

LPA no.1427 of 2017 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA no.1427 of 2017 (O&M)

Date of Decision :23.10.2017

Rajinder Singh Godia

....Appellant(s)

Versus

The State of Haryana and others

...Respondent(s)

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

Present : Mr.Rajiv Atma Ram, Sr. Advocate with
Mr. Jaitej Mittal, Advocate for the appellant(s)

MAHESH GROVER, J.(ORAL)

This appeal is directed against the judgment of the learned Single Judge dated 3.5.2017. To be true to the facts, we would extract the portion detailing facts from the judgment of the learned Single Judge:-

“1.. In this writ petition, petitioner has sought for the following relief:-

“(i) xxx xxx

(ii) *a writ of Mandamus be issued directing the respondents to appoint the petitioner to the post of Inspector (Haryana Police) on the basis / premises that he has been selected at Sr. No.1 in the merit from amongst the Backward Class candidates in pursuance of the selection process initiated by the Subordinate Services Selection Board, Haryana;*

(iii) *the respondents be directed to allow all the*

consequential benefits to the petitioner, including the Roster point in the cadre of Inspectors (Haryana Police) consequent upon his appointment from amongst the candidates belonging to the category of Backward classes, along with all other benefits in the nature of pay, seniority and promotion etc. as granted to persons in the seniority list immediately at a position below the one obtained / deserved by the petitioner;

(iv) the respondents be further directed to consider the claim of the petitioner as a Backward Class candidate and not as a 'general category' candidate in accordance with the instructions issued by the government from time to time;

(v) it is further prayed that during the pendency of the instant writ petition, the respondents be restrained from filling up any posts of Inspector (Haryana Police) or in the alternative a post of kept reserved for the petitioner;”

2. Brief facts of the case are as follows:-

On 22.01.1988 the Subordinate Services Selection Board notified six posts of Inspectors in the Haryana Police Department, State of Haryana. Thereafter, on 07.07.1988 number of posts of Inspectors of Police was increased to 8 posts. While advertising 06 posts of Inspectors of Police, 01 post was reserved for Scheduled Caste category and 02 for ESM, rest of 03 posts for General category. When it was enhanced to fill up 8 posts, 5 posts were reserved for reserved category, whereas 3 posts were reserved for general category.

The petitioner was a candidate for the recruitment. At the time

of finalization of the select list, the official respondents proceed to fill up 19 posts. Some of the candidates including petitioner feeling aggrieved by the selection of 19 candidates which were in excess to the notified vacancy, filed civil writ petition nos. 5123 and 6134 of 1991. This Court was pleased to set aside the selection to the extent of filling up of excess than the notified vacancies. Matter was taken up before the Supreme Court. Supreme Court affirmed the order of this Court passed in CWP No. 5123 of 1991. Pursuant to the judicial order, the official respondents proceeded to select the candidates with reference to written test result i.e. inviting candidates for physical test in the month of October, 1993. Petitioner was permitted to participate in the process of physical test as well as interview by virtue of interim order passed in CWP No. 12632 of 1993 filed by the petitioner. Said writ petition was withdrawn by the petitioner on 28.02.1994 with permission to file a fresh writ petition on the same cause of action. Thus, present petition has been filed.”

The claim of the appellant thus is that he ought to have been considered and appointed against post intended for the backward class candidate, particularly, when the conceded position of the State reflected its availability.

A reference has been made to the affidavit filed by the State in earlier proceedings initiated by the appellant which forms a part of the orders passed by the Hon'ble Supreme Court:-

“In the said affidavit, it was also pointed that the

break up of the 19 posts now sought to be filled in ought to have

been as under:-

General category	10
Ex-servicemen	03
Scheduled castes	04
Backward Classes	02”

It has been contended before us that the aforesaid being an inescapable position qua the availability of the backward class post and the same having not been incorporated in the advertisement has resulted in unfair denial to the appellant's appointment to the post of Inspector. Reference has also been made to the workability of the roster fortifying the afore-extracted vacancy position.

Learned Single Judge declined inference on the ground that the appellant failed to impugn the advertisement and the non-inclusion of the backward class post in accordance with available vacancies.

We would have no hesitation to concur with the finding of the learned Single Judge in this regard. The appellant was alive to the controversy looking at the previous record of litigation and when the advertisement was given out in the year 1988 the appellant made no attempt to impugn the same and question the non-allocation of backward class post in accordance with the availability set out in the affidavits of the State.

As of now the grievance is in the realm of hypothesis as to, if the posts had been allocated, the appellant would have succeeded to the post. In the absence of any challenge to the action of the State in not allocating the post of backward class candidate in accordance with the available vacancies, the appellant's case suffers from an inherent and incurable defect.

Therefore, no ground to interfere is made out. Hence, instant appeal is hereby dismissed.

(Mahesh Grover)
Judge

23.10.2017
rekha
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

(Raj Shekhar Attri)
Judge