

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP No. 16446 of 2014 (O&M)
Gulshan KumarPetitioner
Versus
State of Haryana and othersRespondents
2. CWP No. 25598 of 2014 (O&M)
Nitin Sehgal and anotherPetitioners
Versus
State of Haryana and othersRespondents

Date of Decision:- 05.04.2016

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Vikas Chatrath, Advocate,
with Mr. Sehaj Bir Singh, Advocate
for petitioner in 1st case.

Mr. D.S. Patwalia, Senior Advocate
with Mr. Kannan Malik, Advocate
for petitioners in 2nd case.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. Vikrant Sharma, Advocate
for respondent No.3.

Mr. A.S. Virk, Advocate
for respondent No.1 in 2nd case.

RITU BAHRI, J. (Oral)

This order shall dispose of the above two petitions as common question of facts are involved in the petitions. However, for the facility of reference, the facts are being taken from CWP No. 16446 of 2014.

Petitioner is seeking direction to respondent No.3 i.e. Sanatan Dharma College (Lahore), Ambala Cantt. - 133001 to fill the post of Assistant Professor (Physical Education) as per roster point from the Scheduled Caste category candidates.

The grievance of the petitioner is that Sanatan Dharma College (Lahore), Ambala Cantt (respondent No.3) was established in the year 1916. In the cadre of Assistant Professor (Physical Education) there are three posts in the College. At present Shashi Rana is working as Associate Professor (Physical Education). Two professors, namely, Sh. Parmod Saini and Sh. Rachhpal Singh, working as Associate Professors (Physical Education) have been superannuated. They were working against the roster point of General Category. Thereafter, two posts of Assistant Professor (Physical Education) were advertised by respondent No.3 on 21.06.2014. Both the posts have been advertised for the General Category Candidates as per advertisement dated 21.06.2014 (Annexure P-4). The petitioner applied and was called for interview under the General Category on 16.08.2014. The grievance of the petitioner is that prior to present advertisement three posts were made in the category of General Category i.e. Parmod Saini, Rachhpal Singh and Shashi Rana and the fourth post advertised should have been kept for the scheduled caste candidate as per

reservation policy dated 18.12.1996 (Annexure P-1). The petitioner made a representation to the department for giving effect to the reservation policy and due representation to the Scheduled caste category candidate. The representation was made to the Department under Haryana Affiliated College (Security of Service) Act, 1979 and The Haryana Affiliated Colleges (Security of Service) Rules, 2006. Under Section 15 of the Act, 1979, the State Government could do any act which is necessary for removing any difficulty faced by the affiliated colleges. Petitioner in the present petition is seeking direction to respondent No.3 to fill up 4th post of Assistant Professor by selecting Scheduled Caste candidate.

In the written statement filed by respondent No.3 the stand taken is that the policy of reservation is to be implemented prospectively w.e.f. 18.12.1996. After this date, one post of general category was filled up by Shashi Rana and thereafter two posts which had fallen vacant due to the retirement of two candidates, namely, Parmod Saini and Rachhpal Singh. These two posts are being filled up for the first time after the reservation policy came into existence. In this background, these vacant posts were advertised for general category candidates and fourth post (for SC category) will be filled up after the retirement of Dr. Shashi Rana. As per the Roster (Annexure R-3/1) after 18.12.1996 the first post which became available had been filled up by Shashi Rana in the year 1998. The reservation policy is to be implemented prospectively and two posts advertised for general category as per the advertisement dated 21.06.2014 (Annexure P-7) is valid. It is further stated in the written statement that the University had informed the answering respondent, vide letter dated

13.10.2014 (Annexure R-3/2) that the proceedings of the meeting of the Selection Committee held on 16.08.2014 for the post of Assistant Professor in Physical Education has not been proved by the University as there was no recommendation by the Selection Committee.

In a short reply filed by Deputy Secretary to Government Haryana, Higher Education Department, Panchkula, after advertisement the candidates were called for interview before the selection committee where the nominee of the director was present, being member of selection committee, as per provision of Haryana Affiliated Colleges (Security of Service) Rules, 2006. No recommendation from the Managing Committee of the respondent College have been received for approval as required. In the absence of any recommendation, no direction given to the Private Management of College to clarify it.

Mr. Patwalia, learned Senior counsel for the petitioners in CWP No.25598 of 2014, has referred to a judgment of Division Bench of this Court in case **Subhash Chander Lohan Vs. State of Haryana and others**, 2011(1) S.C.T. 781 whereby a direction was given to the Kurukshetra University to grant approval to the proceedings of the Selection Committee by ignoring the dissenting note recorded by the nominee of Commissioner of Higher Education because the petitioner fulfill the qualifications otherwise required.

After hearing the learned counsel for the parties, going through the record, this Court is of the considered view that the above-said judgment in **Subhash Chander Lohan's case (supra)** is not applicable to the facts of the present case as in that case the Selection Committee had

selected the petitioner Dr. Subhash Chander Lohan and recommended his case despite the fact that the dissenting note had been given by the nominee of Commissioner of Higher Education and in this background the resolution passed by the Kurukshetra University refusing to prove the proceedings of selection committee was quashed. However, in the present case, the Selection Committee did not make any recommendation and this fact is clear from the communication dated 13.10.2014 (Annexure P-3/2).

In the absence of any recommendation by the Selection Committee, the University was unable to give any approval for appointment.

As far as the implementation of reservation policy dated 18.12.1996 (Annexure P-1) is concerned the same is to be applied prospectively as held by the Supreme Court in **G.S.I.C. Karamchari Union Vs. Gujarat Small Industries Corporation, 1997(1) S.C.T. 788** that the policy of reservation is prospective and not retrospective. In that case, the respondent-Corporation had passed a resolution to give benefit of reservation policy to all the posts of Class I to IV from April 30, 1984. Subsequently the resolution was passed giving effect to the roster from January 01, 1976. In paragraph 4, the Supreme Court has held as under: -

“It is true, as contended by Shri P.S. Poti learned senior counsel for the State, that when the policy of the Government envisaged under Article 16(4) read with Articles 14 and 16(1) and 335 is given effect to the reservation in initial requirement and promotion can be made. But the question of retrospectively the policy does not arise; what is being done is to give effect to the constitutional policy of providing adequate representation to the members of Scheduled Castes and Scheduled Tribes in all Classes of service or posts where they are not adequately

represented. therefore, the arbitrariness does not arise since it is part of the scheme of the constitution. Unless adequate representation is given to the employees belonging to Scheduled Castes and Scheduled Tribes in promotions also, the adequacy to representation in all classes and grades of service, where there is no element of direct recruitment cannot be achieved. Obvious, therefore, Article 16(4-A) was brought on the Constitution by Constitution (77th Amendment Act, after the majority Judgment of this Court by a Bench of 9 Judges in Indira Sawhney vs. Union of India & Ors. [(1992) Supp. 3 SCC 210]. The Preamble of the Constitution and Article 38 accord social and economic Justice as fundamental rights to all people in all institutions of national leave. Article 46 enjoins the State to accord social and economic justice to the Scheduled Castes and Scheduled Tribes. Article 51A enjoins every citizen to improve excellence individually and collectively so that the nation constantly rises to higher levels, socially, economically and culturally. Right to development assured by the Constitution is held to be a fundamental right. So the policy of reservation in the preamble of the Constitution, the fundamental rights under Articles 14, 15(1), 15(4), 16(1), 16(4), 16(4A) 46 and 335 and the other related articles is to give effect to the above constitutional objectives.”

The reservation policy was adopted in the year 1996 and according to which 20% posts were reserved for SC category for direct recruitment and as per the said policy 4th post falls under SC category in the subject of physical education and prior to the year 1996, two posts were filled in the general category by candidates, namely, Sh. Rachpal Singh and Sh. P.K. Saini, who retired in the year 2010 and 2011 respectively. After the implementation of the reservation policy (w.e.f. 18.12.1996) one post of general category was filled up by Sh. Shashi Rana and two posts which had fallen vacant due to the retirement of the above two candidates falls under Nos.2 and 3 of reservation roster (general category). These two posts are to be filled up for the first time after the reservation policy came into

existence. The fourth post (for SC category) will be filled up after the retirement of Dr. Shashi Rana. Respondent No.3 has placed on record the roster maintained for physical education as Annexure R-3/1.

Perusal of this roster (Annexure R-3/1) shows that Sh. Shashi Rana was appointed in the year 1998 and after her appointment Rachpal Singh and P.K. Saini has retired in the year 2010 and 2011 respectively. The stand taken by the respondents is correct that these two posts shall be filled up by way of general category candidates and the post was withdrawn meant for reservation shall become available on the retirement of Dr. Shashi Rana.

Hence, in the present case in view of the judgment of the Supreme Court in **G.S.I.C. Karamchari Union's case (supra)**, the benefit of reservation is to be given prospectively i.e. after 18.12.1996 and as per the above-said judgment two posts as per advertisement dated 21.06.2014 (Annexure P-1) advertised for general category candidate is legal and valid. The Selection Committee has not sent any recommendation for approval to the University and this fact is apparent from letter dated 12.10.2014 (Annexure R-3/2) written by Kurukshetra University to the Principal, S.D. College, Ambala Cantt.

In a short reply filed by Deputy Secretary to Govt. of Haryana, it is reiterating that pursuant to advertisement (Annexure P-4), candidates were called for interview on 16.08.2014. However, the proceedings of the selection committee pertaining to appointment as per advertisement (Annexure P-4) have not been received from the Managing Committee of the respondent College for approval. The approval is to be first granted by

the University concerned and thereafter it is to be proceeded by the Higher Education Department.

Since, the policy of reservation is to be implemented prospectively in view of the judgment of the Supreme Court and in the absence of any recommendation of Selection Committee, no direction can be given to the University to approve the appointment of the petitioner.

In view of the above observations, CWP No.16446 of 2014 is hereby dismissed and CWP No.25598 of 2014 is disposed of.

April 05, 2016
naresh.k

(RITU BAHRI)
JUDGE