

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

LPA No.564 of 2016 (O&M)
Decided on : 13.03.2019

Kulwant Singh

..... Appellant

Versus

Union of India and ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Ms. Jyoti Sareen, Advocate
for the appellant.

Mr. Parminder Singh Kanwar, Sr. Panel Counsel
for respondent No.1.

Manjari Nehru Kaul, J.

This appeal has been filed against the order dated 09.02.2016 passed by learned Single Judge in CWP No.17095 of 2015.

2. Brief facts of the case are that the appellant applied for the post of Constable Carpenter in the general category in pursuance to an advertisement dated 22.10.2014 (Annexure P-2) published by respondent No.3. As per the advertisement, two posts were published i.e. one in General category and one in the Reserved category (SC). The appellant was successful in all the four stages i.e. Stage -I which included physical efficiency test, screening of testimonials and physical measurement/standard test, Stage – II included written test, Stage -III included trade test and Stage-IV included medical examination required for recruitment to the said post. In the reserved category (Scheduled Castes), one Pawan Kumar qualified all the four stages for recruitment. However, when the result of the successful

candidates was declared by the respondent-department on 04.08.2015, the name of Pawan Kumar appeared in the list of selected candidates. It was in this background on not finding his name in the list of selected candidates, the appellant approached this Court by way of filing CWP No.17095 of 2015. In the writ petition, the prayer of the petitioner was that he had been ousted from the General category only to accommodate one of the candidates namely Pawan Kumar, who in fact belonged to 'Reserved category'. The prayer of the petitioner was that a candidate belonging to Reserved category could not be appointed against a post meant for General category. Learned Single Judge vide order dated 09.02.2016 dismissed the writ petition in the following terms:

“Facts in the present case are not in dispute. Petitioner had applied for the post of Constable Carpenter in general category. So far as Pawan Kumar, the selected candidate, is concerned, he had applied for the post of Constable Carpenter in reserved category meant for scheduled caste candidates. Admittedly, petitioner as well as Pawan Kumar had qualified all the stages of the selection process for the post of Constable Carpenter. Admittedly, there was one vacancy in the general category and one vacancy in the scheduled caste category. However, in the select list Annexure P-8, the name of Pawan Kumar figures at Serial No. 18 whereas the name of the petitioner does not figure in the select list. As per Annexure R-1, Pawan Kumar had secured 41 marks in the written test whereas the petitioner had secured 37 marks. Since Pawan Kumar had obtained more marks than the petitioner, he was higher in merit and was, consequently, selected for the post of Constable

Carpenter in general category, though, he belonged to scheduled caste category. It is a settled proposition of law that in case a candidate belonging to reserved category secures higher marks than the candidate in the general category, then he is liable to be considered for appointment to the post falling for general category candidate.

In the advertisement Annexure P-2, it has been mentioned that final selection of the candidate will be made in order of merit in each category for respective posts on the basis of marks secured in the written test. The said condition is vis-a-vis the candidates falling in the same category and cannot be interpreted to hold that a candidate belonging to scheduled caste category securing higher marks than the candidate in a general category cannot be considered for the post falling vacant in the general category. In view of the said legal proposition, the arguments raised by the learned counsel for the petitioner fail to advance the case of the petitioner.”

3. Feeling aggrieved, the appellant filed the present appeal.
4. Learned counsel for the appellant contended that the learned Single Judge erred in not appreciating that the reserved category candidate was adjusted against the post in the general category, which was contrary to the settled legal principles. She further contended that the appointment of Scheduled Castes candidate against the general category post amounted to discrimination, which was patently illegal and arbitrary. Hence, in this background she prayed for appointment of the appellant on the post of Constable Carpenter against general category in pursuance to the advertisement dated 22.10.2014 since he was within the merit list in the

general category in respect of post advertised. She has placed reliance upon the decisions in *Madan Mohan Sharma and anr. vs. State of Rajasthan and ors., 2008(3) SCC 724*, *K.Manjusree vs. State of A.P. & anr., 2008(2) SCT 6* and *Maharashtra State Road Transport Corporation and ors. vs. Rajendra Bhimrao Mandve and ors., 2002(1) CLR 339*.

5. Learned counsel for the respondent on the contrary submitted that even though said Pawan Kumar had applied for the post of Constable Carpenter in the reserved category (Scheduled Castes), he was selected as general category candidate as he had secured more marks than the appellant. He further urged that in view of the settled law, a candidate belonging to reserved category and securing better position vis-a-vis a general category candidate could be appointed against the general category since reservation had been made only for reserved category candidate and not for general category candidate.

6. We have heard learned counsel for the parties and perused the material available on record with their assistance.

7. It is not disputed that the appellant had secured 37 marks as against 41 marks secured by Pawan Kumar in the written test. It is also a matter of record that in the selected list (Annexure P-8) the name of Pawan Kumar figured at serial No.18 as against the appellant whose name did not figure at all in the selected list. It would be pertinent to observe that the object of any reservation in the matters of recruitment or even admission to educational institutions is to give some benefit to the backward classes by reserving few seats for that class for whom the reservation was made since many persons/candidates may be handicapped due to social, economic,

geographical reasons etc. It is a settled law that if a candidate from a reserved class fares better and his place is higher in the merit list by securing a higher rank as compared to a candidate from the General Category, he would stand entitled to the seat in the general category. The case law on which reliance has been placed by learned counsel for the appellant, suffice it to notice that the proposition of law enunciated therein is well recognized, however, in view of the factual matrix as noticed hereinabove, it does not help his cause and is not applicable to the facts and circumstances of the instant case.

8. The Supreme Court in ***Indra Sawhney vs. Union of India, 1993(1) RSJ 1: 1993(1) SCT 448(SC)*** while dealing with the reservation as contemplated in clause (4) of Article 16 of the Constitution, observed in paragraph 831 of the judgment, as under: -

“In this connection, it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Caste; they will be treated as open competition candidates.”

9. A Division Bench of this Court in ***Jaskaran Singh vs. State of Punjab, 1995(2) SCT 65*** has also observed that in case a candidate from the reserved category ranks higher in the merit list as compared to candidate of general category, he would be treated to have been admitted in the general category. The Bench further observed that after that has been done, the reserved candidate would be granted admission in the order of their merit

against the reserved seat.

10. A perusal of the order dated 09.02.2016 passed by the learned Single Judge is thus, perfectly justified and hence, does not warrant any interference by this Court.

11. Accordingly, the present appeal stands dismissed being bereft of any merit.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

13.03.2019
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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No