

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

CWP No.16552 of 2017

Date of decision : 28.07.2017

Navjeet Singh

.....Petitioner

Versus

Punjab State Electricity Board and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Arjun Sheoran, Advocate for petitioner.

* * *

DAYA CHAUDHARY, J.

Petitioner Navjeet Singh has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India with the grievance that he belongs to Scheduled Caste category (Mazhabi Sikh and Balmiki) and has a right to be considered for the post of Junior Engineer Grade-II (Electrical) against one out of total 25 posts reserved for Mazhabi Sikh and Balmiki candidates. Total 200 posts were advertised by the respondents and out of the said posts, 50 posts were reserved for the Scheduled Caste candidates. CWP No.10057 of 2008 was filed by the petitioner before this Court for issuance of direction to the respondents to consider his case against remaining 19 unfilled posts reserved for Scheduled Caste category (Mazhabi Sikh and Balmiki) candidates with effect from the date other similarly situated persons were

appointed in pursuance to written test held on 12.07.1998 vide advertisement No.CRA-207/97. Said writ petition was disposed of with a direction to the respondents to verify the placement of the petitioner in the merit list amongst the Mazhabi Sikh and Balmiki candidates and in case he was found amongst 25 candidates in order of merit and had obtained the minimum bench marks, if any fixed, he be given appointment as Junior Engineer, Grade-II (Electrical) within a period of three months.

In compliance of said order passed by this Court, the claim of the petitioner was considered and petitioner was not found to be entitled for appointment to Junior Engineer, Grade-II (Electrical). Said claim was rejected vide order dated 18.10.2011, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the respondents while passing impugned order have not taken into consideration the judgment dated 07.03.2011 passed in CWP No.10057 of 2008. He also submits that the appointment was given only to six Scheduled Caste (Mazhabi/Balmiki) candidates, whereas total 44 Scheduled Caste/other candidates were to be appointed out of 50 posts reserved for Scheduled Caste candidates. Only 17 candidates were called for interview and ultimately, 06 candidates were selected. As per the rules, candidates three times upto the total posts should have been called for interview. Learned counsel also submits that petitioner was at Sr. No.31 in the merit list prepared after the written test. Subsequently, by getting information under RTI, the petitioner came to know that there were 23 posts of Junior

Engineer (Electrical) for Scheduled Caste/Mazhabi-Balmiki out of total number of 1065 posts, which are still lying vacant. The petitioner could have been considered against the vacant post but in spite of making representation, still he has not been considered. Learned counsel further submits that some of the persons who were higher in merit did not join and in such a situation, the petitioner could have been appointed against vacant post. Learned counsel further submits that respondent No.1 was required to prepare separate merit list of the candidates belonging to Mazhabi Sikh-Balmiki being the first list and of Ramdasia candidates as second list. The respondents have not filled 50% of posts out of Scheduled Caste category in favour of Balmiki and Mazhabi Sikhs. It is also the argument of learned counsel for the petitioner that case of petitioner is squarely covered by judgment passed in CWP No.3948 of 1999.

Heard arguments of learned counsel for the petitioner and have also perused impugned order dated 18.10.2011 and other documents available on the file.

Admittedly, the petitioner belongs to Scheduled Caste Mazhabi Sikh. Advertisement No.CRA-207/1997 was published, wherein total 200 posts of Junior Engineer (Electrical) were advertised, out of which 25% *i.e.* 50 posts were reserved for Scheduled Caste candidates. Petitioner applied for one of the post reserved for Scheduled Caste candidates as Mazhabi Sikh but being aggrieved by the action of the respondents he filed the present petition on the ground that out of 200 posts, 25 posts should have been exclusively reserved for Mazhabi Sikh and Balmiki. Petitioner finding

himself fulfilling the criteria applied as Scheduled Caste Mazhabi Sikh candidate and annexed certificates of Mazhabi Sikh caste as well as Scheduled Caste. He participated in the written test conducted by respondents and secured 74 marks out of 200. The petitioner filed CWP No.12109 of 2003 which was dismissed as withdrawn vide order dated 04.08.2003 on the ground that there was a complete ban on fresh recruitment and no appointment could be made. Subsequently, he got information under RTI regarding status of 25 reserved vacancies meant for Mazhabi Sikh and Balmikis. His grievance is that only six candidates belonging to Scheduled Castes (Mazhabi Sikh and Balmiki) out of 25 posts have been appointed. Remaining 19 posts should have been filled up from reserved category of Mazhabi Sikhs and Balmikis. Petitioner also filed CWP No.5053 of 2004 and said petition was disposed of with the following direction:-

“We have heard the learned counsel for the parties. In the preliminary objections, the positive stand of the respondents is that there was no proposal to make any recruitment to the post in question. We thus leave it open to the petitioners that should any advertisement be issued in the future, they would be at liberty to file a writ petition impugning the proposed recruitment. The writ petition is disposed of accordingly.”

However, petitioner was not offered any appointment, consequent whereupon a notice for demand was served upon respondents on 20.04.2007. Thereafter, he filed CWP No.10057 of 2008 before this Court.

Said petition was also disposed of vide order dated 07.03.2011. Relevant portion of said judgment is reproduced as under:-

“For the reasons afore-stated, the writ petition is allowed to the extent that the respondents are directed to verify the placement of the Petitioner in the merit list amongst the Majhbi Sikh and Balmiki candidates and if he is found amongst 25 candidates in order of merit and has also obtained the minimum bench mark, if any fixed, he shall be given appointment as Junior Engineer, Grade II (Electrical) within a period of three months from the date a certified copy of this order is received. The petitioner shall, however, be granted only notional benefits and no back-wages shall be paid. The respondents shall make an endeavour that the appointments already made are not disturbed.

Disposed of. Dasti.”

In pursuance of judgment/order dated 07.03.2011 impugned order dated 18.10.2011 was passed wherein petitioner was not found entitled for appointment which is not under challenge in the present petition. Admittedly, the advertisement is of the year 1997 and selection took place in the year 1998. The petitioner participated in the selection process and finding himself ineligible to be appointed, has challenged the criteria after long unexplained delay. No doubt petitioner qualified the written test by obtaining 74 marks out of total 200 marks and was at Sr. No.31 of the merit list. Meaning thereby, the petitioner was not amongst first 25 meritorious Scheduled Caste Mazhabi Sikh-Balmiki category candidates. Out of total 2495 qualified candidates, merit wise first 610 candidates were called for

document checking and name of the petitioner was not in the list of those 610 candidates being much lower in merit, 50 post out of total 200 advertised post being 25% were under the quota reserved for Scheduled Caste category, 50 posts which were reserved for Scheduled Caste candidates, were filled up on the basis of merit out of combined merit list of Scheduled Caste meritorious candidates *i.e.* Scheduled Caste Mazhabi Sikh - Balmiki and other Scheduled Caste and 44 Scheduled Caste and other candidates were offered appointment as per their merit. Undisputedly, there is an inordinate unexplained delay on the part of the petitioner in filing the petition and no satisfactory explanation has come forward in the averments made in the petition as well as in the arguments.

It is settled principle of law that the delay comes in the way of equity. Under certain circumstances delay and laches may not be fatal but in most of the circumstances, inordinate delay causes disaster for the litigants who knock the door of the Court. Even a selected candidate has no indefeasible right to seek appointment. In case any candidate has participated in the selection process without any protest, he cannot be allowed to turn around and question the very process having failed to qualify. Petitioner participated in the selection process and when his name was not there in the list of successful candidates, he cannot be allowed to question the criteria or the process. It has also been held in various judgments that merit cannot be challenged by a candidate who has taken a chance to get himself selected. On remaining unsuccessful, he is estopped from complaining about the selection process later on. Petitioner was well

aware about the qualifying criteria and has also participated in the selection process till the declaration of the result of written test and, therefore, he is not entitled for the discretionary relief under Article 226 of the Constitution of India.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

28.07.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No