

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

Date of decision: 17.03.2016

CWP No.3443 of 2016

Usha Kumari & others

...Petitioners

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jasbir Singh, Advocate,
for the petitioners.

Mr. D.S.Rawat, Advocate,
for caveator-respondents No.6, 10, 18, 24 & 30.

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

RAJIV NARAIN RAINA, J.

1. The petitioners, who are members of the Scheduled Castes, are working as Nursing Sisters in the Department of Health & Family Welfare, Punjab. They are aggrieved by promotion of General category candidates to the higher post of Matrons.

2. The grievance is that the seniority of the petitioners has been ignored by tampering with the seniority list dated 05.11.2015 and by ignoring the seniority list dated 08.10.2010 issued by the Department. They rely on instructions issued by the Department of Welfare on 05.01.2016 to press their case for promotion by setting aside the orders of promotion of the respondents

and promoting them instead. The promoted General category candidates are arrayed as respondents.

3. A perusal of the paper-book reveals that the seniority list dated 08.10.2008 relied on by the petitioners is a provisional seniority list of the Nursing Sisters working in the State of Punjab. The first petitioner was placed at Sr.No.198 of the provisional seniority list. All Nursing Sisters up to Sr.No.196 have retired from service. Therefore, the first petitioner now stands at Sr.No.2/3 of the said list. The law governing rule of reservation is by now well established in a series of important decisions delivered by the Supreme Court starting with Indira Sawhney Vs. Union of India, AIR 1993 SC 477 and thereafter in R.K.Sabharwal & others Vs. State of Punjab & others, AIR 1995 SC 1371; (1995) 2 SCC 745; Ajit Singh Janjua & others Vs. State of Punjab & others, AIR 1996 SC 1189; JT 1996 (2) SC 727 (*Ajit Singh-1*); Ajit Singh Janjua & others Vs. State of Punjab & others, (1999) 7 SCC 209 (*Ajit Singh-2*); and M. Nagaraj & others Vs. Union of India & others, (2006) 8 SCC 212. The 85th amendment of the Constitution has been upheld by the Supreme Court but with a rider that continued promotion of reserved category candidates would be dependent on collection of quantifiable data by the States to justify continued reservation in promotion. The Punjab Government has circulated instructions on the subject matter issued on 10.10.2014 (Annex P-5) in the Department of Personnel stating therein that roster points are not seniority points. This legal position is beyond cavil and requires nothing more to be added in this order. The Punjab Government issued a seniority list of Nursing Sisters on 30th September, 2014, where the positions of the petitioners have been down-graded making way for General category candidates, whose seniority has been ignored by application of the catch-up rule devised by the Supreme Court in *Ajit Singh-*

2 case to create an equitable balance of the competing interests among the reserved and non-reserved categories of government employees.

4. Point of unreasonable discrimination is attributed to and made reference of unfair dealing in passing the order dated 03.12.2016 by the Principal Secretary, Government of Punjab, Health and Family Welfare Department promoting Medical Officers as Senior Medical Officers by taking into consideration the 85th amendment of the Constitution. These promotions involved 25 Officers some of whom are on the top of the list at Sr.Nos.1 to 5 all of whom are Scheduled Caste category candidates and have been promoted on carry forward principle against reserved vacancies. If this was done why it was not duplicated in the case of the petitioners who they say are similarly positioned.

5. It is complained that the State Government has been giving promotions in pursuance of the 85th amendment and instructions issued by the Department in favour of the Medical Officers. However, on 03.12.2015, the Principal Secretary, Department of Personnel, Government of Punjab issued circular letter advising departments that promotions in pursuance of the notification dated 10.10.2014 may be withheld for the time being. The letter dated 04.12.2015 (Annex P-8) issued by the Department of Personnel, Government of Punjab is on the subject matter of treating the roster point as seniority point and for preparation of the interim seniority list in the cadre of Personnel Assistants working in the office of Financial Commissioner, Punjab Civil Secretariat, Chandigarh. The Superintendent, Revenue and Rehabilitation Department (Financial Commissioner Office, Secretariat) has been informed by this letter that issue regarding instructions dated 15.12.2005 is under consideration of Government.

6. The petitioners rely on a letter of the Department of Welfare, Government of Punjab (Reservation Cell) on the question of implementation of the 85th Constitutional amendment by the Punjab Government aiming to withdraw the instructions dated 10.10.2014 issued by the Department of Personnel. A reading of the letter dated 05.01.2016 (Annex P-9) discloses that it is the result of a meeting held on 19.12.2015 with the representatives of the SC/BC employees Front with the Chief Minister, Punjab. The Front complained that due to the letter dated 10.10.2014 many Departments have started recasting the seniority in favour of General category employees and resultantly making reversions of SC employees which was causing heartburn. The petitioners ascribed this letter to be a notification, but it does not to the mind of this Court come close to it. It is only a request of the Secretary Welfare, Punjab, to the State Government that a detailed notification with reference to the 85th amendment may be considered at the earliest to avoid confusion among the Departments while determining seniority of the employees in the light of the instructions issued by the Personnel Department on 15.12.2005. Though the Welfare Department is the protector of the rights of the classes of employees which it represents, but it is only a recommendatory department and its word is not final as the State speaks through notifications in service matters issued by the Personnel Department of the State Government, as the rules of business require. Therefore, the premises on which petition has been brought to Court is not a correct one. It is not a final decision expressed by the Welfare Department or the State Government. The result of the exercise which is required to be extensively carried out after the ruling of the Constitution Bench in *M. Nagaraj's case* is not yet known or as to its current status. No conclusive data has been referred to in the petition that such an exercise has been conducted and concluded to justify continued

reservation in promotion even though 77th and 85th amendments have been upheld by the Supreme Court.

7. Since roster points are no longer seniority points, the reserved category candidates as at present have no fundamental right to promotion based on accelerated promotion in the lower cadre, which will not bring to them the desired relief of accelerated seniority gained by roster point promotion and rule of reservation.

8. Learned counsel for the petitioners refers to the earlier writ petition filed by Usha Kumari i.e. petitioner No.1 in CWP No.23863 of 2015 decided on 09.12.2015, which was dismissed as pre-mature since the promotions of the General category candidates have not been made till then. The Court had observed that it would be always open to the petitioner to challenge the promotions as and when made after impleading the necessary parties. That is the background in which the present petition has been filed.

9. Having heard the learned counsel for the parties at length this Court is of opinion that the petitioners have no case against the promotions of the General category candidates in view of the legal position obtaining after *Ajit Singh-2* and *M. Nagaraj cases* and for that reason I would dismiss this petition. But there is another reason on account of which interference is not warranted which is for the reason that the petitioners have suppressed the fact that Usha Kumari & others had approached this Court earlier in CWP No.1841 of 2015 titled 'Usha Kumari & others Vs. State of Punjab & another', which was decided on 05.02.2015 by me after hearing both the petitioners and the caveators. I had passed the following order in the case of some of the petitioners who had approached on the same subject matter and the cause of action:

“Heard the petitioner and the caveator.

Learned counsel for the caveator relies on a decision of this Court in CWP No.7699 of 2013 rendered on 9.1.2014 in Nirmal Singh & others v. State of Punjab and others and the consequential order passed in review application No.249 of 2014 on 18.7.2014, and, therefore, no cause of interference is made out as the Government of Punjab has not carried out any exercise so far to gather quantifiable data to justify the test laid down in M. Nagaraj v. Union of India; (2006) 8 SCC 212. In the absence of that exercise, it is not possible to interfere in this case when the admitted position is that the petitioners at level I were junior to the general category candidates, including the caveator. The accelerated promotion to level II [Nursing Sisters] will not bring the fruit of accelerated seniority for further promotional posts since in the absence of exercise carried out in M. Nagaraj's case [supra] the principle of "catch up" enunciated in Ajit Singh Janjua and others v. State of Punjab and others, 1999 [4] RSJ 211 would apply and the general category candidates would regain their earlier positions to be reflected in promotional posts.

In case, the final seniority is challenged on the principle of reservation, then the petitioner may have no case. However, if there are errors with respect to two separate categories prejudicing each other and putting each other to disadvantage, then it would be open to the petitioners to make a representation to the Government for correction of the seniority list. In case, such an application is filed, this Court has no doubt that it would be addressed by the Government and the interest of both sides would be balanced out on the scales of justice. In case, any objections have been filed to the final seniority list found at page 45 and onwards of the paper-book, then those would also need to be addressed, in case rules provide a decision on objections received after the seniority list is finalised. However, challenge to the seniority list based on rule or reservation is negated at this stage.

The petition is dismissed."

10. This order has been withheld by the petitioner. Confronted with this order, and the revelation I asked the learned counsel for the petitioners to

point out from the petition, whether the passing of the aforementioned order has been mentioned in the formal paragraph where the petitioner has to make a declaration whether any similar writ petition was filed before this Court or in the Supreme Court. Sorry to say, Para.20 of the present petition suppresses and withholds such relevant fact. The Court has further examined the prayers made in that petition and found that the prayer was made therein for quashing the seniority list of Nursing Sisters as on 30.09.2014 (Annex P-6) alleging that it was illegal, arbitrary, full of apparent errors and not fixed as per the law and Rules. A prayer was also made to quash the order dated 16.01.2015 (Annex P-7), whereby respondent No.2 proposed to make promotions to the post of Matron. There was further prayer for quashing the order impugned dated 08.01.2015 (Annex P-5), whereby the objections filed by petitioner No.1 against the provisional seniority list were rejected by respondent No.2. A restraint order was also sought against the respondents prohibiting them from making promotions to the post of Matron on the basis of the same seniority list of Nursing Sisters. It appears that the petition was not brought to the notice of the Court in the second petition, referred to above, when brother G.S.Sandhawalia, J. passed the order dated 09.12.2015, referred to above. The vital information was withheld from Court an order obtained granting liberty to approach Court again if promotions were made.

11. The Court has also taken the trouble of asking learned counsel for the petitioners to produce the paper-book in CWP No.23863 of 2015 to acquaint itself with the pleadings and the documents attached thereto. Even there, there is no mention of the previous writ petition. This act of the petitioners in suppressing and withholding material information amounts to interference in the course of justice and in addition to the foregoing reasons I would dismiss this petition on this count as well with costs quantified to Rs.1

lac on all the petitioners to be borne equally by them and the amount directed to be paid to the Mediation & Conciliation Centre annexed to this Court within two months from supply of this order, failing which costs will become recoverable by the Centre against the petitioners through the due process of law.

12. Accordingly, the petition to stand dismissed.

17.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE