

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

1) CWP No.20161 of 2016

Ajay Kumar and others

....Petitioners

Versus

State of Haryana and others

....Respondents

2) CWP No.10062 of 2017

Deepak Phor

....Petitioner

Versus

Punjab & Haryana High Court and others

....Respondents

Date of Decision : 27.11.2017

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

....

Present : Mr.Karan Nehra, Advocate
for appellants in CWP No.20161 of 2016.

Mr.Anurag Goyal, Advocate
for appellant in CWP No.10062 of 2017.

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MAHESH GROVER, J. (Oral)

By this order we propose to dispose of both the aforesaid writ petitions.

The petitioners in these writ petitions impugn Annexures P-12 & P-14 (in CWP No.20161 of 2016) and Annexures P-16 & P-17 (in CWP No.10062 of 2017).

The petitioners are aspirants for the post of HCS (Judicial Branch) and participated in the category of Special Backward Classes

which had by then been introduced by an Act of the legislation. This Act was challenged and its validity upheld but the Court watered down the effect of the enactment in so far as inclusion of Special Backward Classes was concerned, and the following directions were passed in CWP No.9931 of 2016 :-

“For the foregoing reasons,

- (i) the 2016 Act is upheld and sustained;
- (ii) however, the Haryana BC Commission shall carry out an exercise to determine the extent of reservation, if any, to which the castes mentioned in Schedule III of the 2016 Act are entitled to and also the quantum of reservation provided for them;
- (iii) the State Government shall place before the Haryana BC Commission the quantifiable data amongst other things, besides, the Haryana BC Commission itself would be at liberty to seek the data, information, as may be required by it from the State Government, the Welfare of Scheduled Castes and Backward Classes Department and/or any other department;
- (iv) any stake-holder or any person interested shall be at liberty to place the material before the Haryana BC Commission in this regard;
- (v) the State Government, the Welfare of Scheduled Castes and Backward Classes Department and/or any other department as also any other stake-holder or interested person may submit data for or against the reservation before

the Haryana BC Commission by 30.11.2017;

(vi) the State Government shall make due and wide publication for submitting the data to the Haryana BC Commission by the said date;

(vii) the data furnished shall be put by the Haryana BC Commission on its website;

(viii) any person desirous of raising any objection to the data shall file the same by 30.12.2017;

(ix) the Haryana BC Commission shall make its report by 31.03.2018;

(x) the State Government, on receipt of the report of the Haryana BC Commission, shall take decision on the same;

(xi) till such time the exercise is complete the benefit of reservation in services and in admissions for the Backward Classes in Schedule III to the 2016 Act shall be kept in abeyance.”

Evidently, the challenge of the petitioners therein to this effect was accepted. Subsequent thereto the Government itself vide notification dated 31.03.2016 (Annexure P-10 in CWP No.20161 of 2016) withdrew the special categories of Backward Classes which it had introduced earlier and the benefit of which the petitioners sought while participating in the selection process.

In view of the withdrawal of the notification Annexure P-10 the High Court took a decision rejecting the claim of the petitioners qua consideration on the ground of their belonging to a special backward class category which has now been challenged by them.

Learned counsel for the petitioners would contend that Section 15 of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 would protect all acts taken during its currency and since the petitioners had applied against the special category which found inclusion in the enactment, the subsequent withdrawal of such an inclusion by the Government would be inconsequential and they would deserve consideration in the category against which they had applied.

We have heard the learned counsel for the petitioners.

Section 15 of the Act is extracted here-below :-

“15. Validation:- Notwithstanding anything contained in any judgment, decree or order of any court or other authority, the reservation made, and anything done or any action taken on the basis of such reservation, by the Government for admission to educational institutions and for appointment in the services for the Backward Classes on the date of coming into force of this Act, shall, for all purposes be deemed to be and to have always been, validly made, done or taken in accordance with law, as if this Act had been in force at all material times when such reservation has been made and such thing done or action taken.”

We are unable to persuade ourselves to accept the contentions of the learned counsel for the petitioners. The validity of the Act was questioned by some writ petitioners by way of CWP No.9931 of 2016 and as noticed above while upholding the enactment on the premise of the legislation's inherent powers to legislate it and finding no

provisions repugnant to the Constitution of India or in violation of the fundamental rights, the Court gave directions which we have already extracted above. The challenge to the classification of special category of Backward Classes was in a way negated by directing the Haryana Backward Classes Commission to conduct an exercise by having a data base support for a decision qua inclusion of Backward Classes. This also found acceptance in the notification of the Government which withdrew the special categories of Backward Classes. This notification of the Act of the State has not been challenged.

It would thus be difficult to accept the argument of the petitioners in the absence of any challenge to the notification Annexure P-10. That apart, we notice that as on today no enforceable right has crystalized in favour of the petitioners. Assuming they had been selected, they could still not enforce the appointment. Be that as it may, in view of the decision rendered by this Court in CWP No.9931 of 2016 mandating the Haryana Backward Classes Commission to conduct an exercise determining the Special Backward Classes which resonates in acceptance in the notification Annexure P-10, there would be no occasion to grant any benefit of Section 15 of as claimed by the petitioners at least today. In case the Haryana Backward Classes Commission concludes in favour of the inclusion of Special Backward Classes and considers it fit for restoration, the petitioners possibly may have a cause to agitate. The petitions are, therefore, dismissed.

Petitions dismissed.

(MAHESH GROVER)
JUDGE

27.11.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No