

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

CWP No.18098 of 2012

Sarv Mitter

... Petitioner

Versus

State of Punjab and another

... Respondents

(2)

CWP No.18401 of 2012

Jaswinder Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

(3)

CWP No.19445 of 2012 (O&M)

Pritpal Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

(4)

CWP No.20467 of 2012

Nageen Kumar

... Petitioner

Versus

State of Punjab and another

... Respondents

Decided on: 24.05.2016

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

Present : Mr. R.K. Malik, Senior Advocate with
Mr. Mandeep Singh, Advocate for the petitioner
in CWP No.18098 of 2012.

Mr. T.S. Chauhan, Advocate for the petitioners
in CWP No.18401 of 2012.

Mr. G.S. Bal, Senior Advocate with
Mr. ADS Bal, Advocate for the petitioners
in CWP No.19445 of 2012.

Ms. Alka Chatrath, Advocate for the petitioner
in CWP No.20467 of 2012.

Mr. Nilesh Bhardwaj, DAG, Punjab.

Mr. Vikas Chatrath, Advocate
for respondents No.4 to 8 and 10 to 13
in CWP No.19445 of 2012.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of four writ petitions i.e. CWP Nos.18098, 18401, 19445 and 20467 of 2012, as the common questions of law and fact are involved. The facts are being taken from ***CWP No.18098 of 2012 'Sarv Mitter Vs. State of Punjab and another'***.

In the present bunch of writ petitions, the relief claimed is for appointment to the post of Agriculture Development Officer. The case of the petitioner is that for the 18 seats reserved for Backward Class Category, 14 candidates who were appointed had obtained higher marks in comparison to the last General Category candidate. The petitioner being at Sr. No.27 was liable to the adjusted, if the said persons were considered in the General Category. Prayer was also made that the petitioner be granted all other consequential benefits from the date the other batch-mates had been appointed.

The petitioner had relied upon the position of law settled by the Apex Court in '**R.K. Sabharwal and others Vs. State of Punjab and other**' **JT 1995 (2) SC 351**, in support of their contention, which was also noticed by this Court in **CWP No.5774 of 2010 'Sukhpreet Singh and others Vs. Punjab State Electricity Board'** decided on 13.10.2010 (Annexure P-3).

Initially, the stand of the respondent-State was that the decision of this Court in **Sukhpreet Singh (supra)** was not acceptable to the department and the selection committee had approved the merit list and the eligible candidates had been appointed and, therefore, the department has no power to change the merit. Finding, the stance untenable a notice was issued to the Deputy Director Agriculture vide order dated 12.09.2014 for not adhering to the law of the land. Thereafter, an affidavit dated 12.12.2014 was filed that the respondents would reformulate and recast the selection list, in accordance with the judgment of the Apex Court. Resultantly, the affidavit was filed of the Director Agriculture that letters for counselling dated 20.12.2014 have been issued to the candidates falling within the zone of consideration, subject to obtaining approval from Council of Ministers later. It was further averred that the presently working candidates also need to be protected and would require consideration and a composite proposal would be put by the Department before the Council of Ministers. The relevant paragraphs read as under:-

“7. That the deponent submits that the Department of Personnel, which was consulted in view of the observations of Council of

Ministers as recorded in its Minutes dated 23.09.2014 has conveyed its observations vide letter dated 11.11.2014 bearing ID No.10/21/2014-2PP3/1133 and also drawn attention to these judgments and other such matters, stating that the issue involved has large-scale ramifications and is not confined only to the Department of Agriculture and is an inter-departmental issue. Deponent further submits that keeping in view the fact that interest of presently working candidates also needed to be protected and required consideration, a composite proposal was put up by the Department of Agriculture before the Council of Ministers on 22.09.2014. However the deponent seeks the indulgence of this Hon'ble Court that the aforesaid implementation be made subject to the final adjudication on merits of the present writ petition and the deponent therefore submits that the appointments be made subject to the legal remedies, if any, available to the department.

8. That the deponent most respectfully submits and prays that aforesaid may kindly be also considered by this Hon'ble Court while considering the matter pending before it.”

Keeping in view the said affidavit, State had taken more time to implement the orders qua the petitioners. Resultantly, this Court on 22.12.2014 also noticed that the incumbents who had been appointed need not be disturbed as they have not practiced any deceit on the State and it was only on account of the fault of the officials that situation have been created. The said order reads as under:-

“On request of the learned counsel for the State, adjourned to 7.1.2015.

In case the necessary employment is not offered to the petitioners as per their claims based on the judgments of the Hon'ble Supreme Court and this Court within a period of 10 days from today, the Court would visit the respondents with costs which will be determined at Rs.1 lakh per petitioner.

Needless to say that the respondents would be expected to take into consideration the fact that none of the incumbents who have been appointed need not be disturbed as they have not practiced any deceit on the State and it is only on account of the fault of the officials that situation of this sort has been created.

A photocopy of this order be placed on the files of all aforesaid

connected cases.”

Thereafter, it was noticed on 07.01.2015 that the orders had been complied with and number of persons have been given appointment letters, pursuant to which they had joined and some of the element of the decision making was still in process. On 27.01.2015, this Court was notified by the State counsel that only three persons remain to be appointed and time was sought and, thereafter, time was taken to submit an affidavit.

Thereafter, affidavit dated 20.04.2015 was filed, wherein it was deposed that the letters have been issued to the 23 candidates on 23.12.2014 including the petitioners in the present writ petitions. However, an effort was further made that the case should be decided on merits, on account of that certain persons were not eligible, which in view of the orders passed is untenable.

Thus, apparently the present writ petition on account of the appointment letters having been issued has been rendered infructuous on the first issue and the respondents are accordingly held bound by their undertaking as noticed above.

Now, the only issue remains is whether the petitioners are entitled for benefit of seniority and notional benefits from the date the similar situated persons have been given appointment.

Admittedly, the petitioners have been wrongly denied appointment and have been fighting for their legal rights. In such circumstances, they are entitled for the benefit of seniority and all

consequential benefits from the date the similarly situated persons have been granted the appointment. The petitioner has rightly placed reliance upon the Division Bench judgment in '**Jagdeep Singh Marok Vs. Punjab & Haryana High Court, Chandigarh & others'** 2013 (1) RSJ 26, wherein the issue was of Judicial Officer losing out on his seniority. It was accordingly held that it was on the fault of the Commission the seniority could not be denied to him and he would be relegated to a place much lower to his batch-mates. The relevant part reads as under:-

*“We also feel that if the matter was to be viewed from a different perspective, then the petitioner lost out his place in the initial selection due to the fault of the Punjab Public Service Commission and it was to undo this injustice that his seniority was protected and therefore, the benefit of this assigned seniority cannot be denied to him, otherwise, he would be relegated to a place much lower to his batchmates of the year 1992 and with the batch of 2003 thereby revisiting injustice upon him again. Although not on all the fours, but to some extent we find sustenance of our view from the judgment of the Hon'ble Supreme Court in **Union of India v. Sadhana Khanna (2008) 1 S.C.C. 720**, where some incumbents of the same batch of selection were separated in dates of appointments because of the fault of the department, making those incumbents with subsequent dates of appointment ineligible for promotion on account of a marginal shortfall of the eligibility attributed to length of service, and the Hon'ble Supreme Court held that since it was on account of the lapse of the department, that such a situation arose, declared the persons eligible for promotion.”*

Accordingly, the present writ petitions are allowed, with the above said directions. The respondent will take necessary steps in view of their affidavit filed, which has been reproduced above to redress the issue of adjusting of the candidates. The petitioners will be given the notional date of appointment from the date similarly situated persons were given appointment.

MAY 24, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE