

CWP No. 19824 of 2016 (O&M) and connected case

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

(236)

(1)

**CWP No. 19824 of 2016 (O&M)
Date of Decision : 05.12.2019**

Ram Niwas and others

....Petitioners

Versus

State of Haryana and others

.....Respondents

(2)

CWP No. 22069 of 2017

Kuldip Singh and another

....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Rajesh K. Kataria, Advocate for the petitioners.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

Mr. Amit Rao, Advocate for
Mr. Anurag Goyal, Advocate for respondents No. 2 to 5.

Harsimran Singh Sethi, J. (Oral)

By this common order, two writ petitions, the details of which
have been mentioned in the heading, are being disposed of as both the writ

petitions involve the same question of law and similar facts. For the

purpose of this order, the facts are being taken from CWP No. 19824 of 2016.

The challenge, which is being raised by the petitioners in the present writ petition is to the order dated 11.02.2013 (Annexure P-13) and order dated 08.03.2013 (Annexure P-15) by which the promotions, which were granted to them on the basis of Reservation Policy, were withdrawn by the respondents. These orders dated 11.02.2013 (Annexure P-13) and dated 08.03.2013 (Annexure P-15) were challenged by the petitioners before this Court in writ petition being CWP No. 8402 of 2014 titled as ***Naresh Kumar and others Vs. State of Haryana and others***, which was decided on 16.12.2014. Liberty was granted by this Court to the petitioners for moving an appropriate representation before the Vice Chancellor for the grant of accelerated seniority upon their promotion and a direction was issued to the competent authority to decide the said representation. In pursuance to the direction issued by this Court, the Vice Chancellor considered their claim and passed an order dated 13.02.2015 stating that the promotions, which were granted to the reserved category candidates on the post of Assistance and Deputy Superintendents by giving them the benefit of reservation, was incorrect and their order of reversion were perfectly valid. Thereafter, an order was passed by the Registrar dated 03.03.2015 (Annexure P-27), which was based upon the decision of the Vice Chancellor rejecting the claim of the petitioners for grant of accelerated promotions, which is also under challenge in the present writ petition.

Learned counsel for the petitioners states that during the pendency of the writ petitions, the respondent-State has issued Instructions

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dated 04.05.2018 (Annexure P-41) with regard to the grant of benefit of promotion to the reserved category employees. Learned counsel states that a direction has been issued by the Government of Haryana to all the Departments/Boards/Corporations/Autonomous Units to undertake an exercise to ascertain the backlog in respect of the promotions of Scheduled Castes in their respective Group C and D Cadres w.e.f. 17.06.1995 till the issuance of the Instructions and to clear the backlog in promotions at the earliest, not exceeding four months from the issue of the said Instructions. The relevant Instructions dated 04.05.2018 (Annexure P-41) issued by the Government of Haryana are as under:-

*“Government of Haryana
General Administration Department
General Services-III Branch*

No. 22/133/2013-1GSIII

Dated Chandigarh, the 4th of May, 2018

To

- 1. All the Administrative Secretaries to Government, Haryana.*
- 2. All Heads of Departments in the State of Haryana/
All the Divisional Commissioners in the State of Haryana.*
- 3. The Registrar General of Punjab & Haryana High Court, Chandigarh.*
- 4. All the Deputy Commissioners and sub Divisional Officers (Civil) in the State of Haryana.*
- 5. The Registrars of all the Universities of the State of Haryana.*
- 6. All the Managing Directors/Chief Administrators of Boards/Corporations/Public Sector Undertakings in Haryana.*

Subject: **Matter of backwardness and inadequacy of representation of Scheduled Castes in Promotion in the State Government Services.**

I am directed to invite your attention on the subject noted above and to say that keeping in view the directions given by the Apex Court in case of M. Nagaraj & Others Vs. Union of India in respect of gathering quantifiable data to assess/examine the backwardness and inadequacy of representation of Scheduled Castes in matter of 'promotions' in the State Government Services, a Committee had been constituted vide order dated 19.02.2013 to assess the backwardness and inadequacy of representation of Scheduled Castes including the impact, if any, of quotas in promotion on the overall administrative efficiency. This committee chaired by Shri Raghavendra Rao, IAS collected inadequacy data as on 31.3.2006 and submitted their report on 23.12.2013 which was accepted by the Government. Based on the recommendations of the Committee, the Government issued instructions to provide reservation in promotions vide 22/133/2013-IGSIII on 15.5.2015. The said instruction was stayed by the Punjab and Haryana High Court vide order dated 27.05.2015 in CWP 11073 of 2015.

Later another Committee was constituted (vide order 22/133/2013-IGSIII dated 20.03.2017) under the chairmanship of sh. Anil Kumar, IAS to assess the backwardness and inadequacy of representation of Scheduled Castes employees in matters of promotions in the State Govt. services as on 17.6.1995. This report has since been submitted. State Government has considered the report of the Committee and decided to accept the same in respect of Group C & D posts.

It is, therefore, directed that all Departments/Boards/Corporations/Autonomous Units shall undertake an

exercise to ascertain the backlog in respect of promotions of Scheduled Castes in their respective Group C and D cadres with effect from 17.6.1995 till date and clear the backlog in 'promotions' if any, at the earliest and within a period not exceeding four months from date of issue of this instruction.

While implementing these instructions it may be ensured that representation of Scheduled Caste employees should not exceed 20% of the posts in the cadre at any point of time. The roster is to be followed upto the number of posts in a particular cadre and replacement policy guidelines issued vide No. 22/33/2007-3GS-III dated 24.09.2008 are also to be strictly followed.

*Superintendent, General Services-III
for Chief Secretary to Government, Haryana.”*

Learned counsel for the respondent-State very fairly states that an exercise needs to be undertaken in view of the said Instructions and it is only after the exercise is undertaken, it will be clear whether the petitioners will be entitled for the benefit of promotions on the basis of reservation or not.

Learned counsel for respondents No. 2 to 5 states that present writ petitions can be disposed of with a direction to respondents No. 2 to 5 to undertake the exercise as needed keeping in view the Instructions dated 04.05.2018 (Annexure P-41) and in case, after the said exercise, petitioners are found entitled, the benefit of promotions on the basis of reservation be granted to the petitioners.

Learned counsel for the petitioners has no objection in case the the writ petitions are disposed of with a direction to respondent No. 2 to 5 to undertake the exercise of consideration of the cases of the members of the

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reserved category belonging to Category C and Category D post for promotion on the basis of reservation, as envisaged under the Instructions dated 04.05.2018 (Annexure P-41).

Keeping in view the above, both writ petitions are disposed of with a direction to respondents No. 2 to 5 to undertake the exercise in pursuance to the Instructions dated 04.05.2018 (Annexure P-41) with regard to ascertaining the fact whether petitioners will be entitled for promotions on the basis of reservation or not. Let this exercise be completed within a period of four months from the date of receipt of certified copy of this order.

In case, after the exercise, petitioners are found entitled for any relief, the respondents shall extend the same to the petitioners within a period of one month thereafter. It is made clear that in case any other employee, who will be affected by the grant of promotion to the petitioners, shall also be given opportunity to present his/her case while undertaking the exercise for considering the eligibility of the petitioners for the grant of benefit in view of the Instructions dated 04.05.2018 (Annexure P-41).

Civil Miscellaneous No. 17427-CWP-2018 also stand disposed of in above terms.

December 05, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*