

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1012 of 2013
Decided on : 19.02.2016

Vandana Sidhu

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.D.V.Sharma, Sr.Advocate
with Ms.Shivani Sharma, Advocate,
for the petitioner.

Mr.L.S.Virk, Addl.A.G., Punjab,
for respondents No.1 & 2.

Mr.Girish Agnihotri, Sr.Advocate
with Mr.Vijay Pal, Advocate,
for respondent No.3.

G.S. Sandhawalia , J. (Oral)

Petitioner seeks a direction for quashing of the order of appointment of respondent No.3 as Lecturer in Anatomy. Further direction is sought for appointment of the petitioner as a Lecturer, on preferential basis, as she belongs to Scheduled Caste/Balmiki/Mazhbi Sikhs.

Challenge to the appointment letter dated 03.01.2013 (Annexure A1), is solely on the ground that the petitioner belongs to Balmiki Community, as per the certificate dated 21.06.1994 (Annexure P1) and is entitled for the preferential consideration on the strength of the Punjab Scheduled Castes & Backward Classes (Reservation in Services) Act, 2006 (for short, the '2006 Act'). Section 4(5) of the 2006 Act reads as under:

“(5) 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, as a first preference from amongst the Scheduled Castes.”

It is not disputed that respondents No.1 & 2 had, vide advertisement, invited applications for the posts of 4 Lecturers, 2 from the General Category and 2 from the Scheduled Caste category, in various departments. As per the vacancy position in the Department of Anatomy, there was only one post for the Scheduled Castes. The petitioner was an applicant along with respondent No.3, who is also a Scheduled Caste candidate but belong to the Ramdasia caste and other category. The appointment of the said respondent has been justified on the ground that the said respondent was selected against the post on the basis of merit amongst the Scheduled Caste candidates.

A specific averment has been made in the pleadings by the petitioner that preference is to be given under Section 4(5) of the 2006 Act has been sought to be rebutted by relying upon the Division Bench judgment of this Court in **Devinder Singh Vs. State of Punjab & another 2010 (4) SCT 269**, by which, vide order dated 29.03.2010, the Division Bench had held that the provisions of Section 4(5) of the 2006 Act are unconstitutional. Thus, the defence of the State and the private-respondent No.3 is only based on this ground, apart from the defence that the Apex

court in **E.V.Chinnaiah Vs. State of Andhra Pradesh 2005 (1) SCC 394** has also held that sub-classification of caste is not permissible by the States.

Counsel for the petitioner has solely relied upon the fact that the Division Bench judgment of this Court whereby the said section has been held to be unconstitutional, has been stayed by the Apex Court vide order dated 31.08.2010, copy of order dated 30.08.2010 has been placed on record.

It is, thus, apparent that in view of the said fact, the provisions of the 2006 Act are still to be in force. Once that is so, consideration of the petitioner will have to be done on a preferential basis, firstly, considering the case of the petitioner and similarly situated applicants.

Senior Counsel for respondent No.3 has raised an argument that since there is only a single post, therefore, there cannot be such reservation and Section 4(5) cannot apply, cannot be accepted as neither any such defence has been taken in the written statement and secondly, since both the candidates belong to the reserve category.

The last submission made that the petitioner had participated in the process of selection and was not successful, is also without any basis. The petitioner is relying upon the benefit which has been given by the legislature and it is the State who has

to process the applications accordingly. When the interview process took place on 13.09.2012, the provisions of the 2006 Act had to be taken into consideration, as the stay dated 30.08.2010 had come into force and the petitioner cannot be faulted for the lapse of the State.

Accordingly, the present writ petition is allowed by striking down the appointment of the respondent No.3 and directing the respondents to consider the process of selection, afresh, keeping in view the provisions of the 2006 Act.

It is, however, made clear that whatever emoluments the said respondent has drawn, will not be recovered from her. Needful be done within a period of 2 months from today.

With the above-said directions, the present writ petition stands allowed.

FEBRUARY 19, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE