

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

RSA No.2404 of 2006 (O&M)

Date of Decision: 5th Dec., 2017

Raj Kumar

..... Appellant

Versus

Chairman, Punjab Pollution Control Board and others Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Arun Abrol, Advocate
for the appellant.

Mr. Amit Verma, Advocate
for the respondent Nos.1 and 2.

None for respondent Nos.3 to 5.

RAJ SHEKHAR ATTRI, J. (Oral)

Remaining unsuccessful before the courts below, the plaintiff
has come up in this regular second appeal.

The facts, necessary for disposal of the appeal, are that the respondents have published an advertisement (Ex.D-3) on 01.12.1997 in various newspapers for the post of Peons and the Field Attendants in different Regional Offices of the Punjab Pollution Control Board. Relevant part of this advertisement is reproduced as under:-

*“Punjab Pollution Control Board, Head Office, Environment
Building, Nabha Road, Patiala.*

Advertisement No: Admin/97/3

Punjab Pollution Control Board, Nabha Road, Patiala invites

applications from the eligible candidates for filling temporary posts of Class-IV in the proforma given below. Applications on plain paper, testimonial/copies of certificate attested by Gazetted Officer along with one attested passport size photo of candidate shall be sent to Administrative Officer, Punjab Pollution Control Board, Nabha Road, Patiala upto 15/12/1997 for different stations (Regional Offices) of board details of which is given below. One envelop 9"x4" along with the application shall be sent on which address of the candidate be mentioned for the purpose of postal address and stamp of Rs.3 must be affixed. The candidates who are working under government and non government institutions shall sent their applications through proper channel. The applications received after stipulated period/incomplete shall not be considered. The details of the posts as following:-

1) Peon = 8 (SC-2, BC-2, handicapped-1, general-3)

Salary scale = Rs.750-1410/- (Initial pay Rs.770/-)

Qualifications = candidate should be 8th pass

Place of posts = Punjab Pollution Control Board, Nabha Road, Patiala

2) Field Attendant = 40

Salary scale = Rs.750-1410/- (Initial pay Rs.770/-)

Qualification = The candidate should read and write and shall have experience in the fields of Carpenter (Artisan) and Electrician.

Age:- For above mentioned posts the age of the candidates shall be between 18 to 35 years. SC/BC/Tribals and Ex service men shall be given relaxation in age as per the government instructions. For the post of the peon the candidate should have passed Punjabi at least upto 8th standard and for the post of field attendant candidate should have knowledge of reading and writing Punjabi.

For the post of field attendant the candidate shall mention that for which station (Regional Office) want to opt. A candidate can only apply for one station. The application of the candidate, who apply for more than one Station/Regional office can be cancelled. Reservation of Ex-Servicemen, Handicapped and Freedom fighter will be done vertically from the reserved posts of Schedule C`aste and Backward Classes as per the instructions issued by Welfare Department Punjab Government through its Letter No.7/1/90-RC-1/11374 dated 30/12/1996. Besides, number of posts for different categories can increase or decrease.

Place for the posts of Field Attendants:-

Sr. No.	Station (Name of Regional Office)	Number of Vacanci es	SC	BC	Ex- Service Men	Handica pped	Freedom Fighter	General
1 to 8	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
9	Gurdaspur	5	2	1	-	-	-	2

As per the said advertisement, five posts of Field Attendants were to be filled up in the Regional Office, Gurdaspur. Out of these, one post each was reserved for backward class and scheduled caste whereas two for general category.

The plaintiff-appellant, being eligible as per the criteria prescribed in the advertisement, applied for the post of Field Attendant in backward class category. He was called upon to appear for interview on 17.09.1998 by respondent-defendant No.2 and he appeared before the interview board. After the date of interview, neither the result of the selection of candidates was conveyed to the plaintiff-appellant nor published in any newspaper. Even the merit list was not displayed in the office of respondent No.2. Thereafter, the plaintiff-appellant made enquiries regarding the result of the interview. He was told that the information with regard to appointments would be published in the newspaper. Subsequently, he came to know that respondents-defendants No.3 to 5 were appointed by respondent Nos.1 and 2 in an illegal and arbitrary manner without preparing any merit list. Surprisingly, no criteria was adopted while making the selection of respondent Nos.3 to 5. Although, one post was kept reserved for backward class category in District Gurdaspur but no candidate from this category was selected or appointed. Irrespective of the fact that various candidates were available

from the backward class category, none of the selected candidates (respondent Nos.3 to 5) relates to backward class category. Out of the said three candidates appointed in District Gurdaspur, two belong to schedule caste category and one belong to general category. Thereafter, plaintiff filed a suit seeking declaration that he is entitled to be considered for the appointment of Field Attendant but the same was dismissed vide judgment and decree dated 18.11.2003, passed by the learned Addl. Civil Judge, (Senior Division) Gurdaspur. Against the said judgment and decree, the plaintiff preferred an appeal which was also dismissed by the learned District Judge, Gurdaspur, vide the impugned judgment and decree dated 04.01.2006.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the appellant has vehemently contended that the learned Courts below have failed to appreciate the evidence available on the record; the impugned judgment and decree are against the law and facts; the selection of respondent Nos.3 to 5 is absolutely arbitrary, unreasonable which have been done in a callous manner, and thus same is liable to be set aside; that the plaintiff is entitled to be selected on the single post reserved for backward class category and also entitled to the continuity of service with back wages and other service benefits. Apart from it, it is also contended that 66 Field Attendants were appointed, although, 40 posts were advertised. According to him 26 persons were given back door entry in highly illegal and arbitrary manner.

On the other hand, learned counsel for the respondents

submitted that in the advertisement, it has been specifically mentioned that the number of posts is subject to variation; that the selection was made on the state level and not on the regional level, and requisite number of candidates from backward class category have already been appointed.

This Court has given thoughtful consideration on the rival contentions.

A bare perusal of the advertisement (Ex.D-3) transpires that in District Gurdaspur, out of five posts, one has been reserved for backward class category. Undisputedly, the plaintiff belongs to backward class category and he fulfills the prescribed eligibility criteria. He applied and opted for Gurdaspur District. Defendants have produced the merit list (Ex.D-2) which appears to be incomplete inasmuch as only 1 to 199 candidates are shown therein. However, during the pendency of this appeal, they placed on record the translated copy of Ex.D-2 which transpires that no candidate from backward class category was appointed for Gurdaspur region, though available. No reason has been assigned by defendants for not appointing any candidate of backward class category at Gurdaspur.

While appearing as DW-2 Sh. Paramjit Singh Sidhu, Environment Engineer had admitted in cross-examination that plaintiff had applied for reserved post for the backward class category and he also appeared before the interview board. He also admitted that for District Gurdaspur only three persons were appointed; out of them two belong to scheduled caste category and one from general category whereas none has been appointed against backward class category. However, he took a plea

that no candidate from backward class category was found fit for appointment. But this plea is without any foundation. No criteria for appointing the candidates has been placed on record. Even a bare perusal of Ex.D-2 makes it crystal clear that the candidates were awarded marks in the interview in an arbitrary manner. Plaintiff Raj Kumar was awarded 16 marks. No reason has been furnished by the respondents in what manner he could not qualify the merit because no candidate from backward class category has been appointed in Gurdaspur region. DW-2 Paramjit Singh Sidhu in an affidavit Ex.DW-1/A has stated that 10 candidates belonging to backward class category have been appointed as Field Attendants in the State of Punjab. He further stated that last candidate selected and appointed has obtained 17 marks in total whereas the plaintiff had obtained 16 marks in interview. Surprisingly, in the merit list Ex.D-2 placed on the record contains 18 pages and it pertains to 199 candidates. In Ex.D-2 only four candidates secured more than 16 marks in respect of backward class category.

According to him, the candidates have been appointed on the state level and not on the regional basis. Again this contention is without any substance. In the interview, candidates were given district wise option.

To the mind of this Court, the procedure adopted by the defendants-respondents for appointment of candidates in Gurdaspur region is contrary to law and against the advertisement Ex.D3 but the learned trial Court failed to appreciate the facts and wrongly dismissed the suit.

It is undisputed fact that 40 posts of Field Attendants were advertised in the advertisement dated 01.12.1997 but 66 persons were

appointed. In this way, 26 persons have made the back door entry. To substantiate this act of respondents, it has been argued that in the same advertisement, it has been provided that the above said posts were subject to variation. This Court has considered this contention. This rider in the advertisement does not, ipso fact, authorize the defendants to allow the back door entry. If they intended to increase the number of posts advertised, they have to give a specific notice to the candidates and the public at large. Even no material has been placed on the record if the Pollution Control Board has ever decided to increase the number of posts.

In this view of the matter, the back door entry of 26 persons is illegal and unauthorized. Therefore, Chairman, Pollution Control Board is directed to initiate an inquiry and to take appropriate steps in this regard.

As a sequel of discussion, the instant appeal stands allowed with costs throughout and the impugned merit list (Ex.D-2) to the extent that no candidate from backward class category has been appointed, is hereby set aside with further direction to the respondents to consider the case of candidates who applied for the post of Field Attendants in backward class category for Gurdaspur and appoint the meritorious candidate on the said post with continuity of service except for back-wages. This process be completed within a period of three months from the date of receipt of the certified copy of the judgment.

05 December, 2017

mamta

Whether speaking/reasoned

*Whether Reportable :***(RAJ SHEKHAR ATTRI)
JUDGE**

Yes/No

Yes/No