

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Judgement reserved on: 18.08.2017

Date of Decision: 15.12.2017

1. CWP No.12618 of 2014(O&M)
Parminder Singh & others --Petitioners
Versus
State of Punjab and others --Respondents
2. CWP No.13852 of 2014(O&M)
Gursewak Singh & others --Petitioners
Versus
State of Punjab and others --Respondents
3. CWP No.13398 of 2014(O&M)
Gagandeep Singh & others --Petitioners
Versus
State of Punjab and others --Respondents
4. CWP No.18867 of 2014(O&M)
Monika Rani & another --Petitioners
Versus
State of Punjab and others --Respondents
5. CWP No.15858 of 2014(O&M)
Usha Devi & another --Petitioners
Versus
State of Punjab and others --Respondents
6. CWP No.16587 of 2014(O&M)
Daljit Kaur --Petitioner
Versus
State of Punjab and others --Respondents
7. CWP No.12898 of 2014(O&M)
Pawandeep Singh & others --Petitioners
Versus
S.S.S. Board, Punjab and others --Respondents
8. CWP No.21262 of 2014(O&M)
Gurpreet Singh --Petitioner
Versus
S.S.S. Board, Punjab and others --Respondents

9. CWP No.15342 of 2014(O&M)

Harmeet Singh & others --Petitioners

Versus

State of Punjab and others --Respondents

10. CWP No.17787 of 2014(O&M)

Parwinder Singh & others --Petitioners

Versus

State of Punjab and others --Respondents

11. CWP No.15630 of 2014(O&M)

Satnam Singh --Petitioner

Versus

S.S.S. Board, Punjab and others --Respondents

12. CWP No.13176 of 2014(O&M)

Simarpreet Singh & others --Petitioners

Versus

State of Punjab and others --Respondents

13. CWP No.12749 of 2014(O&M)

Arunpreet Singh & others --Petitioners

Versus

State of Punjab and others --Respondents

14. CWP No.14971 of 2014(O&M)

Harvinder Singh & another --Petitioners

Versus

State of Punjab and others --Respondents

15. CWP No.13328 of 2014(O&M)

Baltej Singh & another --Petitioners

Versus

State of Punjab and others --Respondents

16. CWP No.10167 of 2015(O&M)

Rajni --Petitioner

Versus

State of Punjab and others --Respondents

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17. CWP No.13757 of 2015(O&M)

Vikram Kumar --Petitioner

Versus

State of Punjab and another --Respondents

18. CWP No.5919 of 2016(O&M)

Gurdev Ram --Petitioner

Versus

State of Punjab and another --Respondents

19. CWP No.16910 of 2016(O&M)

Gursewak Singh --Petitioner

Versus

State of Punjab and another --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. H.C. Arora, Advocate for the petitioner(s)
in CWP Nos. 12618 & 12749 of 2014 and 16910 of 2016
Mr. Prateek Mahajan, Advocate for petitioner no.10
(in CWP No. 13398 of 2014)
Mr. Puneet Gupta, Advocate for the petitioner(s)
in CWP No. 18867 of 2014.
Mr. Puneet Kumar Bansal, Advocate for petitioner(s)
in CWP No. 10167 of 2015.
Mr. M.S. Sidhu & Mr.Vijay Sharma, Advocates for
petitioners (in CWP No. 15342 of 2014).
Mr. Sardavinder Goyal, Advocate for the petitioner(s)
in CWP Nos. 13398 & 14971 of 2014.
Mr. Arvind Kashyap, Advocate for the applicants-petitioner(s)
in CWP No. 13852 of 2014.
Mr. R.L. Gupta, Advocate for petitioner(s)
in CWP No. 13328 of 2014.
Mr. Sukhdev Kamboj, Advocate for petitioner(s)
in CWP Nos. 15858 & 16587 of 2014.
Mr. Dharmender Singh Rawat, Advocate for petitioner(s)
in CWP No. 12898 of 2014.
Mr. Atul Goyal, Advocate for petitioner(s)
in CWP No. 15630 of 2014.
Mr. P.K. Goklaney, Advocate for the petitioner(s)
in CWP No. 21262 of 2014.
Mr. M.S. Uppal, Advocate for petitioners
(in CWP No.17787 of 2014)
Mr. G.S. Saini, Advocate for petitioner(s)
(in CWP No.13757 of 2015)
Mr. Gaurav Sharma, Advocate for petitioner(s)
(in CWP No.5919 of 2016)
Mr. Vivek Sharma, Advocate for petitioner(s)
(in CWP No.13176 of 2014)

Ms. Monica Chhiber Sharma, Sr. D.A.G., Punjab
for respondent Nos. 1 & 2/State.

Mr. D.S. Patwalia, Senior Advocate assisted by
Mr. Sehajbir Singh, Advocate for most of the
private respondent Nos. 3 to 329.

Mr. Piyush Sharma, Advocate for respondent Nos. 57, 143,
146, 150, 177, 196, 280, 288, 305, 322, 328
in CWP Nos. 12618 & 12749 of 2014.

Mr. S.S. Kamboj, Advocate
for respondent Nos. 87, 90, 95, 106, 116, 119, 122, 139, 142,
144, 145, 149, 154, 169, 221, 228 and 290
in CWP No. 12618 of 2014.

TEJINDER SINGH DHINDSA.J

This order shall dispose of the aforementioned writ petitions as
the relief sought in these petitions is identical.

The issue as to whether a Backward Class category candidate,
who has applied for a post in a process of direct recruitment exercising his
option as a reserved category candidate, thus becoming eligible to be
considered against a reserved vacancy, can also be considered against an
unreserved vacancy, if, he/she secures more merit than the last selected
candidate in the General Category, arises for consideration in these bunch of
petitions.

Brief factual matrix may be noticed.

The Subordinate Services Selection Board, Punjab issued
Advertisement No.02/2013 inviting applications online for recruitment to
1192 posts of Clerks in different departments under Punjab Govt. The
break-up/distribution of vacancies i.e. General, Scheduled Castes, Backward
Class, Ex-Service Men, Physically Handicapped, Sports Persons and
Freedom Fighters was indicated in the advertisement. Essential qualification
were also prescribed under Clause 4 of the advertisement and which read as

follows:-

“4. Essential Qualification:-

- a) Candidates must have passed graduation degree from recognized university.*
- b) Possesses at least one hundred and twenty hours course with hands on experience in the use of Personal Computer or Information Technology in office productivity applications or Desktop Publishing applications from Government recognized institution or a reputed institution, which is ISO 9001 certified.*

OR

Possesses a Computer Information Technology Course equivalent to 'O' level certificate of Department of Electronics Accreditation of Computer Course (DOEACC) of Government of India.

- c) Must have passed Punjabi of matriculation standard.*
- d) As per instructions issued by the Punjab Government, it is compulsory to first pass Punjabi Type Test at prescribed speed. The candidate who want to give type test on computer shall give such test on English Key-Board “Asees or Joy font’.*

Clause 9 of the advertisement laid down the prerequisite for every candidate to qualify a Punjabi Type Test. The specific condition in regard thereto was as follows:-

“It is compulsory to pass Punjabi Type Test and in case any candidate does not qualify the Punjabi Type Test, his candidature shall no longer survive.”

Clause 12 regulated the selection procedure and under which merit of the candidates, who qualify the Punjabi Type Test was to be prepared on the basis of marks obtained in graduation.

The petitioners in these petitions belong to the Backward Class category. All of them claim to be eligible in terms of possessing the essential qualification prescribed for the post of Clerk and appeared in the

Punjabi Type Test the result of which was declared on 26.5.2014. All the petitioners are stated to have qualified the Type Test. Petitioners, thereafter, participated in a counseling process on different dates in the month of June, 2014 as per the counseling schedule. Ultimately, as per criteria mentioned in clause 12 of the advertisement governing selection procedure, merit of the candidates was prepared on the basis of marks obtained in graduation and a select list was uploaded by the Subordinate Services Selection Board on its website on 26.6.2014 (Annexure P-2 along with CWP No.12618 of 2014).

Counsel representing the petitioners would contend that as per dictum laid down by the Hon'ble Supreme Court in ***R.K. Sabharwal and others Vs. State of Punjab and others, 1995 (2) R.S.J, 895*** and a Division Bench of this Court in ***Jaskaran Singh Vs. State of Punjab and others, 1995 (2) S.C.T, 65*** it was imperative for the State recruitment agency to have prepared in the first instance a common merit list of all the reserved and unreserved candidates and the General Category vacancies ought to have been filled up from such combined merit list and if any candidate from the reserved category comes on merit, then, he was to be treated to have been appointed against the General Category vacancies. After completion of such exercise, the reserved category candidates were to be considered for appointment against the reserved vacancies on the basis of the merit determined inter se such category.

The precise grievance raised in the instant petition is that the select list dated 26.6.2014 was prepared separately category wise. It is argued that a large number of candidates including some of the petitioners have secured a higher merit position than the last selected candidate in the

General Category i.e. Ratan Singh, who has obtained 47.54 marks and as such, such candidates belonging to the B.C category ought to have been shifted and considered in the open/General Category. Further contended that as a necessary corollary a number of vacant slots would accrue in the reserved category and by virtue of which the petitioners would come within the zone of consideration on the basis of their merit inter se other candidates falling to the same reserved category. Prayer, as such, raised on behalf of the petitioners is for setting aside the select list dated 26.6.2014 which has been prepared separately category wise and for issuance of directions to recast the merit/select list as per dictum laid down in ***R.K. Sabharwal's*** case (supra).

Per contra, claim of the petitioners is refuted by the State Govt. placing heavy reliance on Clause 13 (x) of the Advertisement No.02/2013. Learned State counsel would urge that the petitioners had applied in response to such advertisement and as such, they would be bound by the terms and conditions contained therein. Clause 13 (x) specified that applicants should apply carefully under his/her concerned category and subsequent change in category would not be permitted. State counsel would vehemently contend that the petitioners had applied under the B.C category and therefore their merit was to be prepared and confined to that category alone. Also argued that in the advertisement there was no restraint imposed that a candidate belonging to a particular reserved category could not apply in the General Category. Further argued that in the advertisement there was no stipulation for a reserved category candidate to be considered against a vacancy meant for general category. It is stated that the select list has been prepared category wise and by applying clause 13 (x) the comparison of

marks obtained in graduation between General Category and B.C. Category candidates does not arise. The non-inclusion of the names of the petitioners in the impugned select list is justified on the basis that B.C category candidates have been selected in their respective category as per marks obtained in graduation and there were candidates higher in merit than the petitioners in the B.C category and on account of which the petitioners have not come within the zone of consideration. As per learned State counsel the judgement in ***R.K. Sabharwal's*** case (supra) would not apply as it was a case pertaining to reservation in matters of promotion whereas the present case relates to direct recruitment. Reliance is placed upon a judgement dated 26.11.2012 rendered by the Hon'ble Supreme Court in ***Civil Appeal No.8499 of 2012 (arising out of S.L.P (Civil) No.31979 of 2010*** titled as ***Alok Kumar Pandit Vs. State of Assam and others*** to contend that a select list prepared separately category wise by the Assam Public Service Commission for recruitment of 116 posts of Assam Civil Services Class-I (Junior Grade), Assam Police (Junior Grade), Labour Officer, Assistant Registrar of Cooperative Societies, Inspector of Labour, Inspector of Taxes and Inspector of Excise, has been upheld. State counsel argues that the judgement rendered by the Hon'ble Apex Court in ***Alok Kumar Pandit's*** case (supra) negates the entire plea and case set up on behalf of the petitioners. Judgement of the Hon'ble Apex Court dated 6.4.2017 in ***Civil Appeal No.3609 of 2017 Deepa E.V. Vs. Union of India*** has also been cited. Reliance is also placed upon a Single Bench judgement of the High Court of Allahabad dated 5.10.2005 in ***Civil Misc. Writ Petition No.42041 of 2000 (Hari Ram Yadav Vs. State of U.P and others)***, wherein a similar controversy had been dealt with and it had been held as under:-

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“Recently the selections of posts and adjustment of OBC candidates in general categories misinterpreting sub section (6) of the Section 3 of U.P. Act No.4 of 1994, have raised serious issues dividing the society. Over zealous appointing authorities, in order to please political bosses are further dividing the society on caste lines. The Benches of Supreme Court have repeatedly held that reservations should not be stretched too far to break down the social structure. It has, therefore, become absolutely necessary for this Court to decide and hold that sub Section (6) of Section 3 of U.P. Act No.4 of 1994 cannot be interpreted in a manner that those who have competed in their own reserved categories are entitled to be adjusted with general candidate, if they have secured higher marks on merits. The Court as such holds that having chosen to compete in his category even if the reserved category candidate does not claim any exemption or is not given any advantage in selection, secures higher marks than the general candidates is not entitled to be adjusted with the general candidates. A reserved category candidate has to give his option at the time of making an application and to choose the category in which he competes and having chosen to do so he cannot claim adjustment with general category candidates on the basis of his merit.”

On the basis of such submissions learned State counsel pleads for dismissal of the writ petitions.

Private respondents in these petitions belong to the General Category. Mr. D.S. Patwalia learned senior counsel has led submissions on their behalf. Mr. Patwalia has been candid in submitting that he would not have much to say as regards the basic proposition of B.C category candidates securing a higher merit position to be adjusted against the open/General Category posts. He, however, submits that the procedure adopted by the State recruitment agency in preparing the select list

separately category wise would at best be seen as a dereliction on its part and for which the private respondents should not suffer. It is contended that the General Category candidates have not secured their selection and appointment on account of any fraud or misrepresentation. There are no allegations in such respect. Furthermore, the private respondents were issued appointment letters way back in the year 2014 upon allocation to different departments under the State of Punjab and as such, it is contended that it would be highly inequitable to displace such General Category candidates having already worked on the post in question for a period in excess of three years.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

It is the conceded stand of the State in the written statement that after conduct of the Punjabi Type Test, the merit of the candidates, who qualified such Type Test was prepared category wise on the basis of marks obtained in graduation. Furthermore, consideration of B.C category candidates has been confined to their category on the basis of marks obtained in graduation. There is also no dispute on the factual premise that in the select list prepared category wise and notified on 26.6.2014 (appended as Annexure P-2 along with CWP No.12618 of 2014), all the 126 candidates shown against the B.C category have obtained more marks than the last selected candidate in the General Category i.e. Ratan Singh, who has secured 47.54 marks. In the category of S.C (R&O) there are a total of 266 candidates and out of which 208 candidates have also obtained more than 47.54 marks i.e. the marks obtained by the last selected candidate in the General Category. Likewise, in the separate select list for S.C (M&B)

category, the first 39 candidates of such category have also obtained more than 47.54 marks. In other words, the select list prepared by the respondent authorities reveals a large number of reserved category candidates having secured more marks than the last candidate selected in the General Category and yet such reserved category candidates have been considered only in their respective reserved categories and have not been shifted/adjusted against open/General Category posts.

The issue with regard to filling up the General Category posts by candidates belonging to the reserved category candidates on their obtaining more marks than the last candidate in the General Category, is no longer *res integra*.

It has been settled by the Hon'ble Supreme Court in a catena of judgements that in the first instance General Category seats are to be filled up purely on the basis of merit of the candidates irrespective of their category. Then, the seats reserved for Scheduled Castes, Scheduled Tribes and Backward Classes are to be filled and candidates belonging to these categories who have been selected on merit in the open/General Category are not to be counted against the quota reserved for these categories. The concept of vertical reservation was dilated upon by the Hon'ble Supreme Court in ***Rajesh Kumar Dariya Vs. Rajasthan Public Service Commission, 2007 (4) S.C.T, 99*** and it was held as under:-

“Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc. under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16 (4), the candidates belonging to such backward class, may compete for non-reserved posts and if

CWP No.12618 of 2014(O&M) & other connected petitions-12 they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for Scs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category (Vide-Indira Sawhney (supra), R.K. Sabharwal v. State of Punjab, 1995 (2) SCT 646: (1995(2) SCC 745), Union of India v. Virpal Singh Chauhan, 1995(4) SCT 695: (1995(6) SCC 684.”

The law on the subject is well crystalized that if a candidate belonging to the reserved category secures a better merit position than that of General Category, such reserved category candidate would consume a General Category point because reservation has been made for the reserved category candidate and not for the General Category candidate. A reference in this regard may be made to the judgements of the Hon'ble Supreme Court in ***R.K. Sabharwal*** (supra), ***Anurag Patel Vs. U.P. Public Service Commission (2005) 9 SCC, 742*** and ***Yoganand Vishwasrao Patil Vs. State of Maharashtra (2005) 12 SCC, 311.***

In the present case the respondents have proceeded to prepare a select list separately category wise on the erroneous premise that there is reservation even for General Category. In ***Jitendra Kumar Singh and another Vs. State of Uttar Pradesh and others (2010) 3 SCC, 119*** it has been reiterated by the Hon'ble Apex Court that there is no reservation for General Category candidates. A reserved category candidate in addition to the reserved seats can always compete for an unreserved seat. It is only in an eventuality where selection criteria is lowered for the reserved category

candidate, then, such difference in standard or criteria would disentitle the reserved category candidate to compete in the General Category. It was further held that if a candidate has availed concession in fee and/or age limit, it cannot be treated to be a relaxation in standard of selection. Therefore, it would not deny a reserved category candidate selection in open competition with General Category candidates. Relaxations in age and concession in fee were held to be provisions pertaining to eligibility of a candidate to find out as to whether he/she can appear in a competitive test or not. Adverting to the facts of the present case, the essential qualifications for the post of Clerk were laid in the advertisement. Such essential qualifications were mandatory to be possessed by all irrespective of the category. There was a prerequisite to qualify a Punjabi Type Test. Even such condition applied across the board. Thereafter, selection was to be made by determining merit on the basis of marks secured in graduation. Clearly in the scheme of eligibility as also selection and for determining final merit, it was a level playing field amongst the General Category as also reserved/B.C category candidates. Under such circumstances, Backward Class/reserved category candidates who secured a higher merit position than the last General Category candidate should have been considered against the open/General Category posts.

The contention raised on behalf of the State that the principle and dictum laid down in ***R.K. Sabharwal*** (supra) would apply only in matters of promotion and not to direct recruitment, is ill founded. There is no statutory provision or instructions shown to this Court which may be seen as a bar for the State not to consider the reserved category candidates in the General Category in case of direct recruitment, if, he/she is higher in

merit than the General Category candidate. The contention raised in such regard on behalf of the State militates against the State Govt. instructions dated 11.9.2015 issued by the Welfare Department (Reservation Cell). It would be useful to extract the same hereunder:-

“No.6/22/2015-RS1/586521/1

GOVERNMENT OF PUNJAB

WELFARE DEPARTMENT

(RESERVATION CELL)

To

*All Heads of Department of State
Chairman, Punjab State Public Service Commission,
Chairman, Subordinate Services Selection Board,
Punjab.*

*All Divisional Commissioners
Registrar, Punjab and Haryana High Court,
All the Deputy Commissioners of Stated
All the District Sessions Judge of State and
All Sub-Divisional Officer (Civil)*

Dated: Chandigarh: 11.9.2015

Subject:- Regarding non-inclusion of those candidates of Scheduled Castes and Backward Classes in the quota for reservation category, where such candidates have been selected on the basis of merit.

Dear Sirs,

On the above subject, your attention is invited to Government letter No.3/3/95-RS3/4853-54 dated 10.7.1995, No.2/27/2004-RS1/1763-71, dated 30.12.2004 and No.3/28/2009-RS1/1601 dated 9.11.2009 and to inform you that it has come to the notice of the Government that those candidates who are recruited on merit are also being counted in the reservation category, instead of counting in the general category by Department/Recruitment Board/Public Service Commission, while applying the formula of reservation.

2. Here it is clarified that at the time of recruitment of employees/officers of any category whatsoever, firstly common merit has to be prepared on the basis of result of the examination of all the categories and the candidates belonging

CWP No.12618 of 2014(O&M) & other connected petitions-15 to Scheduled Caste and Backward Class if they come in the merit list, they have to be counted as general candidates.

3. *It is also stated that if any employee/officer violates reservation policy, he is liable to be prosecuted under Section 8 of Reservation Act, 2006 or various sections of other statutes, which have been enacted for preventing atrocities or discrimination against the scheduled castes. These instructions may kindly be brought to the notice of all employees working in all departments under you, for meticulously compliance.*

Sd/-

Secretary, Welfare

9.9.2015

A copy of the above is sent to all Financial Commissioners, Principal Secretaries and Administrative Secretaries for information and further necessary action.

Sd/-

Secretary, Welfare

9.9.2015.”

To advance a submission on behalf of the State that the dictum in ***R.K. Sabharwal's*** case (supra) would apply only in cases of promotions and not in matters of direct recruitment would only reflect the adamant attitude of the State not to fall in line and not to take necessary corrective measures as per settled proposition of law. Submission advanced in such regard on behalf of the State is without merit and is rejected. A similar contention raised on behalf of the State already stands rejected by the Coordinate Bench of this Court in ***Rajesh Dhiman Vs. State of Punjab and others, 2017 (2) S.C.T, 655.***

In the judgement rendered by the Hon'ble Apex Court in ***Alok Kumar Pandit*** (supra) reliance upon which had been placed on behalf of the State, question that arose was whether a candidate of the reserved category, who is adjudged more meritorious than open/General Category candidates, is entitled to be appointed in the service/cadre/post of his choice/preference

against the post earmarked for the reserved category to which he belongs and whether while computing the quota/percentage of reservation, such candidate should be treated to have been allocated a post in the open category. Such issue arose against the backdrop of a recruitment process initiated by the Assam Public Service Commission on a requisition received from the State Govt. for filling up 116 posts of Assam Civil Services Class-I (Junior Grade), Assam Police (Junior Grade), Labour Officer, Assistant Registrar of Cooperative Societies, Inspector of Labour, Inspector of Taxes and Inspector of Excise. It was held that a reserved category candidate who is adjudged more meritorious than the open category candidate is entitled to choose service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidates of that category. Such view has been taken in a matter involving recruitment to different service/cadres. The issue involved in the present case pertains to a unified service in the cadre of Clerks. As such, there is no issue as regards choice/preference having been submitted by any candidate including the reserved category candidates for being allocated a particular service/cadre/post. The judgement in **Alok Kumar Pandit** (supra), as such, would have no applicability.

In **Deepa E.V** (supra) the post in question was that of Laboratory Assistant Grade-II in the Export Inspection Council of India working under the aegis of the Ministry of Commerce & Industry. The view taken by the Hon'ble Apex Court was in the light of the Export Inspection Agency (Recruitment) Rules, 1980 as also Department of Personnel and Training proceedings dated 1.7.1998, wherein there was an express bar for

the candidates belonging to the S.C/S.T/O.B.C who had availed relaxations in the nature of age limit, experience, qualifications, permitted number of chances in the written examination, extended zone of consideration larger than what is provided for General Category candidates for being considered against open/General Category posts. In the present case there is no such bar either under the statutory rules or under any executive instructions. The judgement in ***Deepa E.V.*** (supra) is clearly distinguishable.

Reliance on behalf of the State on the Single Bench judgement of Allahabad High Court in ***Hari Ram Yadav's*** case (supra) can only be termed as unfortunate. As a matter of fact, such judgement has already been set aside and reversed by the Division Bench of the Allahabad High Court in ***Special Appeal No.1308 of 2005*** decided on 29.10.2007 along with other appeals titled as ***Shiv Parkash Yadav and others Vs. State of Uttar Pradesh.***

In view of the above, the action of the respondents in having prepared separate category wise select list and having confined consideration of B.C category candidates to their category alone and having not considered B.C. Category candidates against open/General Category posts inspite of securing a higher merit than the General Category candidates, is held to be bad in law.

Relief

The impugned select list having been prepared in utter disregard of the settled position of law in the subject, this Court ordinarily would have directed the entire select list to be recast. However, in the peculiar facts and circumstances of the case, directions are issued to recast the select list but only pertaining to one reserved category i.e. the Backward

Class Category in the light of the observations made in this judgement and by following the dictum laid down by the Hon'ble Apex Court in ***R.K. Sabharwal*** and ***Jitendra Kumar Singh*** (supra). Further directed that the benefit of such exercise is not to extend to all B.C category candidates but would be confined only qua the petitioners in these bunch of petitions.

Such view is being taken for the reason that it is only the present petitioners belonging to the B.C category who have agitated the issue. Any direction to recast the entire select list would entail a large number of selected and appointed candidates belonging to the General Category including the private respondents being ousted. Concededly, private respondents herein have not secured their appointment by playing any fraud or having misrepresented. They have now been working against the post in question over a period of three long years. Benefit of this judgement, as such, is being confined to the petitioners herein so as to leave some scope for adjustment of the selected and appointed General Category candidates.

The exercise as directed by this Court be completed within a period of two months from the date of receipt of a certified copy of this judgement. The consequential appointment in favour of the petitioners would relate back to the date when other candidates belonging to the B.C Category in pursuance to the same very recruitment process had been so appointed. However, actual arrears of salary for the period would not be paid.

Such of the petitioners, who would secure appointment by virtue of recasting of the select list as directed, are held entitled to costs of Rs.25,000/- each on account of this unwarranted and unnecessary litigation

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forced upon them and they being compelled to approach the Court to vindicate their vested and fundamental rights.

Petitions are allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

15.12.2017

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No