

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5048 of 2011
Decided on : 17.03.2016

Jaskaran Singh

... Petitioner

Versus

State of Punjab & another

... Respondents

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

Present : Mohd.Sartaj, Advocate, for
Mr.Mansur Ali, Advocate, for the petitioner.

Mr.L.S.Virk, Addl.A.G., Punjab.

G.S. Sandhawalia , J. (Oral)

Petitioner seeks the benefit of consideration as a Medical Officer, in the Freedom Fighter Category, by shifting of respondent No.2 to the General Category, on the ground that he had secured more marks than the last General Category candidate.

It is not disputed that the said respondent stood at Sr.No.34 in the combined merit list and there were only 2 posts reserved for the Freedom Fighter Category, which have been duly filled, on the basis of merit. The said respondent secured 53 marks whereas the petitioner secured 47.5 marks and therefore, seeks appointment, on shifting of the said respondent. The defence taken by the State is that only candidates belonging to SC & BC category can compete for the non-reservation post and persons belonging to other reserved categories, cannot be shifted to the general posts. Reliance was placed upon the instructions dated 10.07.1995.

On 22.08.2014, the following order was passed:

“Prima facie the case of the petitioner is covered against him in case titled as Anil Kumar Gupta vs. State of UP 1995(4) SCT 403 where the following observations have been made:-

“The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/ accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom.(If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)”

This judgment has been approvingly noticed in the subsequent judgment titled as Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others reported as 2007(4) SCT 99.

Confronted with this situation, learned counsel for the petitioner prays for some time.

Adjourned to 13.3.2015.”

Similarly, in **Public Service Commission, Uttranchal Vs. Mamta Bisht & others 2010 (12) SCC 204**, the Apex Court relied upon its earlier judgment in **Rajesh Kumar Daria** (supra) to hold that horizontal reservation differs from vertical reservation. Accordingly, the appeal of the Commission was allowed. The judgment of the High Court was set aside wherein the benefit of horizontal reservation had been given by holding that the respondent had secured more marks than the last selected general category candidate and belonging to the State of Uttaranchal and being a woman candidate she ought to have been appointed against the vacancy in the general category.

Counsel for the petitioner has not been able to distinguish the above-said judgments and find fault in the procedure followed by the State, in any manner.

Accordingly, in view of the above, no case is made out to grant any relief to the petitioner.

Dismissed.

MARCH 17, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE