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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5105-2012

Date of Decision: 20.08.2015

HARINDER SINGH

.....Petitioner

Vs

PUNJAB STATE POWER CORPORATION LTD.

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. S.S. Rana, Advocate and
Mr. Sarvesh Gupta, Advocate
for the petitioner.

Mr. P.P.S. Thethi, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

AMOL RATTAN SINGH, J. (Oral)

The dispute in this petition arises from the fact that the petitioner, in his application form for being considered for the post of a Lineman in the respondent-Corporation (advertised vide advertisement dated 21.01.2011, Annexure P5), had filled in the category under which he was applying as "SC Mazbi Balmik (SP)". "SP" refers to the category of Sportspersons. This is apparent from the copy of the said form, annexed as Annexure P6 with the petition.

Mr. Rana, appearing for the petitioner, submits that

selection, as per the advertisement, was to be made on the basis of marks obtained by the candidates in the National Apprenticeship Certificate in the Lineman's Trade, as is given in the advertisement itself. The petitioner is stated to have secured 411 marks out of 520, i.e. 79.03% marks in the said apprenticeship, which is immediately below the candidate selected at No.1 of the merit list (Annexure P7), i.e. Ravinder Singh, who secured 79.08% marks. The fact that the petitioner obtained 79.03% marks, is not denied by the respondents in their reply.

However, Mr. Thethi, Advocate, appearing for the respondents, submits that since the petitioner had applied in the wrong category (in an application to be submitted online), and despite reminders advertised in the newspapers (Annexures R1 and R2), to candidates to correct any discrepancy in their application form, the petitioner did not do so. Hence, he not being a sportsman, but having applied under the category of "SC Mazhbi Balmiki Sportsperson", cannot claim any appointment. He further submits that though 5,000 posts were advertised, the said selection itself came under challenge in CWP 4881 of 2011, and vide order dated 09.11.2011, the respondents were permitted to fill up only 1,000 posts out of the 5,000 advertised. As per Mr. Thethi all 1,000 posts stand filled up; therefore, there is no post available for the petitioner to be appointed to, especially as the 1000 posts filled in, have also been so filled in as per the Roster point falling to each category. The aforesaid Ravinder Singh, who secured 79.08 marks, already having been appointed at the Roster point available for (SC Mazhbi Balmiki),

and the petitioner also belonging to the same category, he can have no claim to appointment. As regards giving him appointment in place of the next person appointed from the category of SC Mazhbi Balmiki, i.e. Lakhwinder Singh, at Roster point number 9, who secured 78.77 marks, i.e. lower than the petitioner, as per the learned counsel for the respondents, the petitioner cannot also claim appointment in his place (with a cascading effect upon all the reserved categories candidates of that category), for the same reason, i.e. that the petitioner, once having been ousted, for filling up the form wrongly, even if it was inadvertent, cannot claim appointment.

Having considered the arguments raised on both sides, along with the reply filed, in my opinion the writ petition deserves to be allowed, because the only reason for ousting the petitioner is the fact that he, after giving the correct category to which he belonged (SC Mazhbi Balmiki), simply ticked the category of Sports Persons also, as the category under which he was applying, other than the basic reserved category. However, as pointed out by the learned counsel for the petitioner, in the details to be given with regard to the kind of sports etc. that he had participated in, the petitioner has written "Nil". Thus, obviously his "ticking" of the category of Sports Person, in the online form filled in by him, was inadvertent.

That apart, more importantly, it is undisputed that regardless of the category that the petitioner applied under, he was, on merit, at No.2 amongst all candidates selected. Hence, his appointment was not to be made against any particular category, but

being at No.2 in the merit list, he was to be inducted in the merit list as a General category candidate as per settled law (ref: Indra Sawhney Vs. U.O.I. and Samta Aandolan Samiti Vs. U.O.I. (2014) 14 SCC 745).

Thus, though, no doubt 1,000 candidates have already been appointed as Mr. Thethi submitted, however, in view of the fact that the petitioner deserved to have been appointed de hors any reservation, it is directed that without disturbing any of the candidates appointed, the petitioner be also given appointment on the same terms and conditions as are applicable to the selected 1,000 candidates. The petitioners' appointment would remain subject to the outcome of CWP No.4881 of 2011.

Though Mr. Rana has argued, for the petitioner, that the petitioner is also entitled to the benefits of salary that he lost on account of non-appointment, the said prayer is rejected, both, for the reason that, undoubtedly, it was the petitioner who filled in, even inadvertently, his category wrongly and thereby has got his appointment delayed and secondly, not having worked on the post, and the appointment being contractual in nature, with a fixed salary, no benefit of backwages/salary can be given to him.

However, the respondents are directed to give him appointment on the same terms and conditions as the other 1,000 candidates appointed, within a period of two months from the date of receipt of certified copy of this order.

Further, though he would not be given any benefit of back wages etc., any other benefit enuring to the 1000 candidates

appointed pursuant to the selection in question, would be available to the petitioner, as regards length of service from the date of appointment of those candidates, and notional benefits as per the benefits of length of service etc., if any such benefits have been or are to be given to the already appointed 1000 persons.

No order as to costs.

August 20, 2015
SwarnjitS

(AMOL RATTAN SINGH)
JUDGE