

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

Date of decision: 31.03.2016

CWP No.200 of 1996

Gurdev Singh & another

...Petitioners

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr Ranjit Singh Kalra, Advocate, for the petitioners.

Mr. Harkesh Manuja, Addl. AG, Haryana.

Ms. Loveinder Kaur, Advocate, for
Ms. Alka Chatrath, Advocate, for respondents No.4 & 5.

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. (ORAL)

The admitted position is that the cadre of Superintendent Grade I in the office of the Director Public Instructions, Punjab at the relevant time consisted of 28 posts. The reserved category candidates could claim 3.92 posts (rounded off to 4). The prescribed percentage of reservation for the members of Scheduled Castes under the Punjab Policy/Circular dated 4th May, 1974 was 14% in promotion. The quota was replete when the promotions of the private respondents No.4 & 5 namely Dhanna Singh and Gurmail Singh were granted by wrongly excluding the claim of the petitioners for promotion to the post of Superintendent Grade I. The petitioners' claim was wrongly declined by

applying the decision of the Supreme Court in R.K.Sabharwal & others Vs. State of Punjab & others, (1995) 2 SCC 745 to the existing unfilled vacancies. The decision in *R.K.Sabharwal's case* was applicable to the vacancies which had arisen prior to the date of pronouncement i.e. 10th February, 1995. Mr. Atma Ram refers to Paras.10 & 11 of the said judgment to submit that the prescribed percentage cannot be exceeded in any case and, therefore, the principles in *R.K.Sabharwal's case* would apply when promotions are made thereafter and in any event the principle would apply to the posts and not vacancies.

To make matters more difficult for the State, the Department had filed a written statement in CWP No.8375 of 1994 titled 'Dhanna Singh Vs. State of Punjab & others' which is relied upon by the petitioners. Dhanna Singh is private respondent No.4 arrayed in this petition. The defence of the State in Paras.3 & 7 is as follows:

"3. That there are 28 posts of Superintendent Grade I in the office of Director of Public Instructions (Schools), Punjab and according to reservation policy, 14% posts are reserved and out of 28 posts, 3.92 are reserved for the member of Scheduled Caste category. Four persons of that category have already been promoted under State reservation policy. Out of these persons, 3 persons got promotion under reservation policy after superseding the respondents No.4 to 8 who got their promotion on seniority-cum-merit basis. So the writ petition may be dismissed.

xx

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On Merits

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xx

Para 7. Denied. The petitioner is not entitled for promotion on 11.03.1994 for the post of Superintendent Grade I as there are 28 posts of Superintendent Grade I in the office of respondent No.2 and according to reservation policy, 14% posts are reserved for the persons belonging to Scheduled Caste category so out of 28 posts, 3.92 posts are

reserved for this category and against these posts 4 persons of Scheduled Caste category are working as Superintendent Grade I. So the posts reserved for S.C.Category has already been filled by the persons belonging to this category. It is worthwhile to mention here that the petitioner superseded his senior who joined this office prior to his joining as Clerk not once but twice firstly at the time of promotion as Assistant and secondly at the time of promotion as Superintendent Grade-II, details of which are given in Paras.3 & 4 above. It is not only the fact, but also all the persons who are serving against the reserved posts of Superintendent Grade I superseded the persons, who joined the service as a Clerk in this office.”

The defence in the present case is silent on the stand taken in Paras.3 & 7, as reproduced above, and the stand in the preliminary objection is that the ruling in *R.K.Sabharwal's case* applies to the vacancies which arise after the judgment was pronounced. This is in the opinion of this court an incorrect view of the law in *R.K.Sabharwal's case* when it was declared prospective on the running of the roster and introduction of the theory of replacement. The State would remain bound by its admission in the case of *Dhanna Singh*. There can be hardly any doubt that the private respondents were promoted in excess of their quota as reserved category candidates. If that is the factual position, then they have no right to stake claim on promotions as against the rights of the petitioners, who were wrongly ignored for promotion to the post of Superintendent Grade I being general category candidates.

As a result of the reasons recorded above, this petition is allowed. The impugned order of promotion of the private respondents (Annex P-18) is set aside. However, the setting aside of the impugned order would have no impact on Dhanna Singh and Gurmail Singh since they have retired long ago. Their pension etc. will not be affected by this order. However, the petitioners would be entitled to all consequential benefits flowing from the setting aside of

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the order to bring harmony to the law by removing unreasonable discrimination. The petitioners are also held entitled to the salary of the promotional post from the due dates when Dhanna Singh and Gurmail Singh were promoted. The petitioners would also take along with them a right to re-fixation of their pay and pension and by correction of their last pay certificates. In this manner, the petitioners would be entitled to the difference of arrears of pay and pension as well.

31.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE