

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

- 1)

Civil Writ Petition No.7921 of 2010 (O&M)

Harjit Singh and others

..... Petitioners

Versus

Punjab State Transmission Corporation Limited (TRANSCO) and others

..... Respondents
- 2)

Civil Writ Petition No.10096 of 2010 (O&M)

Jagjit Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents
- 3)

Civil Writ Petition No.21760 of 2010 (O&M)

Ishar Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents
- 4)

Civil Writ Petition No.4441 of 2012 (O&M)

Ravinder Singh

..... Petitioner

Versus

Punjab State Transmission Corporation Limited (TRANSCO) and others

..... Respondents
- 5)

Civil Writ Petition No.8909 of 2012 (O&M)

Tejinder Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

6) Civil Writ Petition No.11706 of 2014 (O&M)

Balram Krishan Raturi

..... Petitioner

Versus

The Punjab State Power Corporation Limited and others

..... Respondents

7) Civil Writ Petition No.5524 of 2016 (O&M)

Kulwinder Singh

..... Petitioner

Versus

Punjab State Power Corporation Limited and another

..... Respondents

Date of Decision: 29.11.2016

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. J.S.Sodhi, Advocate for
Mr. Lakhwinder Singh Sidhu, Advocate for the petitioner(s)
(in CWP No.7921 of 2010).

Ms. Alka Chatrath, Advocate for the petitioner(s)
(in CWP No.10096 of 2010 and 8909 of 2012).

Mr. Amandeep Singh Talwar, Advocate for the petitioner(s)
(in CWP No.21760 of 2010).

Mr. Gurjit Singh Latheri, Advocate for the petitioner(s)
(in CWP No.4441 of 2012).

Mr. A.K.Walia, Advocate for the petitioner(s)
(in CWP No.11706 of 2014).

Mr. Rajender Kumar, Advocate for
Mr. Preetwinder Singh Dhaliwal, Advocate for the petitioner(s)
(in CWP No.5524 of 2016).

Dr. Puneet Kaur Sekhon, Additional Advocate General, Punjab.

Mr. Ajay Pal Singh and Mr. Anil Sharma, Advocates
for respondent Nos.1 to 3 (in CWP No.7921 of 2010).

Mr. H.S.Grewal, Advocate
for respondent No.3 (in CWP No.10096 of 2010);
for respondent No.3 (in CWP No.21760 of 2010) and
for respondent No.1 (in CWP No.5524 of 2016).

Mr. J.S.Lalli, Advocate for respondent Nos.4 to 6,
9, 13, 14, 16, 18, 19, 23, 24, 28, 31 and 32
(in CWP No.10096 of 2010).

Mr. R.K.Chopra, Senior Advocate assisted by
Ms. Gagandeep Kaur, Advocate for the intervenors
(in CWP No.10096 of 2010).

Mr. Pranav Grover, Advocate for
Mr. Vikas Chatrath, Advocate for respondent No.2
(in CWP No.7921 of 2010).

Mr. H.S.Grewal, Advocate for respondent No.3
(in CWP No.10096 of 2010).

Mr. Girish Agnihotri, Senior Advocate assisted by
Mr. Saroj Malakar, Advocate for private respondent Nos.5, 7, 8, 9,
11, 14 to 17, 19, 21 to 23, 27, 28, 30, 34 and 35
(in CWP No.21760 of 2010).

Ms. Radhika Suri, Senior Advocate assisted by
Mr. Rinku Dahiya, Advocate for respondent-PSPCL
(in CWP Nos.7921 of 2010; 4441 and 8909 of 2012).

Mr. Vinod Kataria, Advocate for respondent Nos.1 and 2
(in CWP No.11706 of 2014).

Mr. Amarinder Verma, Advocate for respondent No.3
(in CWP No.11706 of 2014).

Mr. Saurabh Singla, Advocate for
Mr. Sandeep Jasuja, Advocate.

Mr. Sukhbir Singh Mattewal, Advocate
for respondent No.3 (in CWP No.21760 of 2010);
for respondent No.3 (in CWP No.4441 of 2012);
for respondent No.2 (in CWP No.5524 of 2016).

Mr. J.S.Ahluwalia, Advocate for respondent Nos.54, 55 and 118
(in CWP No.21760 of 2010).

JASWANT SINGH, J. (Oral)

This common order shall dispose of the aforesaid seven writ
petitions as they involve similar facts and identical issues emerging out of the
filling up of the posts of Junior Engineers (Electrical) and Sub-Station
Attendants pursuant to the advertisement dated 12.01.2009 (**Annexure P-2**).

Station Attendants were, *inter alia*, advertised by the erstwhile Punjab State Electricity Board (successor-Punjab State Power Corporation Limited), vide advertisement dated 12.01.2009 (P-2). The reservation of posts in the aforesaid two cadres was laid down to be worked out on the basis of running roster points as per the Reservation Policy of Punjab Government and adopted by the PSEB from time to time. It is an admitted fact that 56 posts in the Scheduled Castes/Scheduled Tribes Category and 26 posts in the Backward Class Category were earmarked out of 225 posts of Junior Engineers, whereas 31 posts of Scheduled Castes/Scheduled Tribes Category and 15 of Backward Class Category were earmarked out of 125 posts of Sub-Station Attendants.

The selection in both the cadre posts was finalized in April/October, 2010 and appointment letters issued soon thereafter.

The petitioner(s) in all the aforesaid seven petitions belong to the Reserved Categories of either Scheduled Castes/Scheduled Tribes or Backward Classes. They, on the basis of their merit secured in the selection process, have not fallen within the zone of appointment in their respective categories for the respective cadre posts.

The common issues raised in the aforesaid writ petitions are (i) that the candidates belonging to the Reserved Categories having higher marks than the candidates in the General Category have not been assigned selection and appointment in the General Category for both the cadre posts, although they fulfill the eligibility conditions of General Category. It is claimed that the action is in violation of the settled principle of law and if the said principle was to be followed, then the petitioner(s) would fall within the zone of appointment in their respective categories; (ii) it is asserted that there is a backlog of 47 vacancies belonging to the Scheduled Castes Categories for the post of Junior

19 to the Backward Classes of Sub-Station Attendants, which are required to be included in the advertised cadre posts in the respective reserved categories. If that is implemented, then the petitioner(s) would fall within the zone of appointment in the respective reserved categories. The private respondents belong to the General Category, who would get shifted out of the zone of appointment on implementation of the aforesaid two principles in the present selection.

Upon notice, separate replies have been filed on behalf of the respondent-PSPCL and private respondents, contesting the claim of the petitioner(s).

During the course of joint hearings on previous dates, this Court had directed the respondent-PSPCL to file affidavit indicating the factual position with regard to adjudication on the aforesaid two issues.

(A) For the post of Sub-Station Attendant

In the affidavit dated 01.09.2015 filed by the Deputy Secretary, Recruitment, PSPCL, it is conceded that there is a backlog of 26 number of posts belonging to the Scheduled Castes Categories and 14 number of posts in the Backward Class Categories in the cadre of Sub-Station Attendants. It has also been asserted that there is no conscious decision prior to 8th of April, 2010 regarding filling up of the aforesaid backlog of vacancies moreso out of the existing advertised posts pursuant to advertisement dated 12.01.2009 (P-2).

It is stated that on 08.04.2010, a decision which stands approved by the Board reads as under:-

“Regarding backlog, it is mentioned that a decision was taken on Memorandum No.Spl. 1 dt. 8.4.2010 in the meeting of Whole Time Members of PSEB now PSPCL that:-

“ As no post in respect of any backlog has been mentioned in the advertisement, the same, if any, will be taken

into account during the next recruitment.”

While considering the above memorandum No.Spl. 1 dt. 8.4.2010 Whole Time Members in its 6/2010 meeting held in Mohali on 9.4.2010 took the following decision:-

“Approved”.

In the same affidavit, it is averred that keeping in view the provisions of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (for short “2006 Act”), there is no provision for carrying forward of backlog of the Backward Class Category, and as regards the backlog of 26 posts of backlog vacancies, pursuant to the decision dated 08.04.2010, 13 posts of that Category have already been advertised vide Advertisement No. 286 of 2015. The remaining 13 posts are to be advertised in the next recruitment/advertisement.

The aforesaid affidavit dated 01.09.2015 relating to the selection of Sub-Station Attendants, is supplemented by another affidavit dated 14.05.2016, wherein it is averred that the Board of Directors has taken a decision to shift the candidates having higher marks from the Reserved Categories to the General Categories as per their secured merit. Consequently, it is submitted that five of the petitioners, namely, Gurdial Singh, Nirmal Singh, Satinder Singh, Rajinder Pal Singh and Harjeet Singh have fallen within the zone of appointment. The Para 4 and 5 of the affidavit dated 14.05.2015 reads as under:-

“ 4) That as per the decision of BOD in the above agenda total 31 no.'s candidates is being considered for appointment for the post of SSA i.e. 16 no. from SC category, 11 no's BC category, 3 no's from EXSM (D) & 1 no. from PHP category. Among the 31, only 5 no's Petitioners from different writ petitions come in the merit zone and are being adjusted. The name of the petitioners/CWPs are as under:-

- | | |
|--------------------------------------|--------------------------|
| 1. Gurdial Singh s/o Sh. Sadha Singh | CWP: 11243/12 |
| 2. Nirmal Singh s/o Sh. Jeet Singh | CWP: 10347/12 & 21760/10 |
| 3. Satinder Singh s/o Sh. Ajit Singh | CWP: 10347/12 |

4. Rajinder Pal Singh s/o Sh. Kashmir Singh CWP: 10347/12 & 21760/10

5. Harpreet Singh s/o Sh. Chand Singh CWP: 10347/12

5) That by allowing the benefit of By Virtue to the SC/BC category candidates resultantly 10 no's General category candidates already appointed/in service who become surplus are being adjusted at next roster points of General category. It is further mention the roster points so arise for SC, BC, EXSM & PHP has already included in 31 no's candidates. ”

At the time of hearing, learned Counsel for the respondent-PSPCL states that the name of Harpreet Singh s/o Sh. Chand Singh at Sr. No.5 of the aforesaid para 4 is actual Harjit Singh s/o Sh. Chand Singh. He further states that out of the aforesaid five persons, Gurdial Singh, Nirmal Singh and Harjit Singh have been issued appointment letters and the remaining two i.e. Satinder Singh and Rajinder Pal Singh have not come forward for scrutiny of their documents. He, however, assures the Court that one more opportunity under proper intimation would be afforded to the aforesaid two persons for coming present for scrutiny of documents and issuance of appointment letters. That apart, he submits that eight more persons belonging to the Reserved Categories of SC/BC/Physically Handicapped/Ex-Servicemen have since been offered appointment on account of shifting of Reserved Categories to the General Category. He thus submits that the necessary relief with regard to the aforesaid issue has since been extended.

(B) For the post of Junior Engineer (Electrical)

An affidavit dated 27.08.2015 of the Deputy Secretary, Recruitment, PSPCL has been filed pursuant to the directions passed by this Court. In the affidavit, it is categorically submitted that there is no backlog of vacancies of the Scheduled Castes Category in the direct recruitment quota.

However, at the time of arguments, Ms. Alka Chatrath, Advocate for the

petitioner(s) asserts that in the information supplied under the R.T.I. Act by the Office of Deputy Chief Engineer/Personnel, Establishment Section (T), PSPCL, Patiala vide memo No.3145/RTI-318 dated 12.03.2013, it is admitted that there is a backlog of 124 vacancies in the cadre of Junior Engineer (Electrical) in the quota meant for direct recruitment.

In response, learned Counsel for the respondent-PSPCL states that in Para 2 of the affidavit dated 27.08.2015, it is categorically asserted that there is no backlog in the Scheduled Castes Category in the direct recruitment quota, however, the Department shall once again undertake the said exercise and take action in accordance with law. He further submits that in the light of no decision regarding filling up of any backlog vacancy mentioned in the advertisement dated 12.01.2009, no vacancy can now be assigned in the said advertisement, however, in the light of the subsequent decision dated 08.04.2010, the backlog of vacancies in the Scheduled Castes Category, if any, will be taken into account during the next recruitment. For ready reference, Para Nos. 2 and 3 of the affidavit dated 27.08.2015 are reproduced as under:-

“ 2. It is submitted that there was no any backlog of SC category in direct recruitment. A Speaking Order No.1/CWP 819/2010 dt. 6.5.2010 was also issued to this effect. Annexure - “A”.

3. Regarding backlog, it is mentioned that a decision was taken on Memorandum No.SPl. 1 dt. 8.4.2010 Annexure- “B” in the meeting of Whole Time Members of PSEB now PSPCL that

“ As no post in respect of any backlog has been mentioned in the advertisement, the same, if any, will be taken into account during the next recruitment.”

Learned Counsel for PSPCL further submits that 12 candidates i.e. 06 belonging to the Scheduled Castes and 06 belonging to the Backward Classes, who have obtained higher marks than the last candidate selected from the General Category have already been treated in the General Category as per

their own merit and 222 candidates have been given appointments against 225 advertised posts, since three posts belonging to the Physically Handicapped Category have remained unfilled due to non-availability of the qualified persons in that Category.

After hearing learned Counsel for the parties and keeping in view the aforesaid factual position and action taken by the PSPCL, this Court is of the opinion that no further adjudication is required qua the selection for the posts of Junior Engineers (Electrical) and Sub-Station Attendants made pursuant to the advertisement dated 12.01.2009 (**P-2**). Even the respondents, who were ousted from the zone of appointment on recasting of the merit list of the General Category have since been accommodated against the vacancies of the General Category available after the date of issuance of the advertisement, in the light of they having worked for more than 5-6 years.

In law, it cannot be disputed that the respondent-PSPCL is under a constitutional obligation to clear the backlog of the Reserved Categories as per the provisions of the 2006 Act without undue delay, lest it prejudices candidates belonging to the Reserved Categories on their being rendered ineligible due to becoming overage. It is hoped that the respondents would identify the backlog of vacancies on each cadre posts on a year to year basis and maintain proper records and take action in accordance with law for clearance of backlog of vacancies.

With the aforesaid observations, the present petitions are disposed of.

November 29, 2016

Gagan

**(JASWANT SINGH)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>