

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

CWP No. 2996 of 2016 (O&M)  
Date of decision: May 17, 2017

Rajnish Kumar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present: Mr. D.S. Patwalia, Senior Advocate with  
Mr. Sehaj Bir Singh, Advocate,  
for the petitioners.

Ms. Lavanya Paul, AAG, Punjab.

**JAISHREE THAKUR, J.**

1. The instant writ petition has been filed with the following prayers:-

i) *Issue a writ order or direction, including a writ in the nature of Mandamus directing the respondents to fill up the 04 vacant posts of Draughtsman (Civil Instructor) from the category of Scheduled Casts Balmiki/Mazhbi as advertised, vide advertisement dated 01.03.2013 (Annexure P/1) from amongst the Scheduled Caste other category in terms of Section 4 (4) (5) read with Section 7 of the Punjab Scheduled Caste and Backward Classes (Reservation in Service) Act, 2006*

(ii) *Issue an appropriate writ, order or direction restraining the respondents from de-reserving the said posts and filling them up from the general category candidates, such action being contrary to the provisions of the Punjab*

*Scheduled Caste and Backward Classes (Reservation in Service) Act, 2006*

(iii) *It is further prayed that this Hon'ble Court may please to issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.*

(iv) *It is further prayed that during the pendency of the instant writ petition and subject to the final outcome of the same, the 04 vacant posts in question be not filled up.*

2. The petitioners, who belonged to Scheduled caste category (Others) applied for the post of Draughtsman (Civil Instructor) pursuant to the advertisement dated 1.3.2013. In all, 11 posts were advertised, out of which 5 posts were reserved for Scheduled Caste (Balmikis/Mazhbi) category, 4 posts were reserved for Scheduled Caste (Other) category and one post each was reserved for Scheduled Caste Balmiki/Mazhbi (Sports) and Ex-servicemen. A merit list was issued and appointment letters were offered to the successful candidates. The petitioners herein belonging to Scheduled Caste (Others) category were not offered appointment being lower in merit. Out of 5 posts that had been kept for Scheduled Caste Balmikis/Mazhbi, all were held ineligible other than one Sarabjit, who was appointed, thereby leaving 4 posts vacant in Scheduled Caste (Balmikis/Mazhbi) category.

3. Mr. D.S. Patwalia, learned Senior Counsel, assisted by Mr. Sehaj Bir Singh, Advocate, appearing on behalf of the petitioners, raises a contention that on non-availability of eligible candidates in the Scheduled Caste (Balmikis/Mazhbi) category, the said posts should be offered to the candidates belonging Scheduled Caste (Others) category in order of their

merit, instead of carrying forward the vacancies for the subsequent selection or de-reserving the posts.

4. Per contra, Ms. Lavanya Paul, learned counsel appearing on behalf of the respondent-State, on the basis of an affidavit filed, submits that all the posts reserved for different categories of Scheduled Castes have been filled up from the eligible candidates, however, she is not in a position to dispute the fact that out of 5 posts reserved for Scheduled Caste (Balmikis/Mazhbi) category, only one post has been filled up.

5. I have heard learned counsel for the parties and perused the record of the cases.

6. Initially, when this matter was taken up for hearing, at the time of issuance of notice of motion, a contention had been raised by the learned counsel for the petitioner that 4 posts out of the 5 posts reserved for Scheduled Caste (Balmikis/Mazhbi) category, which are lying vacant, were going to be de-reserved and are being offered to the general category candidates, which has been denied by the respondents in their affidavit filed.

7. The only question which comes up for consideration before this Court is, whether the posts which were meant for Scheduled Caste (Balmikis/Mazhbi) category and remained unfilled should be offered to the Scheduled Caste (Others) category in order of their merit or not?

8. The Punjab Scheduled Caste and Backward Classes (Reservation in Service) Act, 2006 provides for percentage of reservation. Section 4 of the said Act reads as under:-

**“Percentage of Reservation.**

*4. (1) While making appointments in service by any of the*

*methods provided under any Service Sections, reservation shall be made for the members of the Scheduled Castes and Backward Classes in the service under all the establishments.*

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*(5) Fifty per cent of the vacancies of the quota reserved for Scheduled Castes in direct recruitment, shall be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes.”*

9. As per Section 4 (5), reproduced above, 50% of the vacancies of the quota reserved for Scheduled Castes in direct recruitment, shall be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes. Section 4 (5) uses the word “***if available, as a first preference***”. A clear reading of this Section would show that where recruitment has to be made under the Act of 2006, 50% of the vacancies of the Scheduled Castes quota, shall, as a first preference, be offered to Balmikis and Mazhbi Sikhs. Thereby an understanding of the Section would mean, that if Balmikis/Mazhbi Sikhs are available, then as a first preference, 50% of the vacancies quota reserved for Scheduled Castes category are to be filled up by offering them appointment. As a natural consequences thereto, if sufficient candidates are not available from Balmikis/Mazhbi to fill 50% of the vacancies of the quota reserved for Scheduled Castes, then automatically the rest of the vacancies in that 50% has to be offered to the candidates belonging to the Scheduled Castes (Others) in order of their merit in the select list.

10. The terms “preference” has been defined in Cambridge Advanced Learner's Dictionary 4th Edition as “*the fact that you like something or someone more than another thing or person; an advantage that is given to a person or a group of people:*” Further the terms

“preference” has been defined in Blacks Law Dictionary 10th Edition as *“The favouring of one person or thing over another.”*. The definition as such would mean priority is to be given to something or someone over the other. Therefore, as per Section 4(5) priority has to be given to the candidates belonging to Scheduled Caste (Balmikis/Mazhbi) category, while reserving 50% of the vacancies of the Scheduled Caste quota for them, as has been done in the instant case by reserving 5 posts for them. This reservation has to be filled up, if suitable candidates are available, if not, then it would be as per the merit of the other Scheduled Castes candidates who have applied. For example, in the selection process that has been initiated and 4 posts are kept for the Scheduled Castes category, out of which 2 posts are to be kept for Scheduled Caste (Balmikis/Mazhbi) category and 2 for the Scheduled Caste (Others) category, if no candidate is available belonging to the Scheduled Caste (Balmikis/Mazhbi) category, would it mean that these posts not to be filled, the answer is in the negative, since Section 4 (5) clearly specifies that reservation would be kept if such candidates are available. The words ‘**if available**’ in Section 4 (5) of the Act of 2006 have been used deliberately and consciously.

11. Therefore, this Court is of the opinion that if vacancies meant for Scheduled Caste (Balmikis/Mazhbi) category could not be filled up on account of non-availability of the eligible candidates in that category, then such posts are to be filled up from amongst the Scheduled Caste (Others) category in order of their merit.

12. For the reasons stated above, the instant writ petition is allowed.

The respondents are directed to fill up the 4 posts of Draughtsman (Civil

Instructor), from amongst the candidates of Scheduled Caste (Others) category in order of their merit. Let the exercise be carried out within a period of two months on receipt of a certified copy of this order.

May 17, 2017  
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(JAISHREE THAKUR)  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | No  |