

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

CWP No. 17512 of 2012 (O&M)

Date of decision: 10.05.2017

Nirmal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.J.S. Gill, Advocate,
for the petitioner.

Ms. Amarjit Kaur Khurana, Addl. A. G., Punjab.

Mr. Deepak Arora, Advocate,
for respondent No.4.

JAISHREE THAKUR, J. (ORAL)

1. The grievance of the petitioner (belonging to the ex-serviceman category) in the instant writ petition is with regard to not being appointed on the post of B.Ed. Teacher for Math and Science in the General Category despite having more marks than the last person admitted in the General Category.

2. In brief, facts are that the petitioner being eligible and having necessary qualification applied for the post of Math Teacher in the ex-serviceman category pursuant to an advertisement No. 1/2006 issued on 12.06.2006. He was awarded 135.04 marks. Since a person having lessor merit than him in the General Category was offered appointment ignoring the claim of the petitioner, the petitioner submitted a representation dated 20.09.2010 (Annexure P-7) that he should be shifted into the General Category. Furthermore, a legal notice dated 20.04.2011 (Annexure P-8) was also served upon the respondents, which was not decided by the

respondents. Aggrieved, the instant writ petition came to be filed.

3. The issue raised in this writ petition is whether the petitioner, of a reserved category, having a higher merit than the persons in the General Category, is entitled to be shifted in the General Category and offered appointment?

4. Law is well settled and no longer *res integra* on the question that a SC/ST/BC/reserved category candidate, if having higher merit than a General Category candidate, will be treated as a General Category candidate. Principle relating to horizontal reservation was explained by the Supreme Court in *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217 (para 812) as under : -

“In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

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“All reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations- what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in

favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. Ex-Servicemen if he belongs to SC Category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in faovur of Backward Class of citizens remains- and should remain-the same.'

5. During the course of hearing of the instant writ petition a query was put to the State as to whether there is any vacancy against which the petitioner can be adjusted in view of the fact that the petitioner, admittedly, had more marks than the last person i.e. respondent No.4 who had been given appointment in the General Category. Pursuant to the order passed by this Court on 27.03.2017, an additional affidavit has been filed by Karamjit Singh, Deputy Director (Recruitment), O/o Director Public Instructions (SE), Punjab, wherein it is mentioned that the record of the selection was scrutinized and 850 posts of Math Masters/ Mistresses were vacant as on 03.05.2017.

6. Admittedly, the petitioner though of a reserved category, had secured 135.04 marks which is higher than the last candidate in the General Category who had secured 134 marks only. Therefore, in view of the law laid down in ***Indira Sawhney vs. Union of India reported in AIR 1993 SC 477*** and subsequent judgment rendered in ***Rajesh Kumar Daria reported in AIR 2007 SC 3127***, the petitioner would be entitled to have been offered appointment in the General Category being higher in merit than the last selected candidate in General Category.

7. Therefore, the above noted writ petition is allowed by directing the respondents herein to offer appointment to the petitioner against the post of Math Master if otherwise eligible. Needless to say, the appointment should be offered to the petitioner as on the date when the persons of his batch were given appointment. The petitioner would also be allowed all other notional benefits other than salary for the period he has not worked. Let the needful be done within a period of four weeks from the date of receipt of certified copy of this order.

10.05.2017

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)

JUDGE

Yes.

No.