

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

CWP No.22900 of 2012

Date of decision: 11.01.2016

Satish Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Chanderhas Yadav, Advocate
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

Mr. Vipin Mahajan, Advocate
for respondents No.2 and 3.

RITU BAHRI J. (Oral)

The petitioner has filed this civil writ petition for quashing/setting-aside the result dated 08.09.2012 (Annexure P-4) and result dated 27.10.2012 (Annexure P-5) and further seeking direction to the respondents to prepare the selection list again as per the law by treating the merit of the reserved candidates at par with those of the General Category.

The respondent-bank invited applications for the appointment of Office Assistant (Multi Purpose) on 03.03.2012 (Annexure P-1). 124 posts were advertised totally for the post of

Office Assistant, out of which 62 posts were for General Category, 39 posts were reserved for Other Backward Classes Category including backlog/shortfall vacancies and 23 posts were reserved for Scheduled Caste Category. As per the advertisement, the pay scale for the post of Office Assistant (Multi Purpose) was Rs.7200-19300. The eligibility criteria for the post of Office Assistant (Multi Purpose) is reproduced as under:-

“Post Code-04 Office Assistant (Multi Purpose)

(i) Bachelor Degree or its equivalent of a recognized university in any discipline.

(ii) (a) Essential: Proficiency in local language i.e. Hindi.

(b) Desirable: Knowledge of Computer skills.”

The age limit for the post of Office Assistant (Multi Purpose) was 18 to 28 years and the OBC candidates were given age relaxation of 03 years for applying and appearing for the Office Assistant (Multi Purpose).

The petitioner being an OBC candidate fulfills the eligibility criteria and applied for the post of Office Assistant (Multi Purpose) vide application form dated 05.03.2012 (Annexure P-2). The petitioner had appeared for the written test for the post of Office Assistant (Multi Purpose) on 06.05.2012 and he was declared qualified on 04.07.2012. Thereafter, the petitioner

received an interview letter for the post of Office Assistant (Multi Purpose) and he was called for interview on 23.08.2012 (Annexure P-3). After appearing in the interview, the list of selected candidates was declared on 08.09.2012 (Annexure P-4) and the second list dated 27.10.2012 was also published (Annexure P-5). The petitioner made an application (Annexure P-6) under RTI Act to find out whether the merit list had been prepared by treating the Reserved Category candidates higher in merit as General Category candidates. As per the information supplied under RTI Act (Annexure P-7), the petitioner had secured 71.70 marks and as per Annexure P-8, the selection list for General Category has been made separately and that of the OBC Category separately.

Upon notice in the present petition, written statement dated 30.06.2014, on behalf of respondents No.2 and 3 has been filed admitting the advertisement for the post of Office Assistant (Multi Purpose) as stated by the petitioner. The eligibility criteria has also been admitted and for the selection process, the written test marks were stated to be 70 and interview marks as 30. The qualifying marks in the written test was 40% and in case of Scheduled Caste or Scheduled Tribe Categories, it is 35%. It is further admitted that as per the provisions of Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2010, the examination was conducted through Institute of

Banking Personnel Selection (IBPS) and the petitioner had secured only 48.25% marks in graduation. The merit list of successful candidates in each category is made separately on the basis of combined performance in the written test and interview.

Reference has been made to a judgment ***“Bhupinder Kaur and others vs Vanita and others”***, 2011(3) SCT 130, passed by Division Bench of this Court, wherein I was also a member of the Division Bench and in that case also a similar question had come up for consideration of preparation of merit list consisting of General and Reserved candidates. The Division Bench was considering the said case, which had been initiated by Director Principal, Government Medical College and Hospital, Sector 32, Chandigarh. In that case, an advertisement for filling up 40 posts of Staff Nurses on regular basis was made on 20.02.2006. Thereafter, in August, 2006, another advertisement was issued by the Government of India for filling up 114 posts of Staff Nurses, out of which 09 posts were reserved for Scheduled Caste Category. One of the candidate Ms. Vanita who belong to Reserved Category of the Scheduled Caste had filed OA No.809/CH/07, on the ground that the persons belonging to the General Category, who are lower in merit than her, had been given appointment. The said OA was disposed of vide order dated 29.02.2008, with a direction to the respondents to complete the process of review/reconsideration of the selection of the post of

Staff Nurses as per law within a period of two months from the date of receipt of a copy of the order. Thereafter, a Committee was constituted and found that 25 candidates were wrongly appointed on the post of Staff Nurses. Ms. Vanita i.e. respondent No.1 again filed OA NO.209/PB/2009, alleging that the candidates belonging to General Category, who secured 53 marks were selected and appointed whereas despite the fact that she has secured 55 marks, she has been denied appointment on the ground that she belongs to Scheduled Caste Category. After obtaining information under RTI Act, 2005, the final select list was placed on record as Annexure A-3. The Tribunal had disposed of the OA No.209/PB/2009, with a direction to prepare a revised select panel strictly in accordance with law laid down in ***“R.K. Sabharwal vs State of Punjab”***, AIR 1995 SC 1371. It was directed that if there is any candidate from Reserved Category has secured more marks than the General Category candidates with lower merit be appointed as Staff Nurses than such candidates shall be given show cause notice and the applicant Ms. Vanita and others would be appointed as Staff Nurses from the date when the other selected candidates had been appointed.

The order passed by the Tribunal dated 05.01.2010, was challenged by the petitioners i.e. General Category candidates, in writ petition. While dismissing the said writ petition, the Division Bench of this Court in Para No.14 and 15

observed as under:-

*“14. Similar view has been expressed by Hon'ble the Supreme Court in the case of **Anurag Patel vs U.P. Public Service Commission, (2005) 9 SCC 742** and **Yoganand Vishwasrao Patil vs State of Maharashtra, (2005) 12 SCC 311**. In these two cases also the same principle has been applied and followed. The law on the subject, therefore, is that a candidate belonging to reserved category securing better merit position than those of General category would consume a General category point because reservation has been made for the reserved category candidate and not for the General category candidate. The respondent-College, in fact, has taken the view as if the reservation between the General category candidates and reserved category candidates has been made in two watertight compartments, which is wholly illegal. On the direction issued by the Tribunal, an exercise was undertaken which revealed that a number of meritorious reserved category candidates were refused appointments on the post of Staff Nurses, whereas the less meritorious candidates belonging to General category were given appointments. By virtue of interlocutory order passed by us on 07.09.2010, we required the authorities to go into the question of availability of meritorious reserved category candidates. It would be futile to remove the General category candidates in the absence of availability of reserved category candidates to occupy the post on their own merit. The respondent College has undertaken an exercise in the right earnest and some meritorious candidates belonging to reserved category*

have come forward to join which would necessitate replacement of General category candidates by such meritorious reserved category candidates.

15. The argument raised by the learned counsel for the petitioners is that the Original Application was filed only by one candidate belonging to reserved category and there could not be a direction issued by the Tribunal to recast the whole list. We find no merit in the aforesaid submission because once a patent illegality has come to the notice of the Tribunal or any other Court then it is a duty cast on the Courts to ensure compliance with the law rather than permitting the illegality to perpetuate. Moreover, law declared by Hon'ble the Supreme Court is binding on all the authorities including the State and it must enforce the directions effectively. The Constitution mandates the State to ensure enforcement of order passed by Hon'ble the Supreme Court and any attempt to bypass the directions so issued is viewed with seriousness. Therefore, the Tribunal could not have confined the relief of recasting the merit list as per law only in respect of respondent No.1. It has to be undertaken in respect of all those meritorious candidates belonging to reserved category who have secured more marks than the last candidate belonging to General category, even though it results into relieving of some candidates belonging to General category. Thus, we find no merit in the aforesaid contention raised by the learned counsel for the petitioners.”

The ratio of the Division Bench judgment is directly

applicable to the facts of the present case. The respondent-bank

after inviting application and conducting written test and interview has prepared the merit list (Annexure P-8) separately for each category i.e. General Category as well as Reserved Categories. Out of 124 posts, 63 posts were meant for General Category, 39 posts for Backward Classes and 23 posts for Scheduled Caste Category. Hence, for preparing the select list for 63 posts of the candidates i.e. General Category and Reserved Categories, the merit of all the candidates has to be taken to prepare the merit list for 63 posts of the meritorious candidates. Whether they belong to Backward Class or Scheduled Caste Category, they have a right to be appointed against the General Category on the basis of merit list. Once 63 posts were filled up as per merit, the remaining posts i.e. 39 for Backward classes and 23 for Scheduled Caste, which are reserved shall be filled with those candidates lower in merit. The General Category candidates lower in merit than the Reserved Category cannot be treated against 63 posts meant for General Category.

Keeping in view the above facts and circumstances, the present writ petition is allowed with a direction to respondent-Bank to prepare a revised selection panel strictly in accordance with law as per the merit obtained by the candidates. The merit of all the candidates in General Category has to be prepared irrespective of the fact that they belong to Other Backward Classes or Scheduled Caste Categories. After making the merit list of

General Category for 63 posts, a separate list i.e. 39 posts for Backward Classes and 23 posts for Scheduled Caste Category shall be made and then, offer for appointment shall be made.

(RITU BAHRI)
JUDGE

11.01.2016

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