

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

CWP No.25896 of 2016 (O&M)

Date of decision: 02.04.2018

Sunita Sharma

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Kapil Kakkar, Advocate for the petitioner(s).

Mr. Amit Mehta, Sr. DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner(s) seek(s) issuance of directions to the respondents to consider and appoint the petitioner as Lecturer (Economics) against the post of General category in view of her securing of 190 marks being equivalent to the marks of the last selected candidate.

Heard.

The petitioner has laid her claim on the basis of the merit list dated 09.12.2016 (Annexure P-6) being equivalent to the last selected candidate, namely Jyoti who was given appointment and in view of the fact that 9 posts of general (ESM) category and 3 posts of general (sports) category are lying vacant. It is asserted that in case the post in general (ESM) category remains unfilled, the same can be filled from the candidates from the general category. The petitioner has not placed on

record anything on the basis of which Annexure P-6 has been drawn. As per the reply filed on behalf of the State, the posts lying vacant in the general (ESM) category and general (sports) category cannot be de-reserved and as such the same will be considered as backlog and will be advertised in the next recruitment process. The merit list (Annexure P-6) which is the basis of the claim of the petitioner neither pertains to the present advertisement nor there is reference of any policy on the basis of which reference has been drawn towards (Annexure P-6). It has been specifically mentioned in Clause 3 of the advertisement (Annexure P-1) that in case more than one candidate secure equal marks in both the written tests, in such an eventuality, the candidate older in age, will be placed higher/earlier in the merit and in case of more than one candidate whose marks and age are at par then the candidate whose marks are higher in the Post Graduation in the concerned subject, he/she will be placed prior in merit. Similar view was taken by Hon'ble the Supreme Court in **Kulwinder Pal Singh** Vs. **State of Punjab and others** (2016) 6 SCC 532, wherein in para Nos.14 & 15 it was observed as under:-

“14. On behalf of the appellants, it was contended that once posts were de-reserved and appointments were made as against the said de-reserved posts and the de-reservation was not challenged, High Court erred in going into the question of de-reservation. As noticed above, out of 52 posts of Punjab Civil Service (Judicial Branch) advertized, 08 posts of reserved category were not filled up and Public Service Commission de-reserved the same. Bifurcation of the said de-reserved posts is as under:-

- 1. Ex-servicemen, Punjab - 3 posts*
- 2. Physically Handicapped, Punjab 2 posts*
- 3. Sports Person, Punjab 1 post*
- 4. Scheduled Caste, Ex-servicemen, Punjab 1 post*
- 5. Ex-servicemen, Backward Class 1 post*

Out of the said eight de-reserved posts, one post was filled up by a backward class candidate and the remaining seven posts by general category candidates. As observed by the High Court, so far as two posts of physically handicapped, three posts of ex-servicemen and one post of sports person is concerned, there was no statutory prohibition in respect of dereservation. However, in respect of de-reservation of one post of scheduled caste category, Section 7 of Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 prohibits de-reservation and stipulates the manner in which such de-reservation could be done. Section 7 of the Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 as extracted in the impugned judgment reads as under:-

7. De-reservation of reserved vacancy:- (1) There shall be no de-reservation of any reserved vacancy by any appointing authority in any establishment, which is to be filled up by direct recruitment or by promotion. In case, a qualified or eligible Scheduled Castes or Backward Classes candidate, as the case may be, is not available to fill up such vacancy, in that situation, such vacancy shall remain unfilled.

(2) Notwithstanding anything contained in sub-section(1), if, in the public interest, it is deemed necessary to fill up any vacancy referred to in that sub-section, the appointing authority shall refer the vacancy to the Department of Welfare of Scheduled Castes and Backward Classes for dereservation. Upon such reference, the Department of Welfare of Scheduled Castes and Backward Classes may, if it is satisfied that it is necessary or expedient so to do, by order in writing, de-reserve the vacancy, subject to the condition that the vacancy so de-reserved, shall be carried forward against

a subsequent unreserved vacancy.

15. By perusal of Section 7, it appears that as a general rule there is a bar on de-reservation of the post reserved for scheduled caste candidates. However, sub-clause (2) provides an exception to this general rule by laying down that in the public interest the authorities may by passing an order in writing de-reserve the seats reserved for candidates belonging to scheduled castes category. After insertion of clause (4B) in Article 16 of the Constitution vide Eighty First (Amendment) Act, 2000, de-reservation could not have been done. Under Article 16(4B) of the Constitution of India, unfilled vacancies reserved for scheduled castes or scheduled tribes candidates are to be carried forward independent of ceiling of reservation of fifty per cent. The seats reserved for scheduled castes and scheduled tribes categories are to be filled only by specified category. Therefore, High Court was right in finding fault with the de- reservation of the seven posts which were filled by candidates belonging to general category and we do not find any reason warranting interference.”

In the present case, the petitioner could not be offered appointment though the petitioner had secured marks equivalent to other candidates, but the petitioner being younger in age to the selected candidates was rightly not issued appointment letter in view of Clause 3 of the advertisement (Annexure P-1).

In view of the above, this Court feels that there is no infirmity or illegality in rejecting the claim of the petitioner.

Accordingly, the instant petition is dismissed.

02.04.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No