

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

(1) CWP No. 24161 of 2014 (O&M)
Date of decision: 09.10.2018

Raj Kumar

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(2) CWP No. 22919 of 2013 (O&M)
Date of decision: 09.10.2018

Jai Maninder Pal Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Vikas Singh, Advocate and
Mr. B.S. Patwalia, Advocate for the petitioner
in CWP-24161-2014 and for respondent No.3
in CWP-22919-2013

Mr. A.S. Cheema, Advocate for the petitioner(s)
in CWP-22919-2013.

Ms. Sunint Kaur, AAG, Punjab.

Jitendra Chauhan, J. (Oral)

The aforementioned two petitions are being decided by way
of common order as common questions of law & facts are issue involved
in both the petitions. However, the facts are being derived from CWP-
24161-2014 in order to avoid repetition.

By way of writ petition No.24161 of 2014, petitioner Raj Kumar seeks quashing of order dated 04.11.2014 (Annexure P-11) vide which he was dismissed from service, whereas, petitioner Jai Maninder Pal Singh seeks issuance of directions to the respondents to appoint him on the post of Junior Engineer (Electrical) against the Scheduled Caste category advertised, vide advertisement dated 15.08.2012 (Annexure P-1) against which petitioner Raj Kumar in CWP-24161-2014 had been appointed and later on terminated from service.

Learned counsel for the petitioner in CWP-24161-2014 submits that the petitioner was appointed on the post of Junior Engineer (Electrical) against the Scheduled Caste category on the basis of merit. While submitting his online application to the post in question inadvertently clicked against the Ramdasia category instead of Balmiki category. To rectify the mistake, he moved representations (Annexure P-3 & P-4) along with his caste certificate as well as caste certificate of his father (Annexure P-5 & P-6) which was duly accepted by the competent authority. It is asserted that the petitioner has been terminated from service on the ground that he obtained two scheduled caste certificates; one is of Ramdasia category and other one is of Balmiki on the basis of which, he fraudulently got the appointment to the post in question, however, while terminating the petitioner no notice or opportunity of hearing was afforded to him and thus, there is a clear violation of principles of natural justice. In support of assertions, learned counsel cites **Kamlesh** vs. **State of Haryana and others**, 2012(2) SLR 223

wherein it has been held that once the post stood consumed, even if subsequently the services of such person are terminated, the next in merit shall have no right of appointment on that post as the mandate of filling up the advertised post stood completed.

Learned counsel for the petitioner in CWP-22919-2013 though acknowledges the factum of petitioner Raj Kumar being higher in merit, however, he states that the post in question was advertised against reserved category i.e. Majhbi and Balmiki (M&B). Respondent No.3 (petitioner Raj Kumar) earlier applied against the category of Ramdasia and others. Vide advertisement dated 15.08.2012 (Annexure P-1), two vacancies were reserved for scheduled caste category, however, later on, the same was reduced to one and it was decided by the respondents that in case of scheduled caste candidates where there is only one vacancy, the same will be filled out of the SC (M&B) category. He further states that respondent No.3 Raj Kumar obtained two scheduled caste certificates; one is of Ramdasia category on the basis of which he took admission in Electrical Engineer in Polytechnic College, Phagwara and other one is of Balmiki on the basis of which, he fraudulently got the appointment to the post in question. Therefore, he states that respondent No.3 Raj Kumar has rightly been dismissed from service.

Learned State counsel admits the above factual aspect of the matter.

Heard.

The petitioner(s) are claiming to be appointed on the post of

Junior Engineer (Electrical). Petitioner Raj Kumar who was appointed on the post in question has assailed his termination order, whereas, petitioner Jai Maninder Pal Singh is seeking appointment to the said post being the next eligible candidate. Admittedly, petitioner Raj Kumar secured total 54% marks, whereas, petitioner/respondent No.3 Jai Maninder Pal Singh secured 50.5% marks and on the basis of merit, petitioner Raj Kumar was appointed on 13.01.2014 on the post in question. However, on verification of caste certificate submitted by petitioner Raj Kumar, it came to light that vide letter No.631 dated 27.04.2000, a certificate of Ramdasia caste had been issued in favour of petitioner Raj Kumar by Tehsildar, Munak, District Sangrur which he had used for seeking admission in Electrical Engineering in Polytechnic College, Phagwara and the other he got against the Balmiki category vide letter No.270 dated 16.05.2013 from Tehsildar Khanauri. It is not in dispute that earlier while submitting the application for the post in question, petitioner Raj Kumar mentioned himself as Ramdasia in the category column which was later on converted into Balimiki category on the representation moved by the petitioner wherein it has been stated that in the category of caste 'Ramdasia' was inadvertently mentioned instead of 'Balmiki'. Learned counsel for petitioner Raj Kumar has failed to explain as to how the petitioner came into possession of two certificates of different categories. An FIR No.94 dated 01.12.2014, registered under Sections 467, 468, 471, 420 and 120-B of IPC, at Police Station Khanauri, District Sangrur has been registered against petitioner Raj Kumar who had used two caste certificates of different categories in

order to get benefit of getting education and job. Further, it has been specifically mentioned in Clause 12(f) of the appointment letter issued to petitioner Raj Kumar that in case the documents in respect to reservation submitted by the petitioner are found false at any stage, then his appointment shall be cancelled without any appeal/plea. Thus, from the act of petitioner Raj Kumar, no fault can be found in the impugned order of termination. Accordingly, petition filed by petitioner Raj Kumar stands dismissed. The plea of learned counsel for respondent No.3 Raj Kumar that petitioner Jai Maninder Pal Singh cannot be appointed is not tenable. The ratio of law laid down in Kamlesh's case (supra) is distinguishable on facts of the present case since in CWP-22913-2013 while issuing notice of motion, appointment to the post in question was held subject to final decision of the writ petition.

Since the petitioner Jai Maninder Pal Singh is the second candidate in order of merit against the category of SC (M&B) and in view of the above findings, the petition filed by petitioner Jai Maninder Pal Singh is allowed.

The respondents are directed to consider the name of petitioner Jai Maninder Pal Singh against the post in question and after verifying all the testimonials and following the due procedure, an appointment letter be issued to him. The necessary exercise be completed within a period of three months from the date of receipt of certified copy of this order.

09.10.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No