

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

**CWP-10471-2020(O&M)
Date of decision:23.03.2021**

Pawan Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Alka Chatrath, Advocate for the petitioner

Ms. Maloo Chahal, DAG, Punjab

ANIL KSHETARPAL, J.

Through this writ petition filed under Article 226/227 of the Constitution of India, the petitioner prays for an appropriate direction be issued to the respondents to consider the case of the petitioner for appointment to the post of Horticulture Development Officer pursuant to the recruitment notice no.14 dated 05.03.2019 issued by the Punjab Public Service Commission.

On 30.07.2020, the following order was passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, the petitioner seeks issuance of an appropriate writ, order or direction, especially a writ in the nature of 'certiorari', “quashing the inaction of respondents no.1 and 2” in not considering the selection and appointment of a 'meritorious candidate', Ramandeep Kaur, from the general category; and “issuing public notice dated 03.07.2020 (Annexure P-15)”. He further seeks to restrain respondents no.1 and 2 from filling up all 4 posts of the general category in pursuance of the aforesaid public notice, and seeks that 1 post be kept

reserved for the petitioner, during the pendency of the writ petition.

On July 23, 2020, the following order had been passed by this court:-

“The Director, Horticulture, Punjab, is directed to file his own affidavit as to why, when Ramandeep Kaur who is shown at sr. no.6 of the joint merit list and had obtained 230 marks, with the last candidate from the General Category having obtained 225.20 (Navpreet Singh at merit no.9), Ramandeep Kaur is being treated to be in the Backward Class Category, with the law very well settled for the past more than two decades, that a reserved category candidate obtaining more marks than a General Category candidate, has to be considered to be a General Category candidate for the purpose of appointment.

If the affidavit of the Director is not filed, he/she shall remain personally present in court through video conferencing to answer this court as to why very heavy costs should not be imposed upon him/her for continuously forcing people to come to the court even to enforce their right as was settled by the Supreme Court 27 years ago in **Indra Sawhney and others v. Union of India and others AIR 1993 SC 477**.

Consequently, notice of motion is issued to the respondent State of Punjab, with Mr. Charanpreet Singh, learned AAG, Punjab, accepting notice at the asking of the court.

Adjourned to 30.07.2020.

Till then, one post be kept reserved for the petitioner.

To be shown in the urgent motion list.”

Today, an affidavit of Ms. Shalender Kaur, Director, Horticulture, Punjab, has been sent by way of 'Whatsapp' communication to the Reader of this Court by the learned State counsel, with it in turn forwarded to me.

It has been stated therein that initially Ramandeep Kaur (referred to in the last order) has been appointed against the vacancies from the backward class category, but thereafter, with vacancies of certain reserved categories having remained unfilled, the Government issued instructions that they should be converted to general category seats.

Thus, instead of three posts, there would now be the seven posts in the general category, available to be filled up from the selection process in question.

The petitioners' representation for appointment against the backward class category is stated to have also been received, with the petitioner stating that upon two persons from the combined merit list having obtained marks more than those from the general category (on the combined merit list), such persons from the backward class should be treated to have been appointed in the general category and therefore, the petitioner and one Manjit Rani from the backward class category be appointed as per their own merit in that category.

The matter is stated to be under consideration of the Government.

Having considered the aforesaid contentions in the affidavit, it is to be again reiterated by this court that nothing from the judgement of the Constitution Bench in **Indra Sawhney's case** (supra), has even been pointed out to this court, to the effect that even upon conversion of posts from other categories to the general category (thereby increasing the number of general category posts), such increased number of posts are to be filled up only from the general category candidates, even if those from reserved categories obtain higher marks than those in the general category.

However, Mr.Gupta, Addl.A.G., Punjab, seeks time to file a detailed reply to the petition.

Adjourned to 21.08.2020, with the Additional Chief Secretary to the Government of Punjab, Department of Horticulture, directed to file her/his own affidavit in response to the petition, after duly taking into consideration the ratio of the judgment of the Supreme Court in **Indra Sawhney and others v. Union of India and others AIR 1993 SC 477**, and if it is found that the said judgment, or any other subsequent judgment of the Supreme Court thereafter, has interpreted it to say that additional general category seats (after conversion from other categories), shall be filled up only by general category candidates and not by those of reserved categories (even if they have obtained higher marks), that part of any judgment shall be pointed out to this court specifically in the affidavit itself.

So far at least, no judgment at all is seen to have been passed and logically, at least in my

opinion, the contention raised by Mr.Gupta cannot be accepted in any case, because once seats have been converted to general category seats, obviously they stand as general category seats and consequently are to be filled up as per the merit on the combined merit list.

Nevertheless, to enable him and the Additional Chief Secretary to point out from any judgment to the contrary, an opportunity is being granted by this court to do so, on the next date of hearing, with it made clear that no candidate who has lower marks in the general category than any candidate in the reserved categories, shall be appointed to the additional posts in the general category now created (after 'conversion' by the Government).

In the meanwhile, the affidavit of the Director as has been sent to me via the Reader of this court by 'Whatsapp' communication, be also filed in the Registry by the respondent-State.”

A short affidavit of the Additional Chief Secretary (Development) Punjab, has been filed in compliance of the order passed.

Para 8 and 9 of the affidavit reads as under:-

“8. That, the case was sent to the Advocate General, Punjab for advice and the following advice was given by the Advocate General Punjab:-

“Having gone through the facts and circumstances of the present case and keeping in view the laid down in this regard right from Indira Sawhney versus Union of India AIR 1993 (SC) 477 and five Judges Bench in R.KSabharwal and others versus State of Pujab and others 1995 SCC (2) 755. It is settled proposition of law that reserve category candidate higher in merit has first to be adjusted/appointed in the General category. Going by the facts of the present case there is no doubt that the vacancy in BC category which was occupied by

Ramandeep Kaur (being no.1 in merit BC) will have to be offered to Ms. Manjit Rani who was no 2 in merit (BC). Ramandeep Kaur being no.6 in combined merit list will have to be shifted in general category against 7 post now available. Also, in view of the fact that 1 post of Backward Class ESM/DESM has been converted into backward class post therefore, in BC category two posts are available. First post goes to Manjit Rani being no.2 in the merit list (BC), the second post will essentially have to be offered to Shri Pawan Kumar being no.3 in the merit list of BC category.”

9. That, as per advice of the Advocate General, Punjab, the case of the petitioner for appointment against the post of B.C. Category, which became available due to conversion as stated in para-7 above is under consideration. Apart from the petitioner, the appointments of other candidates against the converted posts are also under consideration with the competent authority and are at final stage. So as per position stated above the case of appointments against the converted posts of the concerned candidates including that of the petitioner is under process and will be finalized soon.

Since the case for appointment of Sh. Pawan Kumar petitioner against 2nd B.C category post is under process, it is respectfully prayed that the present Civil Writ Petition may kindly be dismissed in the light of facts and circumstances stated above.”

Ms. Maloo Chahal, DAG, Punjab, submits that in principle the decision has been taken and further steps are likely to be taken in

view of the aforesaid affidavit.

Keeping in view the aforesaid facts, the writ petition is disposed of in terms of the affidavit filed. The respondents are directed to take a final decision positively within a period of four weeks.

Disposed of.

23.03.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE