

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5956 of 2011
Reserved on: 27.05.2016
Decided on :08.07.2016

Davinder Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.Surinder Thakur, Advocate, for the petitioner.

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

G.S. Sandhawalia , J.

Petitioner seeks appointment to the post of Motor Mechanic Instructor on the strength of the fact that he was first in the waiting list in the Scheduled Caste category and posts were lying vacant in the SC (Balmiki/Majhbi Sikh/Ex.Serviceman Balmiki/Mazbi Sikh) category. Reliance has been placed upon the advertisement (Annexure P1) and Section 4 (5) of the Punjab Scheduled Caste & Backward Classes (Reservation in Service) Act, 2006 (for short, the 'Act').

The pleaded case of the petitioner is that as per advertisement (Annexure P1) issued by the Punjab Technical Education & Industrial Training Department, Punjab (Industrial Training Wing), there were 3 posts of Scheduled Caste candidates, out of which, one was to be filled up from the SC Ex. Serviceman category. He had applied against the said post and had secured 74.30 marks and was 5th in the merit-list. The candidate at Sr.No.1 of the merit list did not join and the candidate at Sr.No.2 was appointed on the strength of his merit in the General Category. The 3rd and 4th candidates were given appointment

letters and the the petitioner, thus, was at Sr.No.1 in the waiting list. In the category of SC (Balmiki/Majbi Sikh/Ex.Serviceman Balmiki/Mazbi Sikh), 3 posts were reserved but there was no eligible candidate and the posts were lying vacant. Resultantly, the petitioner had served a legal notice dated 20.01.2011 (Annexure P4) wherein he prayed for conversion of the vacant posts to the SC Category and for appointment. Resultantly, the present writ petition has been filed.

Counsel for the petitioner has placed reliance upon Section 4(5) of the Act, which reads as under:

“4(5). Fifty percent of the vacancies of the quota reserved for scheduled castes in direct recruitment, shall be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes.”

It is further contended that similar provision was there in Clause 19 of the advertisement also and resultantly, on the non-availability of the candidates in the category of SC (Balmiki/Mazhbi Sikhs), appointment is sought.

State, in its reply, admitted the fact that the petitioner was at Sr.No.5 of the merit-list and in view of the fact that the candidates at Sr.Nos.3 & 4 had been appointed in the SC category, he was at Sr.No.1 in the wait list. The 3rd post for the SC category was reserved for SC Ex. Serviceman and not for Scheduled Castes candidates and therefore, he could not be considered for the reserved category of post which he did not belong. The petitioner's case against Balmiki/Mazhbi Sikh category could only be considered in due course of time, after following the whole process.

Similarly, respondent No.2, Department of Welfare took the same plea that the candidates belonging to SC category posts cannot be

considered for the post which were reserved for Ex. Serviceman. The candidate of certain category cannot be considered for the posts of other categories, of which, he does not belong.

In the above facts and circumstances, it would be clear that the petitioner was in the waiting list and there was no vacancy available in his category. The provisions of Section 4(5) of the Act, as shown above, gives preferential rights to the Mazhbi & Balmikis to the extent of 50%. It nowhere provides that if the seats of reserved Balmiki and Majhbi Sikhs are vacant, then the same are to be filled up from the other Scheduled Castes candidates. The provisions of the Act only give a preferential right to the M & B categories. Therefore, the petitioner can seek no assistance from the same and claim any right, as such, against the seats which are going vacant of a different category. The said seats will necessarily have to be carried forward, as per Section 6(1) of the Act and cannot be, as such, filled up from the other categories. The same reads as under:

“6 (1) The backlog or carry forward reserved vacancies for Scheduled Castes shall be treated as a separate class of vacancies and the ceiling of fifty percent on filling up these reserved vacancies in succeeding year or years, shall not apply to such class of vacancies.”

Even otherwise, it is settled principle of law that the petitioner only has a right of consideration and no absolute right of appointment. Reliance can be placed upon the Apex Court judgment in **Shankarsan Dash Vs. Union of India 1991 (3) SCC 47** wherein it has been held that candidate whose name appears in the merit list, cannot have an indefeasible right of appointment and the State is under no legal duty to fill up all the vacancies. However, the only exception was that the State should not act in an arbitrary

manner. Relevant observation reads as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in [State of Haryana v. Subhash Chander Marwaha and Others](#), (1974) 1 SCR 165, [Miss Neelima Shangla v. State of Haryana and Others](#), (1986) 4 SCC 268, or [Jitendra Kumar and Others v. State of Punjab and Others](#), (1985) 1 SCR 899.”

Resultantly, finding no merit in the present writ petition, the same is, hereby, dismissed.

JULY 8th, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE