

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

Civil Writ Petition No.19442 of 2018(O&M)

Reserved on : August 19, 2019

Date of decision : September 27, 2019

Postgraduate Institute of Medical Education
& Research, Chandigarh and another

...Petitioners

Versus

Darshan Kaur Cheema and another

...Respondents

AND

Civil Writ Petition No.22189 of 2018(O&M)

Postgraduate Institute of Medical Education
& Research, Chandigarh

...Petitioner

Versus

Kesang Jamwal and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE and
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Sundeep Kumar, Advocate
for the petitioners.

Mr. Brijesh Mittal, Advocate
for the respondents.

HARINDER SINGH SIDHU, J.

1. This judgment shall dispose of two writ petitions, bearing
CWP No.19442 of 2018 and CWP No.22189 of 2018 as the issues raised
therein are identical.

2. However, the facts are being referred from CWP No.19442 of

2018.

3. The Postgraduate Institution of Medical Education and Research (for short 'PGI'), has filed this Writ Petition impugning the order dated 12.03.2018 of the Central Administrative Tribunal, Chandigarh Bench, whereby, OA No.060/00689/2016 filed by respondent No.1, has been allowed.

4. Respondent No.1 belongs to the General Category. She was initially selected and appointed as a Staff Nurse/Sister Grade-II in PGI, where she joined in 12.10.1985. She was promoted as Sister Grade-I on 01.10.2003. She filed the Original Application inter alia praying for direction to the PGI to convene DPC to consider her case for promotion to the post of Assistant Nursing Superintendent by granting the benefit of catch-up rule and if found fit, to promote her from the date her juniors/colleagues were promoted i.e. 26.08.2014 with all consequential benefits. In support of her claim respondent No.1 relied on a decision of this Court in **CWP No.10681 of 2013** titled **Director, Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Central Administrative Tribunal and ors** and connected cases decided on 13.01.2016. In that judgment this Court had upheld the judgment and order of the Tribunal in OA No.56/CH/2012 titled 'Brij Mohan and ors Vs. The Director, PGIMER' and connected cases decided on 15.11.2012 wherein the Tribunal had directed the PGI to grant the benefit of 'Catch up Rule' to the senior general category candidates. It was held that it was the admitted case that the PGI had never collected any quantifiable data disclosing inadequacy of representation of the Scheduled Castes and Scheduled

Tribes. Hence, the benefit of reservation in promotional posts with consequential seniority could not be granted to the Scheduled Caste candidates and the senior general category candidates were to be given benefit of 'Catch up Rule'.

5. The case of the appellant-PGI was that **SLP (Civil) No.19481 of 2016** titled **Director, Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Brij Mohan Dhawan** had been filed against the judgment dated 13.1.2016 which was pending and the matter be adjourned sine die till the final decision in the SLP.

6. The Ld. Tribunal, however, held that the issue of 'Catch up Rule' had been settled by the Hon'ble Supreme Court in the case of **Suraj Bhan Meena and another vs. State of Rajasthan and others (2011) 1 SCC 467** which was also followed in **B.K. Pavitra and others vs. Union of India and ors (2017) 4 SCC 620** and mere pendency of SLP in a connected case was not ground to deny the claim of the applicants. The OA was allowed.

7. The requirement of collecting quantifiable data with regard to backwardness, inadequacy of representation and keeping in mind the over all efficiency of the administration as a pre-condition for making a provision for reservation in promotion with consequential seniority for the Schedules Castes and Scheduled Tribes was mandated by Hon'ble Supreme Court in the **M. Nagaraj and ors Vs. Union of India and ors. (2006) 8 SCC 212**. The later decision of Constitution Bench of Supreme Court in **Jarnail Singh and others Vs. Lachhmi Narain Gupta and others AIR**

2018 SC 4729 has affirmed the decision in *M. Nagaraj* (supra) except to the extent of the requirement that the State had to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes which was held to be contrary to the decision of the nine-Judge Bench in **Indra Sawhney Vs. Union of India 1992 Supp (3) SCC 217.**

8. The directions of the Tribunal are in consonance with the various decisions of Hon'ble the Supreme Court. The judgment of the High Court dated 13.1.2016 affirming the order of the Tribunal directing that the senior general category candidates be given the benefit of the catch up rule has not been stayed by the Supreme Court. The ratio of the judgment in **M. Nagaraj** (supra) to the extent of requirement of collection of quantifiable data with regard to inadequacy of representation and over all administrative efficiency has been affirmed by the later Constitution Bench. Admittedly, there is no quantifiable data on the aforesaid aspects.

9. Thus, there is no illegality or infirmity in the order of the Tribunal. We find no reason to interfere with the same.

10. Consequently, these petitions are dismissed.

(RAJIV SHARMA)

ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)

JUDGE

September 27, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No