

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5055 of 2015 (O&M)
Decided on : 05.04.2016

Harjinder Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.G.S.Guri, Advocate, for the petitioner.

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

Petitioner seeks consideration for appointment as a Mining Officer, in pursuance of the advertisement No.5 dated 07.10.2013 (Annexure P1), against the reserved post meant for Backward Category. The relief is sought on the ground that respondent No.4-Vipan Kumar has secured 218.93 marks and is ranked 3rd in the combined merit list and has obtained higher marks than the last candidate in the General Category. Resultantly, prayer is made that he should be shifted to the General Category and the petitioner be adjusted, having secured 181.23 marks and ranked 9th in the combined merit list (Annexure P3).

It is the case of the petitioner that as per the advertisement, 8 posts of Mining Officers were advertised. Out of the said posts, one post was reserved for Backward Class, Punjab. The combined merit list was prepared and the petitioner got 9th rank. The candidates at Sr.Nos. 1 & 2, were appointed against the posts of Assistant Geologists, which had also been advertised

as per the advertisement dated 23.12.2013 and the written test was the same. Resultantly, Vipin Kumar came at top of the list and the person at Sr.No.4, Tandeep Singh Dhaliwal, refused to join. Similarly, the person at Sr.No.5, Gagan, who also belonged to Backward Caste Category, had 213.22 marks, i.e., more than the General Category candidate and joined against the same. However, respondent No.4 was not moved to the General Category. Resultantly, the present writ petition was filed.

On 24.07.2015, the following order was passed:

“Reply by way of affidavit of Under Secretary, Punjab Public Service Commission, Patiala, on behalf of respondent No.2, has been filed in court today, and the same is taken on record. Copy supplied to the learned counsel for the petitioner.

The petitioner competed for selection against the post of Mining Officer as a backward class category candidate. The combined merit-list(Annexure P-3) prepared by the Punjab Public Service Commission reveals that the candidates at Sr.Nos.1 and 2 i.e. Paras Mahajan and Salil Mahajan were offered appointments against two posts that were earmarked for the general category candidates. However, they did not chose to join and as a result, the said two posts were offered to candidates at Sr.Nos.4 and 5 i.e. Tandeep Singh Dhaliwal and Gagan. Candidate at Sr.No.3 i.e. Vipin Kumar had applied as a backward class candidate and was appointed against one post that was reserved in the said category. As even Tandeep Singh Dhaliwal did not join one post in the general category continues to remain vacant.

Learned counsel for the petitioner submits that since Vipin Kumar, who had been appointed against a

post reserved for a backward class category candidate had higher merit than the last candidate appointed in the general category, thus, he needs to be shifted/adjusted against one vacant post in the general category. And as a result, claim of the petitioner would mature for consideration against one post that is reserved in the backward class category.

Learned State Counsel points out that a formal clarification in this regard, as to whether, at this stage, Vipin Kumar, appointed against a reserved post in backward class category, could still be adjusted/shifted against a vacant post in the general category, has been sought from the Social Security & Welfare Department and the response is awaited, which is expected to be received within a period of four weeks from today. Short accommodation is prayed for.

Adjourned to 27.08.2015.”

In the written statement filed, thereafter, the stand taken is that the reserved point meant for the Backward Class category stands consumed and therefore, respondent No.4 cannot be shifted to the vacant post, meant for the General Category. Thus, the categorical stand is that respondent No.4 cannot be shifted to the vacant post, meant for the General Category. Relevant part of the written statement reads as under:

“It is pertinent to mention here that on joining the post as Mining Officer by Vipin Kumar (Respondent no.4), the reserved point meant for B.C. category in the roster, stands consumed and as such he cannot be shifted on another vacant post meant for General Category. It is submitted that the next candidate namely Tandeep Singh Dhaliwal who ranked at No.4 in the combined merit list was offered appointment as Mining Officer, but he refused to join due to personal reasons.”

The said reply, in the considered opinion of this Court, is totally unjustified. Once Vipin Kumar was higher in merit than the Backward Class candidate, he should be considered in the General Category and could not occupy the post of the Reserved Category. The law already stands settled on this issue and he is to be shifted to the vacant post, which is already available. In **Harinder Pal Singh Vs. State of Punjab & others 2015 (1) RSJ 725**, while referring to the judgment of the Apex Court in **Indira Sawhney Vs. Union of India AIR 1993 SC 477**, **R.K.Sabharwal Vs. State of Punjab (1997) 6 SCC 538**, **Ashok Kumar Gupta Vs. State of UP (1997) 5 SCC 201**, it has been held so. Relevant portion of the judgment reads as under:

“It is the contention of Mr. Rajvinder Singh Bains, the learned counsel appearing for the petitioner, that one Varun Kumar in the R&O category secured higher merit points than Navtej Singh- the last general category candidate selected and appointed. By applying the rule of reservation, he submits that Varun Kumar had to be considered first in the general category and accordingly offered appointment on his open merit position. He could not be counted towards the reserved category posts. As a result of Varun Kumar’s reallocation to the general category, he would be deemed to vacate one post in the Scheduled Caste R&O Category to be filled by the next available person in the reserved category. In this manner, the petitioner would shift from merit position no.4 in the Scheduled Caste R&O Category to merit position no.3 which would bring him within the zone of consideration for appointment as a Junior Engineer (Mechanical) against the 3 vacancies advertised and

falling to the share of R&O. There is merit in the submission of Mr. Bains which is in line with the reservation law that the reserved quota has to be maintained and filled up by available candidates in the reserved category without counting such reserved category candidates who make it on merit in the open general category.”

Accordingly, the present writ petition is allowed. Official respondents are directed to shift respondent No.4 to the vacant post of Mining Officer and offer the vacant post of the Mining Officer, meant for Backward Class Category, to the petitioner, within a period of 2 months, from the receipt of the certified copy of this order. The petitioner will also be entitled for notional appointment from the date similarly situated persons joined service.

Writ petition, accordingly, stands allowed, in the above-said terms, subject to costs of Rs.20,000/-, on account of the unjustified stand taken by the respondents No.1 to 3, forcing the petitioner to come to this Court.

APRIL 5, 2016
sailsh

(G.S. SANDHAWALIA)
JUDGE