

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14515-2013

Date of Decision: July 23, 2019

Pawandeep Kaur

... Petitioner

vs.

Director General School Education & Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Brijesh Khosla, Advocate
for the petitioner.

Mr. Shekhar Verma, Advocate
for respondent No.1.

Mr. R.K.Arya, Advocate
for respondent No.2.

Mr. Satvir Singh, Advocate for
Mr. A.S.Manaise, Advocate
for respondent No.4.

ARUN MONGA, J (ORAL)

1. Under challenge herein, *inter alia*, is an undated order (Annexure P-9) issued by respondent No.1 removing the name of the petitioner and adding the names of Manoj Kumar, Simarjit Kaur and Manjinder Singh, private respondents No. 2, 3 and 4, respectively, in public notice for allotment of stations in respect of candidates for filling up vacancies of Computer Faculty. The petitioner also seeks *mandamus* to consider her for the Computer Faculty and allot her the appropriate station of posting.

2. Facts, as per the petition, are that respondent No. 1 issued an

advertisement for filling up 700 posts of Computer Faculties. The petitioner applied/competed for the same in the category of Backward Class Ex-Servicemen Dependent. It is her claim that she was selected and placed at No. 159 in the merit list. Letter dated 23.04.2013 (Annexure P-8) was issued requiring the petitioner to appear on 04.05.2013 for choosing the station of posting. However, before that could happen, respondent No. 1 illegally cancelled the candidature of petitioner and replaced her with the names of private respondents No. 2 to 4 from the same category.

3. Respondent No. 2 filed its return and later filed additional affidavits dated 06.04.2017, 12.09.2018 and 19.07.2019. Private respondent No.4 Manjinder Singh filed her separate reply. They all have contested the petitioner's claim. Respondent No. 2 asserted, *inter alia*, that three candidates, namely (i) Kanchan Devi with 27 marks, (ii) respondent No. 3 Simarjit Kaur with 26.25 marks and (iii) respondent No. 4 Manjinder Singh with 24.75 marks, in the B.C. Ex-Servicemen dependent category had secured more marks than the petitioner (21 marks); that those three candidates appeared for counseling under the wrong category of Ex-Servicemen dependent, owing to which, in their place, the names of the petitioner and other candidates with lesser marks, were shown in the selected list of B.C. Ex-Servicemen Dependent category. Later, when the aforesaid candidates appeared, the mistake was corrected. Resultantly, the petitioner and other concerned candidates, with lower merit in the category of B.C. Ex-Servicemen Dependent, were replaced by respondent No. 5, Sunil Kumar (22.25 marks), respondent No. 6 Lakhveer Singh (22 marks) and respondent No.7 Sunil Kumar (21.5 marks), by virtue of their higher merit in that category. Following an order passed by this Court in CWP No.

4373-2013, titled as **Manoj Kumar v. State of Punjab**, the claim of another candidate Manoj Kumar (33.25 marks) for the post of Computer Faculty was also accepted. The petitioner having thus gone down in merit, could not be selected/appointed.

4. I have gone through the record of the case and heard Mr. Rajiv Atma Ram learned Senior counsel assisted by Mr. Brijesh Khosla, Advocate, learned counsel for the petitioner and Mr. Shekhar Verma, Mr. R.K.Arya and Mr. Satvir Singh, learned counsels for respondents No. 1, 2 and 4, respectively.

5. At this juncture, it would be appropriate to notice the relevant provisions of Section 7 of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006. For ready reference, the section *ibid* is reproduced below:

“7. (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 de-reservation. 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 to the condition that

the vacancy so de-reserved, shall be carried forward against a subsequent unreserved vacancy.”

6. After pleadings were completed, an additional affidavit dated 12.07.2018 was filed pursuant to a query posed by this Court vide order dated 29.05.2018. In para No.3 of the said affidavit, it has been stated that out of 700 posts, 670 appointment letters have been issued. A complete merit list was attached as Annexure R/A. It has been stated that there is no vacant post in the ex-servicemen dependent(BC Category). On the basis of merit reflected in Annexure R/A, learned Senior counsel for the petitioner contends that as many as six persons in the ex-servicemen dependent(BC Category) had obtained marks which are more than 22 candidates in the ex-servicemen dependent(General Category) viz. Candidates at Sr. Nos. 580, 581, 584, 586, 589, 590, 595, 596, 597, 598, 599, 600, 604, 605, 606, 609, 610, 611, 612 and 616. This is a conceded factual position in view of the affidavit dated 12.07.2018. Marks obtained by above-said six persons belonging to ex-servicemen dependent(BC Category) are as below:-

Sr. No.	Name of candidate	Marks obtained
500	Balwinder Kaur	38.75
511	Gurpreet Singh	38.25
550	Gurpreet Singh	34.75
552	Sarabjeet Kaur	34.75
564	Manoj Kumar	33.25
579	Sukhdev Singh	32

7. In the aforesaid premise, the foremost issue that requires adjudication by this Court is, whether a candidate belonging to ex-servicemen dependent(BC Category), who has more marks than last selected candidate of ex-servicemen dependent(General Category), is required to be shifted to ex-servicemen dependent(General Category)?

8. Learned Sr. counsel for the petitioner argues that in view of the legal position/principle settled by the Hon'ble Supreme Court in **Ravinder Kumar versus State of Haryana & Ors, 2010 (5) SCC 136**, the aforesaid six candidates in the category of Ex-Servicemen B.C. Dependents were required to be shifted to the Ex-servicemen Dependent category, as they had secured more marks than the 29 marks secured by the last candidate (Rajwinder Kaur) appointed in the Ex-servicemen Dependent category, For ready reference relevant part of the judgment *ibid* is reproduced hereunder:

“It is evident from the above that in ex-servicemen (general category) the last two candidates namely: Subhash Chander and Taket Singh had scored only 25 marks each. Sube Singh and Veer Bhan selected in Ex-servicemen BC(B) category had however scored more marks than Subhash Chander and Taket Singh. Sube Singh and Veer Bhan could and indeed ought to have been selected against the vacancies in Ex-servicemen (General) category as per their merit. This in other words would require the Select List to be recast and candidates suitably shifted from the reserved category to the general category in which event appointments can be offered to other candidates in the Ex-servicemen BC(B) category depending on their merit. Such an exercise long after the selection process was completed may unsettle the settled position and lead to removal of candidates who stand already selected and who have been serving for a long time after undergoing the prescribed training. This may also mean that candidates who have accepted the result of the selection and may even have become over-age may have to be brought in. We do not see any compelling reason for us to adopt that course at this distant point of time especially when the same would upset what stands settled for a long time. Interest of justice would in our opinion be sufficiently served if we direct the appointment of the appellant against an Ex-servicemen BC(B) vacancy and if no such vacancy is available against an ex-servicemen (General Category) vacancy. In the unlikely event of there being no vacancy in either one of these categories the appellant could be appointed against any other vacancy in the General category. Any such appointment would, however, in keeping with the statement by the appellant be effective from the

date the same is made and shall not entitle the appellant to claim any back wages, seniority or other benefits. The appointment shall for all purposes be treated as a first appointment subject to the condition that the competent authority shall be free to direct that the appellant shall undergo the training afresh or take a refresher course of such training if deemed fit.”

10. Issue of shifting the candidates from Ex-serviceman dependent (BC) to Ex-serviceman dependent category is thus covered in favour of the petitioner in terms of ratio rendered in Ravinder Kumar case(supra). In my opinion, there is accordingly merit in the contention of the learned Sr. counsel for the petitioner that the six candidates in the category of BC Ex-Servicemen dependents, who had secured more than 29 marks as secured by the last candidate (Rajwinder Kaur) appointed in the Ex-servicemen Dependent category, were required to be shifted to the Ex-servicemen Dependent category. The resultant vacancies in the category of B.C.Ex-Servicemen Dependent, would go to the candidates lower in merit in this category. Consequently, the petitioner being at Sr. No. 3 in the waiting list would be entitled to be considered for appointment against one of those positions vacated in the B.C. Ex-Servicemen Dependent category.

11. In an order dated 15.05.2019 passed by this Court, it was observed that as per additional affidavit dated 12.07.2018 by respondent No.1, 30 posts of Computer Operators had not been filled up; while the petitioner who is No. 3 in the waiting list, is not being issued an appointment letter despite the fact that five persons belonging to Ex-Servicemen (Backward Class) having more marks than the last candidate in the general category, have to be adjusted in general category, thus opening of the window for the petitioner in ESM (Backward Category), who

admittedly being at Sr. No.3 in the waiting list, would be entitled to be appointed.

12. As regards the reservation policy(Annexure R/C) placed on record by the respondents along with another additional affidavit dated 30.04.2019, the posts reserved for ex-servicemen category are at Nos. 21, 53, 73 and 93 in every 100 posts, as per Roster. Accordingly, out of 700 vacancies, 28 posts (4X7) fall to ex-servicemen dependent(SC Category). As per Annexure R/B, only 14 posts out of 28 have been filled up and thus 14 are lying vacant which are meant for SC-Ex Servicemen Dependent (R&O) and SC-Ex Servicemen Dependent(M&B).

13. There is permissible a interchangeability between SC and BC candidates, as per instructions dated 06.04.1976 as contained in Appendix 22 of the same very manual of reservation relied upon by the respondents in Annexure R/C. Relevant of the said instructions, handed over in course of hearing by learned Senior counsel for the petitioner, reads as under:-

“2. XXX The Government, have now decided to allow interchangeability in all Cadres irrespective of the fact whether the Cadre is of less than five posts or more than five posts. The instructions issued vide Punjab Government letter dated 20th June, 1975 mentioned above are clarified as follows:-

(i) A vacancy upon its being de-reserved on account of non-availability of a Scheduled Castes person be offered to a Backward Class person but the vacancy so, de-reserved would be carried forward for the Scheduled Castes just as is done at present.

(ii) The vacancy next reserved for the Backward Classes would in case a person belonging to Backward Classes has already availed of a vacancy meant for the Scheduled Castes be thrown open to non-Scheduled

Caste.

(iii) The same conditions would apply to cases in which vacancies reserved for the Backward Classes are offered to Scheduled Castes on account of non-availability of persons belonging to the former category.”

14. Mr. Shekhar Verma, learned counsel for respondent No.1 contends that State of Punjab has enacted a special statute viz. The Punjab Scheduled Castes and Backward Classes(Reservation) Act, 2006(for brevity, 2006 Act) which specifically does not permit interchangeability between SC and BC candidates. Therefore, he contends that above instructions dated 06.04.1976 are not applicable after the enactment of 2006 Act *ibid*. However, on the other hand, respondent No.1 has itself relied upon manual of reservation of Scheduled Castes and Backward Classes in service which form part of this same very manual. In any case, even if 2006 Act is to be applied for filling up the Scheduled Castes vacancy by Backward Class candidates, the same too permits the interchangeability as would be borne out from Section 7 thereof, as reproduced above. Its perusal leaves no manner of doubt that de-reservation is permissible if it is in the public interest and if the same is necessary to fill up any reserved vacancy subject to carrying forward the vacancy so de-reserved to a future un-reserved vacancy. I am, therefore, of the opinion that the post of ex-servicemen dependent(SC Category) can be filled up by ex-servicemen dependent(BC Category) under the 1976 instructions and even otherwise the same can also be de-reserved in terms of Section 7 of 2006 Act.

15. Concededly, 30 posts are lying vacant as stated by respondents and thus, no person needs to be displaced in order to give relief to the petitioner nor any person is likely to be adversely effected.

16. In view of my discussion above and the reasoning contained therein, the writ petition is allowed and the respondents are directed to pass appropriate orders by considering the petitioner for appointment in accordance with her merit either by shifting ex-servicemen dependent (BC Category) candidate to ex-servicemen dependent (SC Category) and thereafter fill up the consequent vacancies from ex-servicemen dependent (BC Category); or in the alternative consider the petitioner for appointment against one of the vacancies of ex-servicemen dependent (SC Category) by applying the instructions dated 06.04.1976 and if that too is not found feasible, then by de-reserving the vacancy under Section 7(2) of the 2006 Act. It is, however, made clear that the appointment of the petitioner, if made, shall for all intents and purposes be treated as fresh appointment and as a necessary consequence thereof the petitioner would not be entitled to any back wages, seniority or any other benefit based on the earlier letter dated 23.04.2013 (Annexure P-8), which was withdrawn by the respondents.

17. No order as to costs.

July 23, 2019
smriti/ Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No