

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1313 of 2019 (O&M)
Date of decision: 10.02.2020

Prince Kaushal

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Arihant Goyal, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

This is an intra-court appeal, under Clause X of the Letters Patent, against a judgment and order dated 29.4.2013, rendered by the learned Single Judge as also the order dated 30.1.2019, vide which even the application seeking review of the said judgment, had since been dismissed.

A brief narration of facts to the extent they are germane to the matter in issue shall be expedient. Pursuant to the advertisement dated 22.5.2009, Punjab Public Service Commission (respondent No.2) made selections to the posts of Assistant Town Planner in the Housing & Urban Development Department, Punjab. Of the 11 posts, that were advertised, two posts were reserved for SC Punjab, one for SC Sports Person Punjab, one for BC Punjab, one for BC ESM Punjab, one for ESM Punjab, one for Physically Handicapped Punjab, and the rest four were to be filled from the General Category. One of the candidates (**Amolak Singh**), who competed in

the Ex-serviceman Category, challenged the selection of another candidate, namely **Ms. Pearl Sidhu**, who too competed in the same category, vide CWP No. 10780 of 2009, on the ground: **Ms. Pearl Sidhu** was a Bachelor in Architecture with three years experience, and thus possessed only the essential qualification. Whereas, he having acquired a Post Graduate Degree in M.Tech (Urban Planning), possessed a preferential/higher qualification, and therefore in terms of clause 3 of the advertisement, ought to have been preferred to **Ms. Pearl Sidhu** for the purposes of appointment. And, even otherwise, in the category wise merit list, **Ms. Pearl Sidhu** was placed at serial No.1 and he (**Amolak Singh**) at serial No.2. But, for she was higher in merit than a few of selected candidates in the General Category, she was required to be appointed against a vacancy in the General Pool, and he being the next in merit was entitled for appointment against the only post reserved in the Ex-serviceman Category. However, during the pendency of the said petition, **Amolak Singh**, though lower in merit, was issued a letter of appointment, for he possessed a higher/preferential qualification. As a result, **Ms. Pearl Sidhu** petitioned this Court, vide CWP No.11047 of 2010, and questioned the selection and appointment of all the candidates, for she having secured more marks than a selected candidate in the General Category, or being at No.1 in the category wise merit list, her claim for appointment could never be ignored. The appellant (**Prince Kaushal**), who competed for selection, but in the General Category, also approached this Court vide CWP No. 15427 of 2010, *inter alia*, with a similar grievance: he too possessed the preferential qualification, i.e. Post Graduate Diploma in Town & Country Planning, and thus, was entitled for appointment in

preference to those who simply possessed the essential qualification. Likewise, another candidate, namely **Parshotam Dass Joshi**, also filed CWP No. 15563 of 2009, seeking the same relief. For, besides a few collateral issues, the questions involved for determination in all the petitions were common, these were clubbed and heard together.

The learned Single Judge, upon consideration of the matter and the material on record, referred to the decision of the Supreme Court in **State of U.P. and another Vs. Om Prakash and another, 2006 (6) SCC 474**, wherein while dealing with similar set of Rules, it was concluded that when selection is made on the basis of merit preceded by a competitive examination and interview, preference to additional qualification would mean other things being **qualitatively** and **quantitatively** equal, those having additional qualification would be preferred. Accordingly, it was held that possessing a preferential/higher qualification would not entitle such candidates to claim en-bloc preference irrespective of their *inter se* merit and suitability. Thus, for **Ms. Pearl Sidhu** was higher in merit than **Amolak Singh**, her claim for appointment as Assistant Town Planner could not be ignored even though the latter possessed preferential qualification. Further, in a detailed reference to another decision of the Supreme Court in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others, AIR 2007 SC 3127**, it was held that reservation to ESM Category would fall within the special reservation group and would thus be a horizontal reservation, and therefore, even if **Ms. Pearl Sidhu**, had secured more marks than the selected candidate in the General Category, she could not be shifted and/or appointed against a vacancy in the General Category. However, if

Amolak Singh had secured more marks/higher merit than the last selected candidate in the General Category, he/she shall have to make a way for him. Accordingly, vide a common judgment rendered in CWP No. 11047 of 2010 **(being the lead case)**, all the petitions were disposed of, with a direction to the Principal Secretary to Government of Punjab, Department of Housing and Urban Development, to consider the claim of the candidates afresh, in terms of the recommendations made by the Commission as also the position of law expounded in the impugned judgment. Being aggrieved, the appellant preferred an appeal (LPA No. 1157 of 2013), against the said judgment. For, he sought to rake up the issue of excessive reservation or the number of posts that were reserved were more than 50% of the posts sought to be filled, the appeal was dismissed as withdrawn with liberty to move a review application. However, for the said application, as indicated above, was also dismissed by the learned Single Judge on 30.1.2019, thus this appeal.

Learned counsel for the appellant merely reiterated the submissions that were advanced before the learned Single Judge: a bare reading of clause 3 of the advertisement would show that for a candidate to be eligible to compete, he/she was required to possess the qualification in terms of clauses 3(a) or 3(b) or 3(c). However, a proviso thereto postulates that preference was to be given to the candidates who possessed the preferential/higher qualifications in terms of clause (a) and (b) over and above those who were eligible as per clause (c). Thus, he submits that candidates who possessed the preferential/higher qualification ought to have been appointed in preference to the candidates who merely possessed the

essential qualification, in terms of clause (c). Further, in reference to the letter dated 21.5.2010 (Annexure P-7), he sought to contend that of 13 posts, that were sought to be filled, six were earmarked for the candidates in the General Category, whereas the rest seven were reserved for the candidates in different categories. Something that was unsustainable, for reservation exceeding 50% was unconstitutional. Reliance is placed upon the decision of the Supreme Court in **State of U.P, and another Vs. Pawan Kumar Tiwari and others, 2005 (1) SLR 637.**

We have heard the learned counsel for the appellant and perused the records.

Though referred to in the impugned judgment, but in context of the issue in question, it would be apposite to point out that the post of Assistant Town Planner is governed by the Punjab Town and Country Planning Class-II (Technical) Service Rules, 1998, ('Rules of 1998', for short). And, in terms of Rule 5 of the Rules of 1998, appointment to the service is made in the manner specified in Appendix-B. The qualifications prescribed for direct recruitment read thus;-

“(a) Post Graduation Degree or Diploma in City and Regional Planning or its equivalent from a recognized University or Institute OR

(b) Degree in B. Tech (in Planning) from a recognized University or Institute OR

(c) Degree in Architecture or Civil Engineering or its equivalent from a recognized University or Institute and experience in Town Planning's work for a minimum period of three years.

Provided that preferences will be given to the persons possessing qualifications specified in Clause (a) and (b) above.

(d) Punjabi of Matric or its equivalent standard.”

As indicated above, upon analysis and interpretation of the similar Rules, the Supreme Court in ***Om Prakash and another (supra)***, had held that when the selection is based upon merit preceded by a competitive examination and interview, preference to preferential/higher qualification would mean other things being **qualitatively** and **quantitatively** equal, those possessing preferential qualification would be preferred. The argument that ratio of the decision in ***Om Prakash and another (supra)***, would apply only if the candidates were subjected to a competitive examination, which was followed by interview, was also rejected by the learned Single Judge. For an analysis of another decision of the Supreme Court in **Secretary (Health), Department of Health and Family Welfare Vs. Dr. Anita Puri, 1996 (6) SCC 282**, which was referred to and relied upon in ***Om Prakash and another (supra)***, would show that no competitive examination was held for selection and consequent appointment to the posts of Dental Officer. Thus, it could not be urged that principle laid down by the Supreme Court in ***Om Prakash and another (supra)***, was restrictive in its application in giving preference to one qualification over the other, where the merit of the candidate was evaluated only through a competitive examination followed by interview. In other words, once the candidates were subjected to a competitive process, not necessarily an examination, and were evaluated/assessed by the Commission for determining their *inter se* merit and suitability, unless the two were **qualitatively** and **quantitatively** equal, being possessed with the preferential/higher qualification, would not enure to the advantage of one over the other. For, it could not be said: notwithstanding the *inter se* merit just because a candidate possessed a

higher qualification, he/she acquired a preferential right for appointment. Upon being pointedly asked, learned counsel for the appellant could not show or refer to anything if the conclusion recorded by the learned Single Judge in this regard suffered from any illegality.

As regards the plea of excessive reservation or more than 50% of the advertised posts were reserved, a bare reading of the impugned judgment reveals that neither any such issue was raked up, nor anything in this regard was urged before the learned Single Judge. This was not the case of the appellant either, at any stage of the proceedings, that although the issue of excessive reservation was raised during the hearing and despite argument been advanced in this regard, the learned Single Judge failed to examine the same. In fact, we are reminded to point out, at this juncture, that appeal filed by the appellant, i.e. LPA No. 1157 of 2013, against the impugned judgment was dismissed as withdrawn, vide order dated 22.12.2014, with liberty to move a review application for he had not raised the issue of excessive reservation before the learned Single Judge:-

“After arguing for some time and faced with the difficulties that the appellant has not raised the issue of excess reservation of seats before the learned Single Judge, learned counsel for the appellant wants to withdraw this appeal with liberty to file review application before the learned Single Judge on that aspect of the matter. Dismissed as withdrawn with the aforesaid liberty.”

Which is why, perhaps even the learned Single Judge declined to examine any such question in review and the application was accordingly dismissed, vide order dated 30.1.2019:-

“Having heard the learned counsel for the parties, I find no ground for review of the order dated 29.04.2013 passed by this Court.

The review application, therefore, stands dismissed.”

Thus, *ex facie*, the only issue that appears to have been pressed during the hearing before the learned Single Judge was: the appellant being possessed of preferential/higher qualification ought to have been preferred for appointment over the candidates who were merely eligible, in terms of clause 3(c) of the advertisement. As would be equally crucial to notice, the advertisement to fill up the posts in question was issued as back as on 22.5.2009. Even the impugned judgment was rendered by the learned Single Judge almost seven years ago, i.e. 29.4.2013. It is not disputed either that the judgment under challenge and the directions contained therein have since been complied with by the State Government. Meaning thereby, pursuant to their selection, candidates in their respective categories have since been appointed long ago. Thus, in the given situation, and at this stage, we are dissuaded to examine the issue of excessive reservation that is sought to be raised.

In the wake of the above, no ground is made out to interfere with the impugned judgment rendered by the learned Single Judge.

The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 10, 2020
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable:

AMIT KUMAR
2020.04.25 13:21
I attest to the accuracy and
authenticity of this document