

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

**CWP No.21763 of 2013**

Ashish

... Petitioner

Versus

State of Punjab & others

... Respondents

(2)

**CWP No.21773 of 2013**

Paramjit Singh & another

... Petitioners

Versus

State of Punjab & others

... Respondents

**Decided on : 12.05.2016**

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

Present : Mr.R.S.Pandher, Advocate, for the petitioners.

Mr.Anshul Gupta, AAG, Punjab.

Mr.Vikas Chatrath, Advocate, for respondents No.2 & 3.

**G.S. Sandhawalia , J. (Oral)**

This judgment shall dispose of CWP-21763 & 21773-2013, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-21763-2013 titled *Ashish Vs. State of Punjab & others*.

Petitioner seeks consideration amongst Backward Class candidates, for vacancies of Backward Class Ex-servicemen category, which remained unfilled. Relief is claimed on the basis of the notification dated 30.12.1996 (Annexure P3) and 22.10.2009 (Annexure P4).

In view of the written statement filed by respondents No.2 & 3, it was noticed on 23.07.2015, as under:

“Para 3 of the written statement filed on behalf of respondent Nos.2 and 3, is reproduced below:-

“That however, perusal of para No.4(2) of Punjab Recruitment of Ex-Servicemen Rules, 1982 and notifications dated 30.12.1996 (P-3) and dated 22.10.2009 (P-4). Para No.4(2) of Punjab Recruitment of Ex-Servicemen Rules 1982 is reproduced for kind perusal of this Hon'ble Court which reads as under:-

4. Reservation of Vacancies. (2)Where a reserved vacancy remains unfilled for non availability of a (person eligible for recruitment under these rules) such vacancy may be filled in, temporarily from any other source in accordance with the rules. Regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved; Provided that the reserved vacancies filled in shall be carried forward for the subsequent occasions (arising during at least 2 years in each of which such occasion arises for recruitment) where after the vacancy in question shall be treated as un-reserved. Thus competent authority is government to un-reserve post. Under above mentioned rules there is no criteria that in the event of non-availability of required/requisite number of Schedule Caste ex-servicemen, the vacancies earmarked for this category would in the first instance go to Schedule Caste. A bare perusal of above mentioned rule read with Notification (P-3) & (P-4) an inherent confusion/ambiguity has cropped out therefore, to clarify the said ambiguity Deputy Chief Engineer (HR and Admin), PSTCL, Patiala wrote letter memo No. 1608 & 1609 dated 01.11.2013 to Director Welfare (Schedule Caste/Backward Class), Punjab. But till date Punjab Government

has not issued clarification in the right perspective regarding the filling of vacancies of said Ex-servicemen reserved category vacancies. Further on the perusal of both the notifications would show that one notification contemplates the principles of carrying forward, however, second notification does not mention the same nor it states that the same has been repealed to the said extent. In these circumstances, at this stage, it would be in the fitness of things that respondent No.4 department of Welfare of SC and BC should clarify the position and the answering-respondent would thereafter proceed in accordance with law, since the Corporation does not want to be in the midst of controversy due to the inherent conflict in the rules and notifications as explained above.”

As per the above clarification sought for on behalf of respondent No.1 from the Director Welfare (Schedule Caste/Backward Class), Punjab, has not been responded to.

On the next date of hearing, respondent No.4 is directed to clarify the position in connection with the clarification sought for through the above said letter written by the Deputy Chief Engineer (HR and Admin), PSTCL, Patiala dated 01.11.2013.

Adjourned to 22.09.2015.”

In view of the above-said order, affidavit of the Deputy Director, Department of Welfare of SC & BC-respondent No.4 dated 04.11.2015, has been filed. Relevant part of the same reads as under:

“2. That vide the Government letter dated 30.12.1996 (Annexure P-3), it was directed that in the event of non-

availability of the required number of scheduled caste ex-servicemen, the vacancies earmarked for this category would in the first instance go to scheduled castes and in case no scheduled castes are available these will be given to the general category Ex-servicemen.

3. That thereafter vide the Government letter dated 22.10.2009 (Annexure P-4), it was pointed out that the matter regarding non-filling of determined percentage of reserved category posts, is a serious matter and by doing so, many a times government had to face legal problems and a reference was made to the government letter dated 30.12.1996. It was thereafter, decided that in case on non-availability of suitable candidates of Scheduled Castes, Ex-servicemen and scheduled castes sportsman, these posts will be reverted to the post of general category of scheduled castes and will only be filled out of the suitable candidates of scheduled castes.

4. That thus as per the Punjab Government Notification dated 22.10.2009, it was clarified that the posts of scheduled castes, Ex-serviceman and Scheduled Castes sportsman will be filled by the scheduled castes others in case of non-availability of Scheduled Castes Ex-servicemen, Scheduled Castes sportsman. Similar criteria will apply to Backward classes Ex-servicemen.

5. That a letter from the petitioner was received in the office on 11.08.2014 in which it had been stated that while filling vacancies of AE (Electrical and JE (Electricals), the reservation for Backward classes category was not followed by the Punjab State Transmission Corporation Ltd., regarding unfilling Backward class Ex-servicemen posts to be filled by Backward Classes category. In this application, a reference to the letter dated 1.11.2013 was made which was not received in this department. The above said application was sent to the Punjab State Transmission Corporation Ltd., vide this office memo dated 9.9.2014 for comments with a request to send a copy of the letter dated 1.11.2013, so that necessary

action could be taken, but since no reply was received from the Corporation accordingly, the clarification could not be sent to the Punjab State Transmission Corporation Ltd. Copy of the letter is annexed herewith as Annexure R-1.”

From the above, it would be clear that whatever apprehension the respondent-Corporation was having, has been duly redressed. In such circumstances, the Corporation will take necessary steps to consider the petitioners, as per their claim, which would be in pursuance of the above-said notifications and the stand taken by respondent No.4. Needful be done within a period of 2 months from the receipt of the certified copy of this order.

Writ petitions stand allowed in the above-said terms.

**MAY 12, 2016**

*sailesh*

**(G.S. SANDHAWALIA)  
JUDGE**