Cases 243.**

So far as case of **Kanwaljit Singh Sidhu** (*supra*) is concerned, the instructions, under scrutiny of the Court, provided for 50% vacancies of the quota reserved for the Scheduled Castes to be offered to Balmiki/Mazhbi Sikhs as first preference from amongst the Scheduled Caste candidates. There is no discussion therein so as to what is to be done in case there is only one post reserved under the Scheduled Caste category.

On the other hand, the law is well settled that if there is a solitary post, the same cannot be reserved. Admittedly, there was only one post of Computer Teacher, available to be filled up from amongst the Scheduled Caste category. That being so, that solitary post could have not been reserved to be filled from the Balmiki/Mazhbi Sikhs, by giving them preference.

In the case of **Raj Rishi Mehra** (*supra*), the Apex Court has held that a person on the waiting list did not have a right to claim appointment against vacancies, which had come into being on resignation of two of the appointees and on account of de-reservation unfilled posts of the reserved category. In the case in hand, there was only one post in the reserved category which was never filled up even at the initial stage as the offer of such post to respondent no. 4 was never accepted by him and he never joined on the post. The concept of waiting list would come into existence only after the post/posts in question are initially filled up and then vacated for some reason or where reserved posts remained unfilled after the entire process of selection is over, for want of eligible candidates, are the deserved. The above judgment is thus not applicable to the facts of the case in hand.

Thus, viewed from any angle, the stand taken by the respondents, needs to be rejected.

In view of the above, the respondents are directed to appoint the petitioner as Computer Teacher in pursuance to her application to the advertisement-Annexure P-1. The petitioner would also be entitled to all

consequential benefits as have been granted to similarly situated persons, who were appointed as Computer Teachers in District Patiala in pursuance to the advertisement-Annexure P-1.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

Pronounced On :
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