

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 6424 of 2011
Date of decision: 22.4.2016**

Harsimrat Kaur & ors.

... Petitioners

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. TS Chauhan, Advocate,
for the petitioners.

Mr. Vaibhav Sharma, D.A.G., Punjab.

None for respondents No.8 & 9.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Having heard Mr. Chauhan and Mr. Sharma for the respective parties at some length and having paid due regard to the prayers made in this petition, this Court is of the view that the petition can be disposed of with a direction to the State Government to faithfully adhere to its reservation policy issued through policy instructions promulgated from time to time and also to comply with the provisions of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (for brevity 'the Act'). These rights available to the reserved category of Scheduled Caste employees are valuable and constitutionally protected which cannot be bartered away by the State or alienated being protected by Article 16(4) and 16(4A) of the Constitution of India and settled since Indira Sawhney Vs. Union of India, AIR 1993

SC 477 holding that rules of reservation have to be read into service rules

even though the rule may be silent on concessions and relaxations afforded to the members of the Scheduled Castes for appointments and promotions to higher posts subject to limitations in M.Nagaraj & others v. Union of India & others, (2006) 8 SCC 212. No doubt, a running 100 point roster has to be maintained as explained in R.K.Sabharwal & others Vs. State of Punjab & others, AIR 1995 SC 1371; (1995) 2 SCC 745 but that is till the prescribed percentage of reservation is achieved in the cadre. Thereafter the running account will stop and the replacement theory would takeover and occupy the field. Meaning thereby, the roster points will no longer serve any useful purpose since the object for which they were earmarked will be satisfied when the prescribed percentage is complete. Accordingly SC candidate will replace SC candidate when vacancy arises and likewise the general category.

2. The issue arising from Public Notice has arisen in this case due to the Punjab Government taking over schools which were once administered by Local Bodies/Panchayat Samitis, Improvement Trusts and Municipalities to be administered by the Department of Education, Punjab. As a result, the petitioners have transited from non-government service in local bodies to Government service and have acquired status protected by Article 311 of the Constitution on absorption in the Education Department, Punjab from where they will henceforth draw their rights to seniority etc.

3. Suffice it to say with these directions issued and reminders given the interest of the petitioners and other members of the Scheduled Castes will be adequately protected and consequently, there would be no

need for this Court to examine the Public Notice dated March 19, 2011 (Annex P-4), which is alleged by the petitioners to violate the reservation policy. The Public Notice advertised posts of ETT teachers lying vacant in schools run under the control of the Rural Development and Panchayat Department, Punjab. Through the notice the teachers working in the schools run by Zila Parishads under the Rural Development and Panchayat Department were given liberty to appear in person before the Chairman/Chairperson of the District Committees according to lists available on the official website of the Punjab Government maintained in the office of Director General, School Education, Punjab. The impugned Public Notice does no injury to the petitioners when it does not speak of reservation while it need not have made explicit since rules of reservation have to be read into the rules of service. There is no doubt that in Public Notice vacancies are not advertised quota-wise/reservation wise. This may be for one or the other reason. The seniority list mentioned in the impugned Public Notice for the Districts Ropar and Mohali (Annex P-1 & P-2) are in fact only selection list of *inter se* merit determined by the recruiting agency and fresh seniority list has been prepared by giving benefit of reservation to the reserved categories. No specific grievance or error/s has or have been pointed out by the petitioners from the select list sufficient to invite judicial review in the matter by intervention. In case, the petitioners are able to point out any mistakes in the selection list or deviation from the roster then they are free to bring it to the notice of the competent authority who will take up such grievances and decide them in accordance with law by passing speaking orders. In case such requests

are made by persons aggrieved for affording personal hearing before speaking orders are passed, the same shall be granted in an effective manner.

4. Before parting a clarification is required to be issued. The State Government would examine the running roster register of the petitioners while they served in Zila Parishad Schools and see whether the prescribed percentages were completed at the earmarked reserve slots at the reserved roster points laid down in the 100 point roster and in accordance with the provisions of the Act and the judicial precedents prevailing as law and thus to examine whether the instructions survive after coming into force of the Act. These are matters which would deserve scrupulous attention of the authorities so that the rights of either parties are not eclipsed by one or the other and each gets his rightful due.

5. With these observations and directions, the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

22.4.2016
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