

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 5275 of 1994 (O&M)

Reserved on : April 28, 2017

Date of Decision: May 03, 2017

Rajender Singh Godia

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Bhavpreet Singh Dhatt, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana and
Ms. Shruti Jain, AAG, Haryana.

P.B. Bajanthri, J.

1.. In this writ petition, petitioner has sought for the following
relief:-

“(i) xxx xxx

(ii) a writ of Mandamus be issued directing the
respondents to appoint the petitioner to the post of
Inspector (Haryana Police) on the basis / premises that he
has been selected at Sr. No.1 in the merit from amongst the
Backward Class candidates in pursuance of the selection
process initiated by the Subordinate Services Selection
Board, Haryana;

(iii) the respondents be directed to allow all the

consequential benefits to the petitioner, including the Roster point in the cadre of Inspectors (Haryana Police) consequent upon his appointment from amongst the candidates belonging to the category of Backward classes, along with all other benefits in the nature of pay, seniority and promotion etc. as granted to persons in the seniority list immediately at a position below the one obtained / deserved by the petitioner;

(iv) the respondents be further directed to consider the claim of the petitioner as a Backward Class candidate and not as a 'general category' candidate in accordance with the instructions issued by the government from time to time;

(v) it is further prayed that during the pendency of the instant writ petition, the respondents be restrained from filling up any posts of Inspector (Haryana Police) or in the alternative a post of kept reserved for the petitioner;"

2. Brief facts of the case are as follows:-

On 22.01.1988 the Subordinate Services Selection Board notified six posts of Inspectors in the Haryana Police Department, State of Haryana. Thereafter, on 07.07.1988 number of posts of Inspectors of Police was increased to 8 posts. While advertising 06 posts of Inspectors of Police, 01 post was reserved for Scheduled Caste category and 02 for ESM, rest of 03 posts for General category. When it was enhanced to fill up 8 posts, 5 posts were reserved for reserved category, whereas 3 posts were reserved for general category. The petitioner was a candidate for the recruitment. At

the time of finalization of the select list, the official respondents proceed to fill up 19 posts. Some of the candidates including petitioner feeling aggrieved by the selection of 19 candidates which were in excess to the notified vacancy, filed civil writ petition nos. 5123 and 6134 of 1991. This Court was pleased to set aside the selection to the extent of filling up of excess than the notified vacancies. Matter was taken up before the Supreme Court. Supreme Court affirmed the order of this Court passed in CWP No. 5123 of 1991. Pursuant to the judicial order, the official respondents proceeded to select the candidates with reference to written test result i.e. inviting candidates for physical test in the month of October, 1993. Petitioner was permitted to participate in the process of physical test as well as interview by virtue of interim order passed in CWP No. 12632 of 1993 filed by the petitioner. Said writ petition was withdrawn by the petitioner on 28.02.1994 with permission to file a fresh writ petition on the same cause of action. Thus, present petition has been filed.

3. Learned counsel for the petitioner contended that petitioner belongs to Backward community and one of the criteria for selection and appointment to the post of Inspector is that general candidates are required to obtain 50% marks and above insofar as Scheduled Caste and Backward Class candidates are concerned cut of marks is 40% and above. If cut of percentage 40% and above is taken into consideration in respect of the petitioner's candidature that he belongs to backward community, in that event petitioner is entitled for selection and appointment. The official respondents have not notified and reserved post for backward classes had they notified in that event the petitioner would have been successful in selection and appointment against one of the backward class post / vacancy.

Petitioner had completed all the tests earmarked for the post of Police Inspector as well as he was called for interview based on his merit by virtue of interim order in CWP No. 12632 of 1993. The official respondents instead of selection of 8 candidates they have selected 19 persons which were the subject matter in CWP No. 6134 of 1991 and the selection and appointment were set aside while directing the official respondents to make a fresh selection for 8 posts on the basis of written test already held within a period of three months. Feeling aggrieved by the decision of this Court, S.L.P. Nos. 1263-64 of 1993 were filed in which the Supreme Court upheld the decision of this Court dated 31.10.1991 passed in CWP No. 5123 of 1991 on 25.08.1993. The sole contention of the petitioner is that the respondents while notifying the vacancies to fill up Police Inspector to the extent of 8 vacancies, they have not reserved a single vacancy for backward classes. If one of the vacancy out of 8 notified vacancies is reserved for backward class, in that event petitioner is entitled for selection and appointment under backward class category as he stood more merited among the backward classes if criteria of 40% and above is taken into consideration. Thus, the respondents have failed to notify backward class vacancies when they have notified vacancies in the month of January 1988 read with corrigendum in the month of July, 1988. Hence, petitioner is entitled for selection and appointment against one of the backward class category vacancy of Police Inspector.

4. Per contra, learned State counsel while resisting the petitioner's claim submitted that petitioner has surrendered his right for the selection and appointment to the post of Police Inspector pursuant to notification/advertisement dated 22.01.1988 read with 07.07.1988. Having

participated in the process of selection and appointment from 1988 to 1993, petitioner cannot turn around and contend that the very initiation of selection process is not in accordance with law to the extent that not even a single post has been reserved for backward class with reference to the policy decision of the State Government for reserving certain posts for backward class, is not tenable. Petitioner was not allowed to participate in the process of selection after decision of the Supreme Court as he was not within the zone of consideration. Consequently, petitioner approached this Court in CWP No. 12632 of 1993 and obtained an interim order to participate in the process of physical test and interview. During pendency of that writ petition, he had withdrawn the same on 28.02.1994 with permission to file a fresh writ petition on the same cause of action. Thus, present petition has been filed. In the present petition so also in CWP No. 12632 of 1993, petitioner has failed to challenge the notification/advertisement issued in the month of January, 1988 read with July, 1988 to the extent of notifying vacancies and classification of reservation. In the absence of challenge to the same grievance of the petitioner is not maintainable. That apart petitioner is estopped in questioning the classification of reserved vacancies at this distance of time and so also in the absence of challenge to the notification/advertisement. Thus, petitioner has not made out a case so as to seek writ of mandamus sought in the present writ petition.

5. Heard learned counsel for the parties.

6. Grievance of the petitioner is hypothetical for the reasons that in the month of January 1988 read with July 1988, the official respondents have notified to fill up 8 vacancies of Police Inspectors in which 5 posts

were reserved for Scheduled Castes and ESM categories. The petitioner was very much aware that not even a single backward class post was reserved and notified, therefore, petitioner had cause of action in the year 1988 as and when posts were notified while classifying the reservation. In the absence of challenge to the notification cited supra, petitioner cannot seek for writ of mandamus merely on the score that petitioner is backward class candidate and he fulfills the criteria scoring 40% and above, if petitioner's name is considered under the backward class, he would stand at Sr. No.1. Petitioner's grievance could have been considered had he challenged the notification relating to filling up of 8 posts of Police Inspectors in the State of Haryana and if such notification is set aside and if there is a direction for re-notifying the vacancies by re-classifying the reservation and in that event if official respondents reserve one of the vacancy for backward class in that event only, petitioner is entitled for consideration of his name for a vacancy which is reserved for backward class. Even assuming that petitioner's grievance is to be entertained and a direction is given to the official respondents to consider the petitioner's name for selection and appointment to the post of Police Inspector under backward class category such a direction would be in violation of Articles 14 and 16 of the Constitution for the reasons that initial notification dated 22.01.1988 read with 07.07.1988 do not provide for filling up of vacancy earmarked for backward class. In the absence of notifying backward class vacancy, petitioner is not entitled for consideration of his name for selection and appointment to the post of Police Inspector against one of the backward class vacancy since candidates who belonged to backward class are not given opportunity to participate in the process of selection and appointment. In other words, backward class

candidates who are eligible for the posts would be denied the benefit of participation in the process of selection and appointment to the post of Police Inspector against a vacancy of backward class.

7. In view of these facts and circumstances, petitioner has not made out a case so as to seek relief sought in the present petition.

8. Accordingly, instant writ petition stands dismissed.

May 03, 2017

vkd

[P.B. Bajanthri]

Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes