

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-23315-2015

Date of decision : 07.12.2017

Balbir Singh

... Petitioner

Versus

Haryana Vidut Pasaran Nigam Ltd. and others

... Respondents

***CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH***

Present: Ms. Sangita Dhanda, Advocate  
for the petitioner.

Mr. Namit Kumar, Advocate  
for the respondents.

**AMOL RATTAN SINGH, J.(ORAL)**

The petitioner herein seeks issuance of a writ of certiorari quashing the order dated 08.10.2015 (Annexure P-16), by which his services have been dispensed with stating therein that he had wrongly been appointed vide the order dated 15.05.2015, that order having been passed upon directions having been issued by this Court, vide its order dated 03.12.2008 passed in CWP no.15558 of 1997 and other connected petitions. As per the respondents the said order actually does not cover the case of the petitioner, as he was a candidate from the general category and not the BC-B category, and in the general category he did not come within the zone of consideration for appointment (as per his merit in that category, in the selection process in question).

The background of the case is that the petitioner had originally applied for appointment to the post of an Assistant Linesman pursuant to an

advertisement issued in the year 1992, with him having been selected in the general category, and having worked on the said post from 1993 to 1997.

However, that entire selection having been quashed by an order of this Court dated 29.11.1995, passed in CWP no.7382 of 1993 (Jagbir Singh and others v. Haryana State Electricity Board, Ambala and others), with that judgment having become final up to the Supreme Court, the petitioner alongwith other selected candidates was permitted to participate in the fresh selection process, without making any fresh application for the same, as directed by this Court.

It is further contended by learned counsel for the petitioner that the petitioner had initially not applied in the original selection process in the BC-B category, because at the relevant time his caste had been de-notified as a backward class, though it had been re-notified as a backward class by the time that the fresh selection process stated, in the year 1997.

The respondents in their written statement have essentially reiterated what is stated in the impugned order, as also noticed hereinabove, to the effect that the petitioner never having applied in the BC-B category, he cannot have been given appointment in that category, **even** pursuant to the directions of this Court, to consider the petitioners' case for such appointment, upon him having subsequently filed CWP no.8799 of 2014, i.e. after the earlier directions passed on 3.12.2008 in CWP no.1558 of 1997 and connected petitions.

It is, therefore, contended that the appointment letter issued to him on 22.06.2015 (Annexure P-13) was wrongly issued, as the petitioner was not within the zone of selection, as per merit, in the general category.

Pursuant to the order of this Court dated 30.11.2017 (passed in

the present petition), an affidavit of the Deputy Secretary/HR & SR, Haryana Vidyut Parsaran Nigam Limited, has been filed in Court today by learned counsel for the respondents, essentially reiterating the facts given hereinabove, but with greater details.

The issue therefore eventually boils down to whether, as the petitioner had not applied afresh in the re-selection process conducted in the year 1996-97 in the BC-B category, even though by that time his caste (Gujjar), had been declared to be a backward class by the Haryana Government, he can be considered for appointment to a post reserved for that category, though upon the original selection process conducted in the year 1992 having been quashed, candidates were otherwise not required to fill in a new application form as per directions of this Court issued in CWP no.7382 of 1993 (by which the selection process of 1992 had been quashed).

In fact, Mr. Namit Kumar, learned counsel for the respondents, further submits that though the result of the re-selection process was announced in the year 1997, in which the petitioner was neither declared to have been selected in the General category nor in the BC-B category, (he not having applied in the second category in any case at that stage), that result was again challenged by way of various writ petitions, on the ground that those who were in the reserved categories and had obtained marks higher than the selected candidates in the general category, had not been placed in the select list of the general category in terms of the ratio of the judgment of the Supreme Court in **Indra Sawhney and others vs. Union of India and others** **AIR 1993 SC 477**. That litigation culminated in the judgment dated 03.12.2008 (passed in CWP no.15558 of 1997 and two connected petitions), whereby the following direction was given:-

*“At this stage, in view of the limited submission of learned counsel for the petitioners, I do not deem it appropriate to enter into this controversy as to how many posts of reserved category remained vacant and for what reason.*

*In the circumstances, I direct the respondent-Board to consider for appointments at least 336 reserved category candidates for the posts of Assistant Linemen and 75 reserved category candidates for the posts of Shift Attendants from amongst the candidates of reserved category who may have been ousted as a result of wrongly appointed in reserve category, even those reserved category candidates who were entitled for appointment on the basis of their merit even in the general category, and offer appointments to reserved candidates, as per the merit list prepared at that time, out of the posts, which are admittedly lying vacant even today. It is further clarified that any such candidates who are appointed as a result of this exercise would not be entitled to receive any back-wages but would be entitled to all other consequential benefits. In view of the admitted fact about the existence of vacancies, I further hold that it would not be in the interest of justice to displace those general category candidates who may have been given appointments because of the illegal ouster of reserved category candidates since they have now been in service for the last 11 years and no fault can be found with them.*

*The entire exercise will be conducted by the respondent-Board (or its successors) within a period of four months from the receipt of a certified copy of this order.”*

Consequently, in terms of the aforesaid directions, a 'revamped'

select list was published in various newspapers on 29.09.2009, with the

following note given at the end of the select list:-

*“All concerned are requested to check up from the list their category and submit representation/objection, if any, within 15 days from the date of the publication of the notice i.e. by 10.6.2009 regarding correctness of category mentioned, alongwith the attested copy of the certificate given at the time of the application for appropriate action by the Nigam. No representation shall be entertained in this regard after the prescribed period and the concerned Nigam shall take action in furtherance of direction given by the Hon'ble High Court mentioned herein.”*

Learned counsel for the respondents further submits that the petitioner not even having raised any objection at that stage, he would have absolutely no right to subsequently claim to be appointed in the BC-B category, he having first approached the Court only in the year 2014 by way of CWP no.8799 of 2014, which was disposed of by a co-ordinate Bench on 11.12.2014, with the following order:-

*“Learned counsel for the respondents, at the very outset, fairly states that to put the controversy to an end, he has the instructions to say that the petitioner shall be considered for appointment, if he is found higher in merit than the last selected candidate, as per the merit list dated 5.10.2009 prepared in compliance of the order dated 3.12.2008 (Annexure P-3) passed by this Court in CWP No.17812 of 1997. He further submits that let the petitioner approach the respondent authorities by making an appropriate representation, pointing out his marks secured in the merit list and his claim would be considered, as per the merit list dated 5.10.2009. He further submits that this exercise would be carried out, strictly in accordance with the observations made by this Court in the common order dated 9.9.2014 passed in the*

*bunch of cases, and within the number of posts, i.e. 336 posts of Assistant Lineman and 75 posts of Shift Attendants.*

*Faced with the above-said fair statement made by learned counsel for the respondents, learned counsel for the petitioner also fairly states that let the present writ petition be disposed of, in view of the abovesaid statement made by learned counsel for the respondents, because the statement made by learned counsel for the respondents satisfies the claim of the petitioner.*

*Ordered accordingly.*

*However, it is made clear that directions issued hereinabove would be restricted only to the petitioner. It is also made clear that petitioner will approach the respondents within a period of 30 days from today by making an appropriate representation and respondents shall consider and decide the same at an early date by passing an appropriate order thereon, strictly in accordance with law but in any case within a period of three months from the date of receipt of representation from the petitioner.*

*Disposed of, accordingly.”*

Whereas this Court does not find any flaw otherwise in the contention of learned counsel for the respondents in that regard, however, Ms.Sangita Dhanda, learned counsel appearing for the petitioner, points to the order passed, again by a co-ordinate Bench on 09.09.2014, in a bunch of writ petitions, the 'lead case' being CWP no.12605 of 2014. That order is also reproduced hereinunder:-

*“At the time of hearing learned counsel for the respondents submit that public notice dated 7.1.2014 has since been withdrawn and no appointments pursuant to the same to the rank of Assistant Lineman or Shift*

*Attendant from the reserved category in compliance of the directions issued by this Court in the earlier writ petitions are being made. It is further stated that pursuant to the directions dated 3.12.2008 passed by this Court in CWP No.17812/1997 titled as **SC,ST and Backward Class Employees Association v Haryana State Electricity Board and Others**, offers of appointment to 336 vacant posts of Assistant Lineman and 75 vacant posts of Shift Attendants were made, and therefore, the petitioners who are beyond said numbers are not entitled to any relief in view of the fact that there was no provision for framing of any waiting list. However, it is not disputed that if any candidate junior in merit than any of the petitioners herein has been appointed pursuant to the said directions by wrongly treating the petitioners in General Category then the petitioners would be entitled to be extended the benefit of offer of appointments with effect from the date said juniors have been appointed. However, this liberty would not be applicable to such petitioners who are seeking employment with effect from the date the juniors who have been appointed pursuant to the decision of this Court in CWP No.22873/2010, which is subject matter of pending Review Application.*

*Learned counsel for respondents pray for time to identify and verify the factual position in the light of the above.*

*Adjourned to 15.10.2014.”*

Eventually that bunch of petitions was actually disposed of on 11.12.2014, by passing individual orders in each case, the case of the petitioner being disposed of by an order passed in CWP no.8799 of 2014 (reproduced earlier hereinabove).

That being so, obviously the issue of filling up vacancies advertised in the year 1996-97 for the posts in question, i.e. Assistant

Linesmen/Shift Attendants, remained alive till the year 2014.

It is also not disputed that the petitioner actually belongs to the BC-B category, the certificate in that regard (Annexure P-6), dated 07.01.1997, issued by the Sub Divisional Officer, Hathin, not being challenged on the ground that it is a fake / forged certificate.

It is also not disputed that the petitioner, in the BC-B category, has secured marks enough for him to have been considered for appointment in that category above the last candidate appointed, but for the fact that the said certificate is stated to not have been placed on record at the right time, either by way of a separate application filed in the re-selection process in the year 1996-97, or even when objections were invited in the year 2009, but only for the first time (as per the respondents) at the time when the petitioner filed CWP no.8799 of 2014.

Learned counsel for the petitioner of course refutes that fact by stating that the petitioner had produced that certificate at the time of his interview, which is countered by learned counsel for the respondents by saying that no such certificate was produced.

Though naturally there is no proof of the certificate having been produced even at the time of interview and factually the petitioner not having challenged the result announced in the year 2009, the stand of the respondents on the ground of delay may not otherwise have been faulted.

However, in the opinion of this Court, the respondents having given him an appointment pursuant to the order dated 11.12.2014 passed in the aforesaid CWP no.8799 of 2014, and he undoubtedly being within the zone of selection and in the BC-B category, to which he belongs, it would be unfair to now oust him from the post.

Consequently, this petition is allowed and the impugned order, Annexure P-16, is quashed, with the petitioner deemed to be in service since the day of his appointment, vide the appointment order dated 22.06.2015, Annexure P-13. However, in the circumstances he shall not be entitled to arrears of pay in the interim period, though all benefits would otherwise flow to him, taking it that he was in service since 22.06.2015.

The petitioner be reinstated in service within a period of two months from the date of receipt of a certified copy of this order.

(AMOL RATTAN SINGH)  
JUDGE

**December 07, 2017.**

*Davinder Kumar*

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No