

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

Civil Writ Petition No. 13199 of 2018

DATE OF DECISION : December 20th, 2019

Satya Pal and others

..... PETITIONER(S)

VERSUS

Uttar Haryana Bijli Vitran Nigam Limited and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Ms. Sangita Dhanda, Advocate, for the petitioner.

Mr. B.R. Mahajan, Advocate General, Haryana, with
Mr. Hitesh Pandit, Additional Advocate General, Haryana, for
respondents No.1 and 2.

Mr. Prateek Mahajan, Advocate, for respondents No.3.

...

Sanjay Kumar, J.

Challenge in this writ petition is to Order dated 15.05.2015 (Annexure P-22), whereby the Haryana Vidyut Prasaran Nigam Limited (for short, 'HVPNL') rejected the claim of the petitioners, three in number, to be appointed to the posts of Assistant Line Man (for short, 'ALM'). A consequent direction was sought to the Uttar Haryana Bijli Vitran Nigam Limited (for short, 'UHBVNL') and the Dakshin Haryana Bijli Vitran Nigam Limited (for short, 'DHBVNL') to consider the candidature of the petitioners for appointment to the posts of ALM, under Backward Class Category.

The Haryana State Electricity Board (for short, 'HSEB') was reorganized and split up into four independent companies, viz., HVPNL, Haryana Power Generation Corporation Limited, UHBVNL and DHBVNL, in the years 1998 and 1999. The erstwhile HSEB had notified 791 posts of ALM and 250 posts of Shift Attendants, *vide* Advertisement dated 02.03.1992. The petitioners applied pursuant thereto for appointment to the posts of ALM under General Category. They emerged successful in the selection and were appointed as ALM under General Category. However, as 1687 ALM and 468 Shift Attendants were recruited, far in excess of the notified posts, the recruitment was challenged before this Court in CWP-7382-1993. By order dated 29.11.1995 passed therein, this Court quashed the selection and directed the HSEB to make a fresh selection from scratch. This decision was upheld by the Supreme Court in SLP No.11946 of 1996 in February, 1997. In the meanwhile, the HSEB issued a fresh Advertisement on 04.03.1996 notifying 2000 posts of ALM and 542 posts of Shift Attendant. Therein, a 'Note' specified that candidates who had applied for the said posts against the Advertisement dated 02.03.1992 need not apply again and that they would be considered on the basis of their earlier applications.

It is the case of the petitioners that by Notification dated 07.06.1995, the Governor of Haryana included five castes in the list of Backward Classes. Ahir and Saini castes were included in these five castes. The first and third petitioners belong to Ahir caste while the second petitioner belongs to Saini caste. They secured Backward Class certificates stating to this effect on 19.03.1996, 23.06.1996 and 13.05.1997. It is however an admitted fact that the petitioners did not choose to file any fresh

applications or submit representations after issuance of the Advertisement dated 04.03.1996 that their candidature should be considered under Backward Class Category. The fresh recruitment process pursuant to the aforesaid Advertisement dated 04.03.1996 concluded on 22.09.1997. The petitioners, who had been selected and appointed to the posts of ALM pursuant to the earlier selection under the Advertisement dated 02.03.1992, had continued in service as such pursuant to the protection afforded by the Supreme Court in SLP No.11946 of 1996 filed against the order dated 29.11.1995. However, when the results of the successful candidates pursuant to the fresh selection were declared, a general public notice was issued terminating the services of those who were continuing in service but were not selected afresh. The petitioners were amongst this category as they were not selected. Significantly, they did not choose to agitate any grievance as to their removal from service at that stage. However, others raised a grievance in CWP-17812-1997, titled **Scheduled Caste/Scheduled Tribe and Backward Classes Employees Association v/s Haryana State Electricity Board and others**, to the effect that meritorious reserved category candidates had been adjusted against reserved category posts though they were to be considered on merit basis against open category posts. This writ petition was allowed on 03.12.2008, directing consideration of meritorious reserved category candidates against open category posts. In consequence, 336 posts of ALM and 75 posts of Shift Attendant fell open to the reserved category candidates, who were denied consideration earlier as meritorious candidates from their respective reserved categories had been wrongfully appointed thereto. Thereupon, a fresh merit list was drawn up on 05.10.2009 in terms whereof, the last candidate who was selected in Backward Class-B

Category was shown to have secured 68 marks.

Alleging non-compliance with the order dated 03.12.2008 in true letter and spirit, contempt proceedings were initiated in COCP-1632-2010. Therein, a status report was filed by the authorities admitting that 94 candidates who had been selected to the posts of ALM and 59 candidates selected as Shift Attendants had not joined. It appears that a public notice was thereupon issued in the daily newspapers on 07.01.2014, inviting applications from candidates from the reserved categories who had secured more marks than the last selected candidates in their categories as per the merit list of 2009.

It was only after the publication of this notice in January, 2014, that the petitioners woke up. They submitted applications dated 20.01.2014, 31.01.2014 and 13.01.2014 seeking consideration of their cases for appointment to the posts of ALM. Admittedly, the petitioners applied under the Right to Information Act, 2005, only in the years 2010/2014 and secured information as to the marks obtained by them in the later selection held pursuant to the Advertisement dated 04.03.1996. According to them, they secured 76 marks, 71 marks and 70 marks respectively but were shown as General Category candidates though they had produced their Backward Class certificates at the time of their interviews. They then filed three separate writ petitions, viz., CWP Nos.12605, 9064 and 19432 of 2014, seeking appointment to the posts of ALM on the ground that they had secured higher marks than the last selected candidate in the Backward Class-B Category, viz., 68 marks. These writ petitions were disposed of by independent orders dated 11.12.2014, granting liberty to the petitioners to approach the authorities within a period of 30 days by making appropriate

representations and in turn, the authorities were directed to consider and decide the same within a time frame. These orders were passed in consequence and in terms of the common order dated 09.09.2014 passed in CWP-12605-2014 and batch, to the effect that if any candidates junior in merit to the petitioners in that batch of cases were appointed by wrongly treating the petitioners in General Category, then the petitioners in that batch would be entitled to the benefit of appointment with effect from the date such juniors had been appointed. Pursuant thereto, the petitioners submitted their representations in January, 2015. Upon consideration of their cases along with others, the HVPNL passed the impugned order dated 15.05.2015. Aggrieved thereby, the petitioners are before this Court.

Ms. Sangita Dhanda, learned counsel, would contend that the petitioners ought to have been considered as reserved category candidates coming under Backward Class-B Category and that grave injustice was done to them by treating them as General Category candidates. She would assert that the petitioners are entitled to appointment even at this late stage as vacancies are still available. According to her, the petitioners were neither informed of the marks secured by them or the fact that they had not been treated as reserved category candidates and therefore, they could not be accused of delay in seeking redressal of their grievance.

Per contra, the learned Advocate General, State of Haryana, would contend that the present writ petition is liable to be dismissed on the ground of delay and laches. He would point out that, having suffered termination of their services as long back as in the year 1997, the petitioners took no steps whatsoever to seek redressal of their grievances, if any, and therefore, they cannot claim benefit at this late stage on the strength of orders

secured by others. On merits, the learned Advocate General would point out that nothing prevented the petitioners from submitting fresh applications pursuant to the Advertisement dated 04.03.1996, if they wanted to be considered under Backward Class Category, as their earlier applications were admittedly submitted under General Category. He would assert that the failure on the part of the petitioners to do so or at least submit a representation seeking consideration of their candidature under Backward Class Category disentitles them from now seeking change of the status of their candidature. He would point out that mere production of Backward Class certificates by the petitioners at the time of their interviews did not have the effect of changing the status of their applications, which were admittedly made under General Category, and assert that they, therefore, could not seek such consideration at this late stage ignoring the passage of time and the unconscionable delay on their part. He would assert that the writ petition is unworthy of consideration and seeks its dismissal with costs.

Perusal of the impugned Order dated 15.05.2015 reflects that the authorities were of the opinion that Ahir and Saini castes were notified as Backward Classes by the Governor of Haryana in 1991 itself, but despite the same, none of the petitioners submitted their applications under that reservation category though they belonged to those castes.

Though Ms. Sangita Dhanda, learned counsel, would contend that the aforestated castes were declared as Backward Class-B category only in 1995, the record reflects that the Haryana Government notified these castes as Backward Classes on 05.02.1991. By the letter dated 12.09.1991, the Under Secretary, General Administration, speaking for the Chief

Secretary to Government of Haryana, merely stated that the question of reservation for Other Backward Classes and Economically Backward Classes amongst the forward classes in State services was being re-examined and that till a final decision was taken, further recruitment should be made according to the reservation policy prevalent prior to issuance of the Notification dated 05.04.1991. This communication makes it clear that Ahir and Saini castes continued to be included in Backward Class-B reservation category but no reservation was to be made for these castes in recruitment to State services till a final decision was taken. The later Notification dated 07.06.1995 also states to the same effect, as it refers to the fact that Ahir and Saini castes along with the other castes had already been declared by the Haryana Government to be Backward Classes. Thereunder, the Governor of Haryana merely ordered certain synonymous names/castes also to be included against the named castes.

It may also be noted that the order dated 29.11.1995 passed in CWP-7382-1993 specifically stated as follows:-

'The petitioners and other candidates who had applied in response to the advertisement dated March 2, 1992 shall be considered on the basis of applications already submitted by them.'

There was therefore a clear and specific mandate to consider the candidature of the earlier candidates on the strength of the applications already submitted by them. It was therefore incumbent upon the petitioners to either bring it to the notice of the authorities that they wanted a change of status in relation to their candidature, by treating them as Backward Class-B category candidates instead of General Category candidates, or at least submit fresh applications basing on this change. They chose to do neither. Be

it noted that the later Advertisement dated 04.03.1996 specifically referred to the aforestated mandate and said that candidates who had already applied against the Advertisement dated 02.03.1992 need not apply again and that they would be considered on the basis of their applications. The advertisement further stated that the benefit of reservation would be given to all reserved categories and the candidates belonging to such categories had to deposit their certificates. It was also made clear that applications would be liable to be rejected if not supported by certificates of caste. Therefore, the petitioners necessarily had to submit their reservation category certificates at that point of time and not later. Upon emerging unsuccessful in the later selection process pursuant to the Advertisement dated 04.03.1996 and having been removed from service on 23.09.1997, the petitioners admittedly took no steps whatsoever. The results of the selected candidates were declared and the petitioners did nothing to seek information as to how many marks they had secured and the category against which they had been considered. Though Ms. Sangita Dhanda, learned counsel, would make an issue of such information not being furnished to the petitioners at that point of time, she is not in a position to show any norms or rules which required communication of results to even the unsuccessful candidates. It may be noted that till the year 2010, the first and third petitioners did nothing in this regard while the second petitioner remained unmoved till long thereafter, i.e., till the year 2014. It was only in February, 2010, that the first and third petitioners sought information as to the marks secured by them in the 1996/1997 selection and the second petitioner sought such information only in January, 2014. This was despite the fact that their right to seek information stood crystallized under the Right to Information Act which was promulgated in the year 2005

itself.

Ms. Sangita Dhanda, learned counsel, would further contend that notwithstanding the delay on their part, the petitioners secured independent orders dated 11.12.2014, requiring their candidature to be considered in the context of candidates junior in merit to them being appointed by wrongly treating them as General Category candidates. The observation to this effect made in the order dated 09.09.2014 passed in CWP-12605-2014 was in the context of the earlier litigation, whereby meritorious reserved category candidates were adjusted against reserved category posts though they were entitled to be appointed to open category posts. This observation therefore has no application whatsoever to the cases of the petitioners, who applied under General Category and never took effective steps to change their candidature to Backward Class Category at the relevant point of time. As rightly pointed out by the learned Advocate General, it is not open to them to contend that they did so by producing their reservation category certificates at the time of their interviews. Permitting the same would set at naught the advertisement clause to the effect that the application itself had to be supported by such a certificate. Further, this aspect was raised by the petitioners in COCP Nos. 143 of 2016, 2241 of 2015 and 2664 of 2015 and by order dated 19.02.2018, this Court rejected their claim that their change of category was accepted at the time of interview as there was no evidence of such change having been made or the same being accepted by the authorities.

Ram Kumar Gijroya V/s Delhi Subordinate Services Selection Board and another [2016(4) SCC 754] does not come to the aid of the petitioners as that was a case of late submission of the reservation

category certificate. In the case on hand, it is not such a situation, as the petitioners did not even seek consideration of their candidature under the appropriate reserved category and admittedly applied as General Category candidates.

Similar is the case with **Jai Narain Ram V/s State of U.P. [1996 AIR (SC) 703]**. That decision pertained to reservation category candidates being called for filling up the unfilled reserved posts. As pointed out *supra*, the petitioners cannot be treated as reservation category candidates as they did not choose to apply in that status at the relevant point of time.

Munja Praveen and others V/s State of Telangana and others [2017(14) SCC 797] was a case relating to operation of the merit list and has no relevance whatsoever to the case on hand.

Collector, Land Acquisition, Anantnag and another V/s Mst. Katiji and others [1987 AIR (SC) 1353] dealt with condonation of delay under Section 5 of the Limitation Act, 1963. The patent delay and laches on the part of the petitioners in the case on hand does not come within the scope of Section 5 of the Limitation Act, 1963, as no explanation worth the name is forthcoming from them as to why they slept over the alleged violation of their rights as long back as in the year 1997.

Amita V/s Union of India and another [2005(13) SCC 721] was a decision which turned upon the provisions of The Persons with Disabilities (Equal Opportunities etc.) Act, 1995 and the *ratio* laid down therein has no application to the petitioners.

Observations made by a learned Judge of this Court, in **Paramjit Kaur and another V/s State of Punjab and another [CWP-2301-2014 decided on 18.11.2014]**, to the effect that the State should

normally desist from taking pleas of limitation, delay and the like to defeat just claims, such as the right to be considered for appointment to a public service, cannot be applied in the case on hand as the petitioners who were shown the door as long back as in the year 1997 chose to remain somnolent till long thereafter. As already pointed out *supra*, petitioners No.1 and 3 did not even secure their marks till 2010 while the second petitioner did so in 2014, four years later. None of them even chose to address representations till 2014. Such delay and laches on the part of the petitioners cannot be ignored. All the more so, when no proper explanation therefor is forthcoming.

The decision of this Court in **Krishan Kumar and others V/s Haryana Vidhyut Prasaran Nigam Ltd., Panchkula, and others [CWP-22873-2010 decided on 22.12.2010]** is relied upon by Ms. Sangita Dhanda, learned counsel, in support of her contention that candidates ought not to have been asked to indicate their reservation category status in the answer sheets. Even otherwise, the Advertisement dated 04.03.1996 made it very clear that the reservation certificate had to be submitted along with the application itself, failing which it was liable to be rejected. However, it may be noted that the petitioners did not even choose to indicate in their answer sheets that they belonged to Backward Class-B category. Such answer sheets were relatable to a date long after the Notification issued in the year 1995.

Viewed thus, it is clear that there is no reasonable or justifiable explanation for the delay on the part of the petitioners in taking effective steps to seek redressal of their grievance, which dates back to the year 1997. They took no steps whatsoever till the years 2010/2014 and even then, there is a delay of 4 years on the part of the first and third petitioners, as they did

not choose to make a representation till 2014. The petitioners are now seeking to take advantage of the litigation initiated by others who had certain other grievances with regard to the selection made in 1996/1997, but the same would not absolve them of the obvious delay and laches on their part, which remain wholly unexplained. Even on merits, this Court finds that the petitioners took no effective steps to change the status of their candidature, whereby they can claim that injustice has been done to them by not treating them as Backward Class Category candidates.

Be it viewed on technicalities or on merits, this writ petition is utterly devoid of merit. The writ petition is accordingly dismissed.

However, in the circumstances, there shall be no order as to costs.

December 20th, 2019
Kang

(Sanjay Kumar)
Judge

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