

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

CWP No. 16983 of 2012 (O&M)

Date of Decision:- 29.11.2016

Paviter Singh and another

....Petitioners

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.S. Patwalia, Sr. Advocate with
Mr. Kannan Malik, Advocate,
for the petitioners.

Mr. Harkesh Manuja, Addl. A.G., Punjab.

Mr. Malkiat S. Hundal, Advocate for
Mr. R.S. Bains, Advocate,
for respondents No. 6 to 8.

DAYA CHAUDHARY, J. (Oral)

C.M. No. 14424 of 2014

This application is for placing on record Annexure P-17 to P-
20.

Application is allowed. Annexures P-17 to P-20 are taken on
record.

CWP No. 16983 of 2012

Review application No.42 of 2015 was filed in CWP No. 20605
of 2012 and the following order was passed on 30.09.2016:-

“In compliance of directions issued by this Court Mr. Harkesh Manuja Addl. AG, Punjab has filed a reply by way of a short affidavit of Mr. Kripa Shanker Saroj, Secretary to Government Punjab, Department of Welfare of Scheduled Castes and Backward Classes in Court which is taken on record. Copies thereof have been supplied to the respective counsel and the contents have been perused.

The learned Senior counsel Mr. G.S. Bal appearing in the review application and other counsel in the connected writ petitions have adverted to the averments contained in para.10 of the affidavit wherein there is a categorical admission by the State of Punjab that reservation to Vimukat Jatis is post-based and not based on vacancies. This was the legal position canvassed in these petitions and in view of this admitted view and interpretation placed by the State itself on the policy statement in moot letter dated 20.12.2001 nothing remains to be determined by this Court or to persuade it to hold by any stretch of imagination or logic that reservation of Vimukat Jatis should be based on vacancies. Given 20% reservation to Vimukat Jatis, if not post based posts will be rendered illusory and nugatory, where in a given recruitment process vacancies are advertised wholesale numbering at least 50 of them

remain unfilled in order to find a berth for one Vimukat Jati candidate.

In the affidavit, it has been maintained unequivocally that there are at least five departments of the Punjab Government where appointments have been offered to Vimukat Jatis after the executive policy notification dated 20.12.2001 came into force and at least 13 candidates belonging to Vimukat Jatis have been appointed as Doctors, Inspectors, Supervisors, Drivers and Constables/Sub Inspectors in the departments of Health and Family Welfare, Department of Food and Supplies, Punjab, Department of Social Security of Women and Child Development, Excise and Taxation and Punjab Police under the control of the office of the Director General of Police, Punjab. These appointments have been made in 2015. Besides, it has been stated in the short affidavit that in the past, five Nurses belonging to Vimukat Jatis were appointed in 2013 in addition to the posts figuring in Annex R-1 to the affidavit.

Mr. Manuja states that he has acquainted himself with the original record brought by the department from where it is revealed that the number of posts mentioned in Annex R-1, were utilized against 2% of the total posts advertised in the respective recruitment processes conducted for filling vacant posts in the various

departments of the Government.

In view of the stand of the State in the short affidavit filed today in Court, the review application is allowed since the contents of the affidavit alters materially the factual position with regard to the interpretation of the policy statement on reservation for Vimukt Jatis. Therefore, the observations made by me in paras.5, 6, 7, 9, 10 & 11 of the judgment and order are rendered obiter and the assumptions in law made in the order in review are presently inconsistent with the stand of the State as presented today and the past administrative precedents in the State Government mentioned in the affidavit which indicate to the contrary the position in law that reservation is against the total number of posts and not the vacancies advertised for direct recruitment.

Accordingly, the review application is allowed and the order on the point in issue is recalled. The case would be heard afresh on merits.

Main Case

List as per roster.

A photocopy of this order be placed on the files of the connected cases.”

In that petition, the affidavit filed by respondent-State was also considered and it was held that as per policy 2% reservation for Vimukat

Jatis, is to be given against the post and not against the vacancies.

In view of the stand taken by respondent-State and order passed in said review application, the present petition deserves to be allowed. However, the respondent-State is directed to consider the case of the petitioners against their quota of 2% against the total vacant posts. Necessary exercise be done within a period of three months from date of receipt of copy of order.

Writ petition stands allowed.

November 29, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes