

C.W.P No. 7116 of 2015

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. C.W.P No. 7116 of 2015

Parveen KumarPetitioner

Versus

State of Punjab and othersRespondents

2. C.W.P No. 4014 of 2014

Pardeep Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

DATE OF DECISION: 10.1.2017

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Pankaj Jain, Advocate
for the petitioner in C.W.P. No. 7116 of 2015.

Ms. Satpreet Grewal Kapila, Advocate
for the petitioners in C.W.P. No. 4014 of 2014.

Mr. L.S. Virk, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

This order of mine shall dispose of two Civil Writ Petitions bearing Nos. 7116 of 2015 and 4014 of 2014 as the common question of

law and facts are involved in both the petitions. For the sake of convenience, facts are being extracted from C.W.P. No. 7116 of 2015.

The prayer in the present petition is for issuance of a writ in the nature of certiorari quashing the selection of reserve category candidates made against the general category to the post of Sub Inspector by ignoring the eligibility criteria as mentioned in the advertisement. A further prayer has also been made for issuing directions to respondents No.1 to 3 to consider the petitioner for the post of Sub Inspector and not to fill up all the posts till the disposal of this writ petition.

Briefly, the facts of the case as made out in the present petition are that an advertisement for recruitment to 150 posts (120 male +30 female) of Sub Inspector (District Cadre) was issued in the year 2011. Applications were to be submitted from 1.8.2011 to 16.8.2011. The petitioner considering himself eligible applied for the said post. Said posts were to be filled up after conducting physical and written test. Petitioner qualified the physical test and thereafter he was called to appear in the written test. As per process of selection, the merit list was to be prepared category wise on the basis of total marks obtained in written examination and interview. Thereafter, the final merit list was to be prepared after conducting medical test and other formalities. The petitioner appeared in physical test as well as in the written test and thereafter in the interview. The final list was prepared, which had to be category wise but some of the candidates belonging to reserve category i.e. BC and SC (R&O) were also included and were kept at Sr. Nos. 8, 27,37,38,46,47 and 61. All these candidates had already crossed the age of 25 years as on 1.1.2011 as required for general category candidates and hence were ineligible for being

considered in general category but still they were selected.

The petitioner has approached this Court by way of filing the present petition for quashing of selection of those candidates, who were considered in general category by ignoring the eligibility criteria i.e. the criteria of age.

Learned counsel for the petitioner contends that the petitioner was entitled to be appointed in the general category as he cleared the physical as well as written test. He is aggrieved by the action of the respondents vide which the reserve category candidates were considered for appointment in general category ignoring their upper age limit of 25 years and has no grouse for inclusion of BC and SC candidates who were in the age group as mentioned in the advertisement. The action of the respondents is violative of principles of natural justice as well as Articles 14 and 16 of the Constitution of India. Learned counsel also submits that selection of reserve category candidates has been made contrary to the criteria mentioned in the advertisement. The selected candidates were given benefit of age relaxation but were selected in general category and as such they are not entitled to get double benefit. The petitioner has been deprived of his right to be selected in general category because of inclusion of those candidates in general category. It is also the argument of learned counsel that there is no provision in the Punjab Scheduled Caste and Backward Class (Reservation) Act, 2006 that any candidate belonging to reserve category can be accommodated against the general category post on the basis of higher rank in merit list, despite availing the benefit of age relaxation and as such their selection in the general category is liable to be set aside. At the end, learned counsel submits that the petitioner had

secured 66 marks and the last selected candidate secured 63 marks in the written test.

In response to notice of motion, reply has been filed, which is on record.

Learned counsel for respondent-State submits that the issue involved in the present case is squarely covered by the decision of Hon'ble the Apex Court in case **Jitendra Kumar Singh and another Vs. State of U.P. and others** 2010 (3) SCC 119, wherein, it was held that concession of relaxation in fee or age can be granted simultaneously as the age relaxation is given just to give aid to the candidates belonging to reserve category and as far as merit is concerned, in case they get higher merit than the last selected candidate in general category, they are to be selected in the general category. Learned State counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **Mangla Ram Bishnoi and others Vs. State of Rajasthan and others** reported as 2011 (1) RLW 846 and **Indra Sawhney and others Vs. Union of India and others** reported as 1993 (1) SCT 448.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

The facts relating to publication of advertisement for the post of Sub Inspector (District Cadre), number of posts, process of selection are not disputed. Admittedly as per process of selection, the merit list was to be prepared on the basis of physical test, written test and interview and that too category wise. The petitioner is aggrieved by the action of the respondents as some of the candidates who belong to reserve category being BC and SC (R&O) were included in the list of general category candidates. It is the

grievance of the petitioner that because of inclusion of those candidates, the petitioner could not be selected as number of posts of general category candidates were reduced. The candidates who were considered in general category had already taken benefit of age relaxation, however, while considering in general category they were not entitled for age relaxation as they have crossed the maximum age i.e. 25 years. Such candidates cannot take double benefit as benefit of age relaxation was to be given only in case they were to be considered in reserve category.

The issue for consideration by this Court is whether the candidates who applied in reserve category and have taken benefit of age relaxation but being higher in merit can be considered in general category with benefit of age relaxation or not.

In **Indra Sawhney's case (supra)**, it has been held that the reserve category candidates who secured more marks than the general category candidates, can be considered for appointment in general category and quota of that particular reserve category cannot be reduced by treating the appointment as made against the earmarked reserve category to which one belongs.

In the present case also, the candidates who applied in reserve category secured more marks than the last selected candidates in general category. The petitioner is aggrieved by the action of the respondents in giving age relaxation to those candidates who applied in reserve category but were considered/selected in general category. The petitioner could not come in the merit of general category because of inclusion of reserve category candidates in general category. Had those candidates been considered in reserve category, the merit of the petitioner could have been

higher in General Category and he could have been selected/appointed.

It is well settled that in case a reserve category candidate gets more marks than the last selected candidate in the merit list, he is entitled to be considered in general category and in that situation, he cannot be treated as reserve category candidate. In case any reserve category candidate gets benefit of age relaxation, he cannot be deprived for consideration in general category on the basis of higher in merit. By considering the concept of “Equal Opportunities”, the benefit is granted to reserve category candidates by relaxing the age. Thereafter, they were found to be higher in merit and were considered in general category. The purpose of giving age relaxation is to bring those persons at par with general category candidate. This benefit of age relaxation is given to those persons by taking into consideration the concept of bringing them on equal footing to compete. Thereafter by considering them higher in merit because of their performance, they have a right to be considered in general category. The benefit of age relaxation was given because of being reserve category candidate. The purpose of giving age relaxation was upto the period of consideration. Thereafter performance in the selection process was to be considered. In case they get higher merit then they can be considered according to their respective merit. It has been held in various judgments including **Indra Sawhney's case (supra)** that a reserve category candidate can always compete in unreserved category in addition to his/her reserve seat. Meaning thereby a reserve category candidate can compete against the unreserved seat under a criteria which is uniformly applicable to all the candidates. In case the selection criteria is lowered for the reserve category candidate then such difference in standard or criteria would disentitle the reserve category

candidate to compete in the general category. The preferential treatment by giving certain relaxation in age and fee is given to reserve category candidate under Article 16 (4) of the Constitution of India has to be balanced objectively. The relaxation in matter of fee and age is given to reserve category candidates so that they can compete with other candidates in general category in an open competition. By considering the circumstances that a reserve category candidate cannot compete with the open category candidate after availing preferences, which result in lowering of the prescribed standards, by giving age relaxation and by allowing them lesser fee they are in a position to compete with other candidates. Therefore, in case a candidate has availed concession in fee or age limit, it cannot be treated to be a relaxation in the standard of selection, therefore, it would not deny a reserve category candidate the selection in open competition with general category candidates. The relaxation in age and concession of fee are provisions pertaining to eligibility of a candidate to find out as to whether he can appear in a competitive test or not and by these it does not provide any indicia to open competition. The competition would start only at a stage when all the persons who fulfill all the requisite eligibility qualification, age etc. are short-listed. The candidates who are in zone of consideration and are entering the list on the basis of aforesaid qualifications would thereafter participate in the competition and there would be an open competition which would commence therefrom. Accordingly the concession granted to the reserve category would not disentitle a reserve category candidate of the benefit to be considered in General Category.

Similar issue was there in **Jitendra Kumar Singh's case (supra)**. The relevant portion of the said judgment is reproduced as under:-

“In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the General Category Candidates is without any foundation. It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list. It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16 (1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates at par with General Category candidates. It

is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates. It has been recognized by this Court in the case of **Indra Sawhney (supra)** that larger concept of reservation would include incidental and ancillary provisions with a view to make the main provision of reservation effective.”

In view of ratio of aforesaid judgment and the facts and law position as discussed above, it is held that if a reserve category candidate has secured more marks than the last general category candidate, he is entitled to be selected against the unreserved seat without being adjusted against the reserve seat. It is also held that the age relaxation was given to those candidates by considering their reserve category and they cannot be deprived of the benefit while considering their merit in the open category. It cannot, therefore, be said that the petitioner has been deprived of consideration by including the names of candidates belonging to reserve category in general category. No prejudice has been caused to the petitioner and as such 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.

10.1.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No