

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

(1)

COCP No.2241 of 2015

Rakesh Kumar

.....Petitioner

Versus

Smt. Ashima Brar and another

...Respondents

(2)

COCP No.143 of 2016 (O&M)

Satya Pal

.....Petitioner

Versus

Smt. Ashima Brar and another

...Respondents

(3)

COCP No.2664 of 2015 (O&M)

Sunil Kumar

.....Petitioner

Versus

Smt. Ashima Brar and another

...Respondents

Date of Decision : 19.02.2018

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Ms. Sangita Dhanda, Advocate for the petitioner
in COCP Nos.2241 and 2664 of 2015.

Mr. Rajesh Arora, Advocate for the petitioner
in COCP No.143 of 2016.

Mr. Deepak Sabherwal, Advocate for respondents.

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DAYA CHAUDHARY, J. (Oral)

This order of mine shall dispose of all the three contempt petitions mentioned above, as common questions of law and facts are involved for adjudication in all the three cases. However, for the sake of convenience, facts are being extracted from COCP No.2241 of 2015.

Petitioner filed CWP No.12605 of 2014 titled as Balwinder Singh Vs. Haryana Vidut Parsaran Nigam Ltd. and others for appointment on the post of Assistant Lineman on the ground that he secured more marks than the last selected candidate in the category of BC-B. The following order was passed on 11.12.2014:-

“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.”

On non-compliance of said order, the petitioner filed the present contempt petition under Section 12 of the Contempt of Courts Act.

Learned counsel for the petitioner submits that copy of order dated 11.12.2014 was supplied to the respondents. A representation along with certain documents was also sent through registered post, but the same was not considered within the stipulated period as per direction issued vide order dated 11.12.2014. Learned counsel further submits that it was undertaken by learned State counsel to comply with the order in case the petitioner was found to be higher in merit than the last selected candidate in BC-B category. Learned counsel also submits that not only the non-compliance of order 11.12.2014 is there but subsequently orders passed in the COCP have also not been complied with. The claim of the petitioner was to be considered under BC-B category as the copy of BC-B certificate

dated 19.03.1996 was supplied to the concerned authority at the time of interview in the year 1997 as the petitioner did not mention his category in the application form. Learned counsel also submits that the petitioner remained the employee of the respondent-department from 1993 to 1997 as he was appointed in General category at the relevant time *i.e.* in the year 1993. His caste was de-listed from the category of Backward Class vide notification dated 11.07.1991 but subsequently, again his caste came under BC-B category vide notification dated 07.06.1995 *i.e.* much before his final selection of 1997. His category was not mentioned in the form in the year 1997 because of that reason and caste certificate was submitted at the time of interview in the year 1997 itself. The record of selection was not with the respondents and they cannot take advantage of their own negligence by denying offer of appointment to the petitioner. Learned counsel also submits that claim of the petitioner has not been considered in spite of giving undertaking and his claim has wrongly been rejected which amounts to deliberate, willful and intentional disobedience of order dated 03.12.2008 and 11.12.2014 passed by this Court. Learned counsel for the petitioner also submits that the category of some of the similar candidates was changed. At the end, learned counsel for the petitioner submits that the act of the respondents amounts to contempt of Court and they be punished in view of provisions of Contempt of Courts Act.

Learned counsel appearing for the respondent has opposed the submissions made by learned counsel for the petitioner and submits that the petitioner made representation dated 05.01.2015 in pursuance of direction

issued as per order dated 11.12.2014 passed by this Court. After considering his representation, a well reasoned order has been passed by considering the merit of the petitioner. The petitioner obtained 71 marks and he was considered in General category as he did not mention his caste as BC-B in the application. In the year 1997, he was treated as General category candidate and accordingly, during 2009 also he was considered in the same category as petitioner did not represent for correctness of his category in pursuance of public notice dated 29.05.2009. Learned State counsel also submits that in case the petitioner is aggrieved by the order, he is at liberty to challenge the order passed by the respondent.

Heard arguments of learned counsel for the parties and have also perused all the documents on the file including orders passed on 03.12.2008, 11.12.2014 as well as 22.12.2010. On perusal of order dated 11.12.2014 passed in CWP No.12605 of 2014, the writ petition was disposed of with a direction to the petitioner to approach the respondents within a period of 30 days from the date of passing of order by making an appropriate representation and same was to be considered and decided by the respondents by passing an appropriate order strictly in accordance with law within a period of three months from the date of receipt of the representation. No doubt the said petition was disposed of on the basis of statement made by learned State counsel that in case the petitioner was found more meritorious than the last candidate as per merit list dated 05.10.2009, his claim would be considered. In pursuance of said direction issued by this Court on 11.12.2014, the representation was made by the

petitioner and subsequently it has been rejected by passing a speaking order dated 20.08.2015. It has also been mentioned in the said speaking order that opportunity was given to all the candidates by inviting representations regarding correctness of name and categories mentioned in the list belonging to reserve categories within a period of 15 days of issuance of press notice *i.e.* by 10.06.2009. However, the petitioner did not represent for correctness of his category in pursuance of public notice dated 29.05.2009. After considering the representations given by the candidates, all candidates were placed in the appropriate category and final merit list was prepared on 05.10.2009. Name of the petitioner did not figure in the list dated 05.10.2009. The petitioner did not challenge the merit list and the same has attained finality. Petitioner obtained 71 marks in General category as he was treated in the General category and not in BC-B category as he did not make any representation for correctness of his category in pursuance of notice dated 29.05.2009. The last selected candidate secured 77 marks in General category and marks of the petitioner were lesser than the last selected candidate. It has also been mentioned in the order that some of the candidates were issued appointment letters in compliance of order dated 22.12.2010 passed by this Court. Thereafter, review application was filed by the respondents which was allowed vide order dated 11.12.2014 and the services of those candidates were dispensed with after giving adequate opportunity of hearing.

Although all efforts have been made by learned counsel for the petitioner to make out a case that the certificate of BC-B category was

accepted at the time of interview but still his category has not been changed but there is no document on the file that the certificate was submitted or same was accepted by the respondents. Disputed question of facts cannot be decided by the Contempt Court as it is a matter of evidence. A speaking order has been passed in pursuance of order dated 11.12.2014 passed in CWP No.12605 of 2014. In case the petitioner is aggrieved by said order he is at liberty to avail appropriate remedy to challenge said order.

Accordingly, all three contempt petitions *i.e.* COCP No.2241 of 2015, COCP No.143 of 2016 and COCP No.2664 of 2015 are dismissed.

However, it is made clear that any observation made in this order shall not be construed as an expression of opinion on the merits of the case while challenging the order passed by the respondents.

19.02.2018
sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No