

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

Date of decision: 07.04.2016

CWP No.8464 of 1997

Om Parkash & another

...Petitioners

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioners.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. B.S.Patwalia, Advocate, for the private respondents.

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

RAJIV NARAIN RAINA, J. (ORAL)

1. This petition was filed with a prayer to quash the seniority list prepared by the respondent-Department on 04.05.1997 of Punjab Service of Engineers Class-I Officers on the basis of length of service in Class-II.

2. The petitioners are members of the reserved category and belong to the Scheduled Caste. Their inter se seniority positions *vis-à-vis* the general category candidates senior to them at level-I have been downgraded by the impugned seniority list. They are not represented by counsel despite notice and case shown in the beginning of urgent list designed for disposal of the oldest cases first in a lot of four of them from the regular hearing board of the present bench in order to deal effectively with the rather long list.

3. It is recorded in one of the interim orders that the petitioners retired from service prior to the year 2000 as Superintending Engineers. The

contest amongst the petitioners and the private respondents was for the post of Chief Engineer from the feeder cadre of Superintending Engineers. At the stage when the petition was brought, the law on reservation in promotion concerning the members of the Scheduled Castes stood at the juncture of the judgment of the Supreme Court pronounced in Ajit Singh Janjua & others Vs. State of Punjab & others, AIR 1996 SC 1189; JT 1996 (2) SC 727 (Ajit Singh-1).

4. The petitioners claim the benefit of the Supreme Court in Jagdish Lal & others Vs. State of Haryana & others, JT 1997 (5) SC 387 in this petition, which had upheld the view of the Division Bench of this Court holding that reserved category candidates would be entitled to seniority on the basis of length of continuous service even when the promotion was on accelerated basis on reserve roster points on account of the seniority rule. The law underwent a sea change when *Jagdish Lal's* case was overruled by the Supreme Court and a new legal order emerged with the pronouncement in case Ajit Singh Janjua & others Vs. State of Punjab & others, (1999) 7 SCC 209 (Ajit Singh-2), which introduced the catch up principle restoring seniority to general category candidates who had to await promotion against general vacancies occurring in the 100 point roster, which came to be occupied by the reserved category candidates by the rule of reservation. It was held that roster points are not seniority points. The petitioners then had relied on the Constitution (Seventy-seventh Amendment) Act, 1995 providing for continued reservation in promotion to members of the scheduled castes to tide over the boundary fixed in Indira Sawhney Vs. Union of India, AIR 1993 SC 477. The word 'seniority' was inserted for the first time in the Constitution by the 85th Amendment (2001) introducing Article 16 (4A) in the Constitution retrospectively from 17th June, 1995 to remove the base of the ruling of a Coram of 9 Hon'ble Judges of the Supreme Court in *Indira Sawhney* delivered

on 16th November, 1992 holding that reservation in appointments or posts under Article 16 (4) were confined to initial appointments but not in matters of promotion. The 85th Amendment introduced the words 'with consequential seniority' in newly introduced Article 16 (4A) to remove the basis of *Ajit Singh-1* and *Ajit Singh-2* cases. The 77th and 85th amendments were upheld by the Constitution Bench decision in M. Nagaraj & others Vs. Union of India & others, (2006) 8 SCC 212. But a caveat was entered by the Supreme Court that reservation in promotion would continue only if State justifies the concession on the basis of quantifiable data collected to examine the continued utility of reservation in promotion. In any case, the replacement theory introduced in R.K.Sabharwal & others Vs. State of Punjab & others, AIR 1995 SC 1371; (1995) 2 SCC 745, holds the field is limited to achieving the prescribed percentage of reservation. When that goal is achieved, there is no further use of the roster maintained as a running account of vacancies. Promotion on turn and merit stands excluded from the prescribed percentage of reservation.

5. The parties to the petition have since retired. Besides this, the stay order granted by the Court earlier had been vacated by a detailed order passed by the learned Single Judge on 18.05.2000 after admission of the writ. It was prima facie concluded in the order that promotion to the post of Chief Engineers may be made in accordance with law after considering the cases of all the eligible candidates. However, promotions were made subject to the decision of the present writ petition. Petitioner Om Parkash retired from service on 31.03.2000, while petitioner No.2 D.R.Digra retired on 30.06.1999 as Superintending Engineers. The stay order was vacated on the ground that the law in *Ajit Singh-2* had been pronounced during the pendency of the writ petition which made the material difference tilting the case against the petitioners and giving the right of catch up crafted to secure to the general

category candidates restoration of their past accrued seniority at the lower level when the latter were promoted to the same rank though later due to roster point promotion on the earmarked reserved points. In these circumstances and in the prevailing law on reservation, I am inclined to think that no useful or practical purpose would be served to search for relief to the petitioners after long lapse of time on account of which this matter would not bear any fruit and the petition itself is rendered infructuous.

6. In any case, it is too late in the day to intervene in the matter of seniority settled by judicial precedent from the highest Court. The private respondents had a right of restoration of the seniority on promotion as Superintending Engineers to carry it forward on a preferential basis to the higher cadre of Chief Engineers. The promotions of the private respondents is not open to challenge on the principles of an overruled decision in *Jagdish Lal* case. The question posed and answered in *Ajit Singh-2* was stated as follows in the opening passages:

“At the outset we make it clear that in this judgment we are not concerned with the reservation policy of the State or with the validity of any procedure fixing roster points for purpose of promotion of reserved candidates. We are here dealing only with a limited question relating mainly to seniority of the reserved candidates promoted at roster points.

We also make it clear that what we are deciding today is based on principles already laid down by this Court since 1950 and in particular since 1963. Basing on those principles, we are concerned with the limited question as to whether Union of India Vs. Virpal Singh [1993 (6) SCC 685] and Ajit Singh Janjua Vs. State of Punjab [1996 (2) SCC 215], which were earlier decided in favour of

the general candidates are to be affirmed or whether the latter deviation made in Jagdish Lal Vs. State of Haryana [1997 (6) SCC 538] against the general candidates, is to be accepted.”

7. The answer was in the negative for the reserved category candidates and *Jagdish Lal* case was declared no longer good law. The decision was overruled in the clarificatory orders passed in *Ajit Singh-2*.

8. As a result of the foregoing discussion, I find there is no life or substance in this petition warranting interference by writ of mandamus or certiorari. None of the petitioners' fundamental rights in Part-III have been infringed while promoting their erstwhile senior general category candidates from the dates of direct entry into service at Level-I on their inter se merit positions determined at the time of recruitment and seniority accruing as per rules. The petition is accordingly and hereby dismissed. No costs.

07.04.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE