

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9799 of 2011

Date of Decision: 29.09.2015

Satwinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Harinder Pal Singh Ishar, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. The advertisement under which the petitioner claims relief was issued in the year 2006 to fill several posts of Head Masters and Lecturers in different subjects in Punjab school cadre.

2. This petition concerns appointment to the post of Head Master while the petitioner has been selected and appointed as Lecturer in Geography in the same recruitment process. The petitioner had applied for both the posts which was permissible. The petitioner competed in the category of Backward Class (Male) and secured 61.961 marks. Twenty one posts were earmarked for BC (Male) out of a total of 43 posts which were to be divided half and half between male and female backward class candidates. One Jasvir Singh son of Ganga Singh was at merit position No.1 securing 64.87 marks while one person, namely, Inderjit Singh Panesar son

of Joginder Singh Panesar was placed at Sr. No.15 in the merit list of BCs having secured 63.3655 marks. In the additional affidavit filed before this Court by the Deputy Director in the office of DPI (SE), Punjab, Mohali dated January 30, 2015 there is a categorical statement made in para.3 that Inderjit Singh Panesar was offered appointment and given 7 days to join service as Head Master in terms of the appointment letter issued to him. However, he did not join within the time stipulated period and lost his right to appointment and hence that vacancy remains unfilled. However, while the selection process was in progress, the outer limit of income for declaration of Backward Classes was increased to Rs.2.5 lacs per annum. When the advertisement was issued in 2006 the creamy layer of BCs was excluded when income was Rs.1 lac or more.

3. Many candidates like the petitioner who could not produce valid certificates of Backward Class issued within 1 year from the last date of submission of applications were left out of consideration. All such candidates approached this Court by way of various writ petitions including CWP No.4242 of 2007 titled Gayatri Jyoti vs. State of Punjab. The writ petition was allowed together with the connected petitions and the Department was directed to consider the backward class candidates who did not possess Backward Class Certificate issued within 1 year from the last date of submission of applications. This led to revision of the entire merit list under the advertisement dated October 21, 2006 and trailing public notice dated October 27, 2006 treating all the applicants eligible who have applied in the Backward Class category but could not produce the BC certificate in the year 2006. Hence, the public notice in this regard was

published on October 15, 2009 in leading newspapers and counseling for filling up the posts was conducted on 19/20.10.2009.

4. Admittedly, the petitioner attended counseling as per schedule for the post of Head Master as well as for the post of Lecturer in Geography in the reserve category of Backward Classes. The last candidate selected for the post of Head Master as per the prescribed criteria was 62.762 whereas the merit of the petitioner was 61.961. For this reason he could not make the zone of selection being lower in merit than the last selected candidate in his category. The Department first completed the selection in the general category and thereafter started to determine the merit of the Backward Class category and this was in accordance with Government instructions. In response to an interim order passed by this Court the aforesaid additional affidavit has been filed by the Deputy Director (School Administration) in the office of DPI (SE) Punjab, Mohali. It has been stated in this affidavit dated January 30, 2015 that Jasvir Singh was appointed to the post of Head Master (Male) on January 15, 2010. It is admitted fact that the appointment letter of Inderjit Singh Panesar at merit No.15 was issued on December 01, 2006 but he did not join service within time allowed. He had surrendered his right.

5. As a result, point No.15 remains unfilled in the category of BCs (Male).

6. Since the petitioner has been appointed as a Lecturer in Geography in the same recruitment process in the category of Backward Class, his eligibility on the basis of Backward Caste certificate for the post of Headmaster is no longer in doubt.

7. It is the case of the petitioner that even though he is lower in merit than the last candidate selected at Sr. No.21 in the category of Head Master BC (Male) he should be offered appointment at Sr. No.21 by shifting up the names of persons at merit position 16 to 21 en bloc by upward movement to fill the post left unfilled by Inderjit Singh Panesar. Since the additional affidavit now discloses that Inderjit Singh Panesar was offered appointment on December 01, 2006 and Jasvir Singh son of Ganga Singh, the topper in the category of BC (Male) was offered appointment on January 15, 2010, then on January 15, 2010 the post left unfilled by Inderjit Singh Panesar remained vacant and the name of the petitioner could have been adjusted towards the post of the Head Master by redeploying him from the post of Lecturer in Geography to the post of Head Master.

8. When the advertisement was issued in 2006 then delay cannot be viewed as adverse to the petitioner in this case since the writ petition was brought in early 2011 after Jasvir Singh was appointed in late 2010. The appointment of Jasvir Singh and the adjustment of the petitioner to point 21 within the advertised vacancies for BC (Male) was eminently possible even though the post at point 15 had remained vacant since 2006 when Inderjit Singh Panesar had refused to accept appointment. The intervening period was occupied by litigation which culminated in 2009 leading to fresh counseling by treating all those persons like the petitioner who had not furnished their BC certificates within the time allowed but had earned rights under the orders of this Court in the aforesaid writ petition. The only reason for rejecting the case of the petitioner is that Backward Class category person at the tale-end of the list possesses higher merit than him. Therefore,

the presence of 3rd respondent who is the last candidate appointed in the general category is not determinative of the rights of the petitioner since his claim is against his own category and not from the general category. In this process, the appointment of 3rd respondent in the general category would remain unaffected. This is one side of the coin.

9. Mr. Harinder Pal Singh Ishar, learned counsel appearing for the petitioner has also pressed his case from the reverse side of the coin. He submits that Balvir Kumar, the last candidate appointed in the Backward Class category is higher in merit than the 3rd respondent in the general category. The general category candidate who is the 3rd respondent had secured 62.2% marks whilst Balvir Kumar had secured 62.762 in the merit list. This information was retrieved by the petitioner from one Harish Kumar who was supplied this information under the Right to Information Act, 2005. From this factual position, Mr. Ishar argues that a Backward Class candidate if secures merit higher than general category candidate he has to be accommodated first in the general category leaving a vacancy unoccupied for fitment of another Backward Class candidate on the basis of reservation. He relies on the decision of the Supreme Court in **Ravinder Kumar vs. State of Haryana**, AIR 2010 SC 2128 to demonstrate that a candidate higher in merit would first occupy the post in the general category. Para.9 of the judgment reads as follows:-

“9. It is evident from the above that in ex-servicemen (general category) the last two candidates namely: Subhash Chander and Taket Singh had scored only 25 marks each. Sube Singh and Veer Bhan selected in Ex-servicemen BC (B) category had however scored more marks than Subhash Chander and Taket Singh. Sube Singh and Veer Bhan could

and indeed ought to have been selected against 13 the vacancies in Ex-servicemen (General) category as per their merit. This in other words would require the Select List to be recast and candidates suitably shifted from the reserved category to the general category in which event appointments can be offered to other candidates in the Ex-servicemen BC(B) category depending on their merit. Such an exercise long after the selection process was completed may unsettle the settled position and lead to removal of candidates who stand already selected and who have been serving for a long time after undergoing the prescribed training. This may also mean that candidates who have accepted the result of the selection and may even have become over-age may have to be brought in. We do not see any compelling reason for us to adopt that course at this distant point of time especially when the same would upset what stands settled for a long time. Interest of justice would in our opinion be sufficiently served if we direct the appointment of the appellant against an Ex-servicemen BC (B) vacancy and if no such vacancy is available against an 14 ex-servicemen (General Category) vacancy. In the unlikely event of there being no vacancy in either one of these categories the appellant could be appointed against any other vacancy in the General category. Any such appointment would, however, in keeping with the statement by the appellant be effective from the date the same is made and shall not entitle the appellant to claim any back wages, seniority or other benefits. The appointment shall for all purposes be treated as a first appointment subject to the condition that the competent authority shall be free to direct that the appellant shall undergo the training afresh or take a refresher course of such training if deemed fit.”

10. Interestingly, either of these two propositions would result in appointment of the petitioner as Head Master, that is, via upward fitment of candidate at merit position No.14 to merit position 15 left unoccupied by Inderjit Singh Panesar and secondly, by working the rule in **Ravinder**

Kumar case or better still in constitution bench authority in **R.K. Sabharwal vs. State of Punjab**, AIR 1995 SC 1371; (1995) 2 SCC 745 not failing to mention **Indira Sawhney v. Union of India**, AIR 1993 SC 477 to the clear advantage of the petitioner on this point. There is merit in the submissions of Mr. Issar when he builds his case on both the firm foundations leaving two avenues open for negotiating relief following different paths which take one to the same goal. This is like saying that all roads lead to Rome.

11. No other person has approached this Court who is higher in merit than the petitioner but lower in merit to Balvir Kumar son of Mela Ram who may have preferential right to appointment as a Head Master BC (Male) over the petitioner. In case, there is such person, then it appears too late to entertain a request, if made on the judicial side.

12. Therefore, I assume none has come forward especially when nothing has been said of it in the written statement filed by the State, that the petitioner is effectively next below Balvir Kumar. In any case, the petitioner is not an outsider, as he has already working as a Lecturer in Geography and it presents no difficulty if he is considered for appointment as Head Master in the category of Backward Class (Male). This transition would not infringe fundamental rights of any third party and for these reasons I would find merit in the submission of Mr. Ishar when he says that viewed from both angles, one, being first in the waiting list and secondly, by shifting the Backward Class candidate to the general category on account of the reserve candidate being higher in merit. Either of the formulas are eminently acceptable and can be readily be adopted. Either of them can

work by shifting merit position holders from point 16 to 21 to be counted from point 15 downwards, the first of whom in place of Inderjit Singh Panesar which would automatically accommodate the claim of petitioner at point 21 which is within the advertised vacancies.

13. For the above reasons, the writ petition is allowed. The stand of the State in denying offer of appointment to the petitioner as Head Master in the category of BC (Male) is held to be legally bad and as a result a mandamus is issued to the respondent-State to consider appointing the petitioner as a Head Master from the date Jasvir Singh son of Ganga Singh was appointed on January 15, 2010 in the backward class category.

14. When appointed as Head Master (Male) then on accepting the offer of appointment the petitioner would be entitled to the difference of pay and allowances, if any, of the post of Head Master and Lecturer in Geography with effect from the date the petitioner joined service as Lecturer in Geography reported to be on December 17, 2009 mentioned in para.6 of the preliminary submissions in the written statement and most definitely from the date when the topper Jasvir Singh was appointed to service on January 15, 2010. The consideration under this order would take place within six weeks from the date of receipt of a certified copy of this order. It may be mentioned that this writ petition was filed on May 27, 2011 and the approach to this Court was prompt.

15. The parties shall bear their own costs.

(RAJIV NARAIN RAINA)
JUDGE

29.09.2015

manju