

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

**CWP No.812 of 2013
Date of Decision: 22.10.2018**

Rajesh Kumar

.....Petitioner

Versus

State of Punjab & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Ms. Alka Chatrath, Advocate
for the petitioner.

Ms. Sunint Kaur, AAG Punjab.

JITENDRA CHAUHAN J.

Through the instant civil writ petition, the petitioner seeks quashing of action of the respondents in not considering his claim for the post of Lecturer in Physics against the Scheduled Caste category.

The Government of Punjab through C-DAC, Mohali issued an advertisement No. Oct 1/2006 on 21.10.2006 for filling up posts of Masters, Lecturers including 20 posts of Lecturers in Physics. As per the advertisement, five posts were reserved for S.C. male and female i.e. two each and the fifth post was meant for male/female candidate with higher merit. The petitioner applied for the post of Lecturer in Physics. He had secured 889 marks out of 1200 (704 marks in Part-I out of 1000 marks and 185 in part-II internal assessment out of 200 marks) in B.Ed examination. As per the criteria adopted by the respondents the petitioner's merit comes at 68.016. The petitioner appeared in the counselling before the Committee and his certificates were scrutinized. The result in question was declared on 20.11.2006.

The name of the petitioner was not included in the select list. One candidate, namely, Vimal Kumar who had secured 68.24 marks was selected under the SC (Ramdasia and others) category. The petitioner came to know that his merit is at 68.016 and he is next in the order of merit under SC (Ramdasia and others) category but the department has bifurcated the posts kept for SC category (one post for Ramdasia and others and other one for Mazhbi & Balmiki) and has kept the second post for SC (Mazhbi & Balmiki) candidate. In this regard, the Secretary to Government of Punjab, Welfare of Scheduled Caste & Backward Classes Department issued letter No. 1818-SW-75/10451 dated 05.05.1975 prescribing that henceforth 50% vacancies of quota reserved for scheduled caste should be offered to the Balmiki and Mazbi Sikh if available as a first preference from amongst the scheduled caste candidates and out of 33 castes included in the Presidential order.

It has been contended that the instructions have not been construed in their true spirit. The petitioner being a member of Scheduled caste (Ramdasia) ought to have been offered appointment as he is next to Vimal Kumar in the merit. It has been further contended that while calculating the merit of the petitioner at 66.175, the internal assessment marks were not been taken into consideration, whereas, qua other two candidates, namely, Vimal Kumar and Jaswinder Lal, who also belong to the SC category, the internal assessment marks were considered to determine the merit. On adding the internal assessment

marks of the petitioner, the merit of the petitioner would come to 68.016 from 66.175 which would be higher than that of Jaswinder Lal, who had been treated as a candidate at serial No.2 in the merit and had scored 67.75 marks. The petitioner would therefore be entitled to be considered for appointment to the post of Lecturer (Physics).

On the other hand, the stand of the respondents is that 20 posts of Lecturers Physics were advertised during 2006, two posts were reserved for SC category which were further reserved for sub-categories i.e. S.C. (Ramdasia and others) and S.C. (Mazhbi & Balmiki) on the basis of 50:50 ratio. Out of these two reserved posts, only one candidate was selected under the S.C. (Ramdasia and others) category and the remaining one post is still lying vacant due to non-availability of any candidate belonging to S.C. (Mazhbi & Balmiki) category.

It has been pointed out by the learned State counsel that the internal assessment marks of other candidates had been taken into consideration because the candidates had uploaded their total marks including the internal marks whereas, the petitioner had uploaded his marks excluding the internal marks.

Heard.

It is to be noticed that the internal assessment marks of the petitioner were not taken into consideration because the petitioner himself had not uploaded the same. The mistake on the part of the petitioner cannot be said to be so grave which could not have been

rectified by the respondents and ultimately disentitles him the offer of appointment. Further Circular No. 1818-SWI75/10451 dated 05.05.1975 issued by the Government of Punjab reads as under:-

“In the matter of direct recruitment 50% of the reserved vacancies for the members of Scheduled Castes will be offered to the members belonging to Mazhbi Sikhs/Balmikis, if available, as a first preference. If the requisite number of candidates belonging to Mazhbi Sikhs/Balmikis are not available, vacancies fallen to their share will be filled by the members of other Scheduled Castes. xxx”

A reading of the aforesaid circular makes it clear that only the preference has to be given to the SC (Mazhbi and Balmiki) and if a candidate from that category is not available then the post will be offered to member of the other Scheduled Castes. Keeping in view the fact that the post of Scheduled caste category (Mazhbi and Balmiki) is lying vacant as no suitable candidate was found, the respondents are directed to offer an appointment to the petitioner who is Scheduled Caste category (Ramdasia) if after adding his internal assessment marks, he becomes eligible for the post.

Consequently, the present civil writ petition is allowed. The respondents are directed to offer an appointment to the petitioner for the post of Lecturer (Physics), if he is found eligible. The necessary exercise be done within a period of two months from the date of receipt of certified copy of the judgment.

22.10.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No