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

**Date of decision: 20.02.2019**

**CWP No.11276 of 2012**

Naveen Chaudhary ...Petitioner

Vs.

State of Haryana & others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. P.K.Mutneja, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

**RAJIV NARAIN RAINA, J.**

Initially, the present writ petition has been filed with a prayer to quash the selection of respondents No.4 to 57 with a further direction to consider the petitioner for appointment being a more suitable candidate along with all consequential benefits.

The brief facts of the case are that the Haryana Staff selection Commission (for short 'the Commission') advertised 38 vacancies in the post of Taxation Inspector vide advertisement No.15 of 2007 dated 07.12.2007. The category-wise breakup of reserved categories and the general category was as follows:

> "GEN-14, SC-13, BCA-3, BCB-3, ESM Gen-2, ESM BCA-1, ESM BCB-1, OSP SC-1"

The written test was conducted by the Commission on 24.05.2009 and 115 candidates were shortlisted for interview. The petitioner who applied under the Scheduled Caste category was also called for interview. The petitioner secured 280 marks (242 in the written examination and 38 in the viva voce) as against 281 marks of the last selected candidate in main selection list of Scheduled Caste category. His name figured at serial No.2 in the waiting list of Scheduled Caste category. The Commission recommended 38 candidates along with 16 candidates in the wait list vide letter dated 22.09.2009 and all the selected candidates were appointed in the year 2010.

The petitioner filed the present petition in the year 2012 challenging the said selection on multifarious grounds, such as, the Selection Committee did not deliberately awarded more marks in interview to the candidates in reserved categories so that they can select general category candidates or that the vacancies having arisen after the advertisement should have been filled up from the waiting list besides leveling allegations of procedural irregularities and favouritism in the selection process.

However, in the year 2013, the petitioner amended the writ petition. In the amended writ petition, all the grounds taken earlier were given up and a completely new ground was introduced that as against the 16 available posts in the Scheduled Caste category (as on 07.12.2007), only 13 have been selected by the respondents and since the petitioner has been placed at serial No.15 in the select list, he comes within the zone of selection if 16 posts are filled up from amongst his category. It may be recorded that the originally impleaded private respondents i.e. respondents No.4 to 57 have not been impleaded as respondents in the amended writ petition.

The detailed position of the vacancies in Scheduled Caste category has been given in the amended reply filed by the Department of Excise and Taxation, Haryana. In paragraph 4 of the written statement, it has been stated that when the requisition was sent on 08.10.2007 for direct recruitment to the post of Taxation Inspectors, 38 posts were available and while sending the requisition the department had duly taken into consideration the backlog of SC category as pointed out by the SC/BC Welfare Department in their audit note dated 05.05.2005. The backlog of 10 vacancies of SC category also included the backlog of promotional share since the roster register of the department is common to both the direct recruits and the promotional Taxation Inspectors. As per rule 5(2) of the Excise and Taxation Inspectorate Service Rules, 1969, as amended on 05.06.1998, the share of promotional and direct recruit is is prescribed in the ratio 50:50. Out of the total 10 backlog vacancies as pointed out in the audit note dated 05.05.2005 and as per the rules as well as the roster points, only 05 vacancies of backlog come in the share of direct recruits. The Commission advertised 38 vacancies on 07.12.2007 including 13 vacancies in SC category (which included the aforesaid 5 backlog vacancies, 2 vacancies being withdrawn on 14.09.2006 from the requisition sent to the Commission in the year 2005 and 6 vacancies which fell vacant due to promotions as Assistant Excise & Taxation Officers. It has been further stated that 3 more vacancies of backlog including one post of SC (OSP) category, which arose while sending the requisition to the Commission, requisition was accordingly sent to the Commission on 06.01.2009 for recommending names. It has been further stated that all the 38 candidates recommended by the Commission had joined service and there was no vacancy left so as to operate the waiting list during the period it remained alive. The said position was reiterated in the affidavit dated 24.11.2017/06.12.2017 filed by the Excise and Taxation Commissioner.

Be that as it may, the petitioner did not challenge the advertisement. Rather, he participated in the entire selection process without demur. Even after the declaration of the result by the Commission, he did not challenge the selection. It was almost 2 years after the conclusion of the selection process that he filed the present writ petition in the year 2012 alleging certain irregularities coupled with the prayer that the candidates in the waiting list be considered against the vacancies arising subsequently and the plea of backlog vacancies in the Scheduled Caste category was taken for the first time in the year 2013 in the amended writ petition. Acceptance of any such claim would be completely in the teeth of the law laid down by the Supreme Court in **Hoshiar Singh Vs. State of Haryana & others**, reported as AIR 1993 SC 2606: JT 1993 (5) SC 63. While upholding the order of the High Court quashing the selection of candidates in excess of the vacancies advertised by the Commission, their lordships of the Supreme Court held as follows:

> *"10. The learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not*

> *eligible for appointment to the posts on the last date for submission of applications mentioned on the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable."*

It may be recorded that though Mr. Mutneja has strongly opposed the application filed by the State for amending its written statement, but the same has already been allowed by order dated 02.06.2017 and therefore forms part of pleadings. I have also considered the objections/reply filed to the application under Order 6 Rule 17 CPC and find that the necessity for amending the written statement dated 25.08.2014 has been explained in the application stating that after minutely examining the record to ascertain the correct number of backlog vacancies, some new facts come to the notice of the answering respondents, which are necessary for determining the real question in controversy in the writ petition. The new facts, which have emerged during the pendency of this petition, were as a result of compliance of the interim order dated 20.01.2017. The opinions of the Advocate General, Haryana and the Chief Secretary, Haryana were obtained and a proposal was placed before the Council of Ministers for considering the case of the petitioner for appointment to the post of Taxation Inspector against the unfilled backlog vacancies as a special case. On 18.04.2017, the proposal of the Administrative Department was declined by the Council of Ministers with a direction that Administrative Department may take action at its own level. There was a direction of the Government to the respondents to ascertain the correct number of backlog vacancies. The result of that exercise is sought to be foundation for amending the written statement. These facts are necessary for judicial review of administrative action and I would, therefore, reject the objection of Mr. Mutneja as unfounded.

In view of the above factual position, I find no error apparent on the face of record in the selection process, which may justify interference in proceedings under Article 226 of the Constitution. Consequently, the present petition is found devoid of merit and is hereby dismissed.

**20.02.2019** **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

*Whether speaking/reasoned:* *Yes*
*Whether Reportable:* *Yes/No*