

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

CWP No.12464 of 2014 (O&M)

Date of Decision: 17.08.2016

Gurmel Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CWP No.13551 of 2014

Jagjeevan Singh and others

....Petitioners

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. B.S. Bhalla, Advocate
for the petitioner
in ***CWP No.12464 of 2014.***

Mr. Beant Singh Seemar, Advocate
for the petitioners
in ***CWP No.13551 of 2014.***

Mr. Kamal Sehgal, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

By this judgment, two petitions bearing ***CWP No.12464 of 2014*** and ***CWP No.13551 of 2014*** shall be disposed of as common question of law and facts are involved. However, for the sake of convenience, the facts are being derived from ***CWP No.12464 of 2014.***

The present petition has been filed under Articles 226/227 of

the Constitution of India for issuance of a writ in the nature of *certiorari* quashing Advertisement No.2 dated 21.04.2014 (Annexure P-7) and also the “General Information” (Annexures P-8 and P-9) as no reservation has been granted to the candidates of Scheduled Castes despite the mandate of Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (here-in-after referred to as ‘the Act, 2006’) and the essential qualification of passing of Punjabi language test up to matric level or its equivalent has not been provided despite the mandate of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. A further prayer has also been made for issuance of direction to the respondents to initiate the selection process afresh in accordance with law.

Briefly, the facts of the case as made out in the petition, are that respondent No.2-PPSC issued an Advertisement No.2 dated 21.04.2014 inviting online applications for selection to the Punjab Civil Service (EB) (here-in-after referred to as the ‘PCS (EB)’) to be filled up through Register ‘A-II’ and Register ‘C’. Petitioner being fully eligible for appointment as per criteria laid down under Rule 15 and having eight years of experience, submitted online application on 12.05.2014. His name was also forwarded by respondent No.3 vide letter dated 29.05.2014 to the respondent-Commission for consideration in Register ‘C’. However, inadvertently the petitioner filed online form of Register ‘A-II’ and his name was put in Register ‘A-II’ by the respondent-Commission subject to the confirmation by the Government. Petitioner also made a representation dated 28.04.2014 protesting against the non-reservation of any vacancy for the scheduled castes and also not providing the clause of passing the Punjabi language test upto matric level or its equivalent in the advertisement but to no effect.

Hence, the impugned advertisement and general informations issued in respect of appointment to Registers “A-II” and “C” have been challenged by stating that the same are illegal, arbitrary, discriminatory, un-constitutional and contrary to the statutory provisions and as such, they are liable to be set aside.

Learned counsel for the petitioner submits that the respondent-State has enacted the Act, 2006 with the object of providing reservation in services for members of Scheduled Castes and Backward Classes. Learned counsel also submits that no reservation for the Scheduled Castes candidates has been provided in the advertisement, whereas, as per mandate of 2006 Act, 25% reservation should be provided for Scheduled Castes in direct recruitment and 14% reservation in promotion in Group A services. The petitioner is also entitled for consideration by carrying forward the backlog vacancies. Learned counsel further submits that there are at least 15 candidates, who have applied in both the categories of Registers ‘A-II’ and ‘C’ but they do not possess the essential qualification of having passed Punjabi language upto the standard of matric or equivalent but still they have been permitted to participate in the selection process. Both the 2006 Act and 1994 Rules have an overriding effect over the PCS (EB) 1976 Rules and the non inclusion of the essential eligibility of passing of Punjabi examination upto matric level or its equivalent and also of reservation for the Scheduled Castes is not sustainable in view of settled position of law.

In response to notice of motion, reply has been filed, which is on record.

Mr. Kamal Sehgal, Additional Advocate General, Punjab, submits that the benefit of reservation can be granted only in case of direct

recruitment, transfer or appointment or appointment by way of promotion and in case of nomination, benefit of 2006 Act can't be given. The Rules of 1976 were amended in the year, 2011 and under the amended rules, the process of recruitment was started afresh as laid down in the Punjab Civil Service (E.B) (First Amendment) Rules, 2011. The applications were invited for screening test for vacancies of PCS (EB) falling in the category of Register 'A-II' and Register 'C'. The criteria for selection of candidates of Register 'A-II' and Register 'C' for the post of Punjab Civil Services (Executive Branch) was '**merit**' in the screening test so that the meritorious candidates should join the premier service of the State. Learned counsel also submits that 25% posts were reserved for members of Scheduled Castes in respect of direct recruitment in all services including PCS (EB) Services. Similarly, 14% posts have also been reserved for members of Scheduled Castes in case of promotion to Class-I and Class-II services as per instructions dated 04.05.1974 and 18.06.2003. Neither any Government instructions nor Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976 provide for any reservation for Scheduled Castes and Backward Classes in the posts of PCS (EB) to be filled up from various registers other than Register 'B' i.e direct recruitment.

He further submits that the issue of providing reservation was settled by this Court in case ***Sohan Lal Bhumbak vs State of Punjab 2001 (2) RSJ 395***, wherein, it was held that reservation to the extent of 25% and 14%, respectively is for direct recruitment and promotion and the same has not been provided in recruitment made by way of nomination as the benefit of reservation can be availed of only if specifically provided. Finding no merit in the LPA, the same was dismissed. At the end, learned counsel for

the respondent-State submits that the main criteria for selection of candidates of Register 'A-II' and Register 'C' for the post of Punjab Civil Services (Executive Branch) as per amended rules is only the '**merit**' on the basis of screening test so that meritorious candidates may join the premier service of the State.

Heard the arguments of learned counsel for the petitioner(s) in both the cases as well as learned counsel for the respondent-State and have also perused the documents available on the file.

The grievance of the petitioner is that while issuing impugned advertisement dated 21.04.2014, no reservation has been provided in favour of candidates belonging to Scheduled Castes, which is contrary to the provisions of Punjab Act No.22 of 2006. Petitioner belongs to Scheduled Caste category and he was not considered, whereas, he should have been considered by giving reservation to him as per Act of 2006. The Punjab Civil Services (Executive Branch Class I) Rules, 1976 came into existence on 14.12.1976. The said rules were amended vide notifications dated 28.07.2011 and 02.11.2011. Rule 8 of the said Rules provides for five registers to be maintained of the candidates, who are appointed to the PCS (Executive Branch). Register 'A-1' is regarding the persons who are selected from amongst the eligible District Revenue Officers, Tehsildars and Naib Tehsildars as per procedure laid down in Rule 9 and 18% posts are filled up from Register 'A-1'.

Register 'A-II' is regarding the persons who are selected from amongst the members of 'Group A' and 'Group B' services holding ministerial appointments serving in connection with the affairs of the State of Punjab as per the procedure laid down in Rule 10 and 16% posts are to

be filled up from this Register.

Similarly, Register 'A-III' is regarding the persons who are selected from amongst the Assistant Excise Taxation Commissioners, Excise Taxation Officers, District Development and Panchayat Officers and Block Development and Panchayat Officers as per the procedure laid down in Rule 11. 11% posts are to be filled up from Register 'A-III'.

Register 'B' is regarding the persons accepted as candidates as a result of the main competitive examination, the procedure of which is laid down in Rule 14. 50% of the posts are to be filled up from Register 'B'.

Similarly, Register 'C' is regarding the persons who are selected from amongst the members of 'Group A' and 'Group B' services serving in connection with the affairs of the State of Punjab but do not fall in any of the categories of Register 'A-1', 'A-II' and 'A-III'. 5% posts are to be filled up from this Register.

The grievance of the petitioner is regarding Register 'C' as no post of scheduled caste has been advertised and no representation has been given to the candidates belonging to Scheduled Caste. Admittedly, in the present case, the screening test is to be held for Register 'A-II' and Register 'C' and it was held on 06.07.2014 as mentioned in the advertisement dated 24.05.2014. Non-giving of representation to the scheduled castes candidates has been challenged by learned counsel for the petitioner on the ground that the action of the respondents is illegal, arbitrary, discriminatory, unconstitutional and contrary to the statutory provisions being violative of Articles 14 and 16 of the Constitution of India.

The stand of the respondents is that the benefit of reservation is given only in case of direct appointment or the appointment by way of

promotion. No provision is there for grant of benefit of reservation in case of nomination. The provisions of the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976 relating to nominations for filling the posts of PCS (EB) from registers other than Register 'B' i.e direct recruitment were challenged in **CWP No.1628 of 2009** titled as ***Rahul Sharma and another vs State of Punjab and others***. The said petition was disposed of vide order dated 02.11.2010 and the directions were issued regarding finalizing of criteria to be adopted while making nominations to the PCS (EB) against Register 'A-1', 'A-II', 'A-III' and Register 'C'.

In compliance of said directions issued by this Court, a committee was constituted under the Chairmanship of Chief Secretary to Government of Punjab, to consider and recommend the criteria to be adopted while making nominations to the PCS (EB) against various registers. On the basis of recommendations made by said Committee, it was decided to amend the provisions of the Punjab Civil Service (E.B) (Class I) Rules, 1976 to abolish the system of nominations. Said Rules of 1976 were amended in the year, 2011 and under the amended rules, the process of recruitment was started afresh as laid down in the Punjab Civil Service (E.B) (First Amendment) Rules, 2011. As per amended rules, the main criteria for selection of candidates of Register 'A-II' and Register 'C' for the post of Punjab Civil Services (Executive Branch) was '**merit**' in the screening test so that meritorious candidates may join the premier service of the State. Subsequently, vide instructions dated 06.06.1974 and 30.12.1996, 25% posts were reserved for members of Scheduled castes in respect of direct recruitment in all services including PCS (EB) Services and 14% posts were reserved for members of Scheduled Castes in case of promotion

to Class-I and Class-II services vide instructions dated 04.05.1974 and 18.06.2003.

The issue of reservation was settled by this Court in ***Sohan Lal Bhumbak's case (supra)***, wherein, it was held as under :-

“20. Concededly, instructions dated 06.06.1974 and 04.05.1974 are dealing with reservation to the extent of 25% and 14%, respectively in direct recruitment and promotion. Reservation has not been provided in recruitment made by way of nomination. The benefit of reservation can be availed of only if specifically provided and no writ lies to command the Government to make reservation as such.

21. Finding no merit in this letters patent appeal, we dismiss the same, thus upholding the order of learned Single Judge. Parties are, however, left to bear their own costs.”

As per Rule 17 of the Punjab Civil Services (General and Common Conditions of Services) Rules, 1994, the knowledge of Punjabi language was necessary as it was mentioned that no person was to be appointed to any post in any service by direct appointment unless he possesses knowledge of Punjabi language of matriculation standard or its equivalent.

As per said provision, the knowledge of Punjabi language of Matriculation standard or its equivalent was an essential qualification in case of direct recruitment, whereas for the posts which were to be filled up from Register 'A-II' and Register 'C', no such qualification was required as it was not a case of direct recruitment but is of nomination.

The issue in the present case is squarely covered by decision rendered in ***Sohan Lal Bhumbak's case (supra)***, wherein, it has been held

that no reservation can be provided in case the recruitment is made by way of nomination and benefit of reservation can be availed of only if specifically provided under the rules. The present case is of the appointment by way of nomination. The Act of 2006 is applicable in case the appointment is made by direct recruitment or by promotion or by transfer of a person already in service of Government of India or the State Government. Nowhere it is mentioned that the Act, 2006 would be applicable in case of appointment by way of nomination.

In view of the facts as mentioned above, there is no force in the arguments raised by learned counsel for the petitioner and as such, both the petitions bearing **CWP Nos.12464 of 2014** and **13551 of 2014**, being devoid of any merit, are hereby dismissed.

17.08.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes