

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 17095 of 2015
Date of Decision: 09.2.2016.

Kulwant Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Jyoti Sareen, Advocate
for the petitioner.

Mr. Parminder Singh Kanwar, Advocate
for the respondents.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of mandamus directing the respondents to consider his case for selection to the post of Constable Carpenter in general category.

Case of the petitioner, in brief, is that in pursuance to the advertisement dated 22.10.2014 Annexure P-2, issued by the respondents, petitioner had applied for the post of Constable. Petitioner successfully cleared physical efficiency test, written test, trade test and medical fitness test. Petitioner had applied for the post of Constable Carpenter in the general category. Petitioner was the only candidate in general category who had successfully qualified all the stages required for the recruitment to the post of Constable. Pawan Kumar had applied for the post of Constable Carpenter in the reserved category for scheduled caste. He was also declared fit in the said category. Thus, the petitioner had

qualified all the four stages in general category whereas Pawan Kumar had qualified all the stages in scheduled caste category. There were two vacancies for the post of Constable Carpenter i.e. one for general category and one for scheduled caste category. On 4.8.2015, the result of successful candidates was declared and only the name of Pawan Kumar figured in the selected candidates list. Hence, the present petition by petitioner Kulwant Singh.

Learned counsel for the petitioner has submitted that petitioner was liable to be selected in the general category as he was the only candidate in the general category who had successfully cleared all the four stages required for recruitment to the post of Constable Carpenter. So far as Pawan Kumar was concerned, he had applied for the post in the reserved category for scheduled caste and was liable to be appointed in the said category. Learned counsel for the petitioner has further submitted that in the select list Annexure P-8, Pawan Kumar was shown to have been selected against scheduled caste category. However, no person was shown to have been selected in the general category. Learned counsel has further submitted that as per the advertisement, the selection of a candidate was to be made in order of merit in each category for the respective posts on the basis of marks secured in the written test.

Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that, although, Pawan Kumar had applied for the post of Constable Carpenter in the category reserved for scheduled caste category but he had secured more marks than the petitioner and was consequently, selected by treating him as a general category candidate. Hence, the petitioner

could not be appointed as Constable Carpenter in general category being lower in merit than Pawan Kumar. Learned counsel for the respondents has further submitted that so far as Annexure P-8 is concerned, it was merely a list of selected candidates and merely because Pawan Kumar has been shown to be belonging to scheduled caste category does not lead to the inference that he was selected qua the vacancy meant for scheduled caste category. In support of his arguments, learned counsel has placed reliance on **“Bhupinder Kaur and others versus Vanita and others, 2011(3) S.C.T. 130”** wherein it was held as under:-

“13. We have heard learned counsel for the parties at length and are of the view that the directions issued by the Tribunal are unassailable. It is well settled that a candidate belonging to reserved category who has been selected and appointed on his own merit by securing higher merit than the merit of a General Category candidate would not be considered to be appointed against the post/vacancy reserved for a candidate belonging to reserved category. In that regard reliance may be placed on a judgment of Hon'ble the Supreme Court rendered in the case of Ritesh R. Sah v. Y.L.Yamul (Dr.), (1996) 3 SCC 253. The aforesaid case belongs to admission to a professional college and the observation made by their Lordships' of Hon'ble the Supreme Court would be equally applicable to the present case which reads as under:-

“There is sufficient force in the contention of the

petitioner. A student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but in computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.”

14. *Similar view has been expressed by Hon'ble the*

Supreme Court in the case of Anurag Patel v. U.P. Public Service Commission, (2005) 9 SCC 742 and Yoganand Vishwasrao Patil v. 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 7.9.2010, 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.”

Facts in the present case are not in dispute. Petitioner had applied for the post of Constable Carpenter in general category. So far as Pawan Kumar, the selected candidate, is concerned, he had applied for the post of Constable Carpenter in reserved category meant for scheduled caste candidates. Admittedly, petitioner as well as Pawan Kumar had qualified all the stages of the selection process for the post of Constable Carpenter. Admittedly, there was one vacancy in the general category and one vacancy in the scheduled caste category. However, in the select list Annexure P-8, the name of Pawan Kumar figures at Serial No. 18 whereas the name of the petitioner does not figure in the select list. As per Annexure R-1, Pawan Kumar had secured 41 marks in the written test whereas the petitioner had secured 37 marks. Since Pawan Kumar had obtained more marks than the petitioner, he was higher in merit and was, consequently, selected for the post of Constable Carpenter in general category, though, he belonged to scheduled caste category. It is a settled proposition of law that in case a candidate belonging to reserved category secures higher marks than the candidate in the general category, then he is liable to be considered for appointment to the post falling for general category candidate.

In the advertisement Annexure P-2, it has been mentioned that final selection of the candidate will be made in order of merit in each category for respective posts on the basis of

marks secured in the written test. The said condition is *vis-a-vis* the candidates falling in the same category and cannot be interpreted to hold that a candidate belonging to scheduled caste category securing higher marks than the candidate in a general category cannot be considered for the post falling vacant in the general category. In view of the said legal proposition, the arguments raised by the learned counsel for the petitioner fail to advance the case of the petitioner.

Accordingly, this petition is dismissed.

**(SABINA)
JUDGE**

February 09, 2016
Gurpreet