

**209 IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**CWP No. 12110 of 2021 (O&M)  
Date of Decision: August 13,2021.**

Sarang Preet Singh Aujla .....Petitioner

Versus

State of Punjab and others .....Respondents

**CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Jagmohan Bansal, Sr. Advocate with  
Mr. Deepak Gupta, Advocate,  
for the petitioner.

Mrs. Anju Sharma Kaushik, DAG, Punjab.

Mr. Rupinder S. Khosla, Sr. Advocate with  
Mr. Aman Sharma, Advocate,  
for respondent No.4.

**MAHABIR SINGH SINDHU. J.**

Civil Writ Petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of Certiorari to quash the impugned category-wise merit list dated 18<sup>th</sup> June, 2021(P-5) qua respondent No.4- Manjinder Singh, whereby his name is shown under Category Code No.82 despite the fact that throughout he was a candidate for Category Code No.78; further for directing the official respondents to recast the category-wise merit list after deleting name of respondent No.4 from category No. 82; and or to pass any order(s)/direction(s) as this Court deems appropriate in view of the facts and circumstances of the present case.

2. Initially, in terms of requisition dated 17.04.2020 received from respondent No.-1, the Punjab Public Service Commission (for short “the Commission”) published Advertisement No.8, dated 04.06.2020 for recruitment to

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77 posts of PCS & Allied Services; but, later on the same was withdrawn on 09.12.2020.

3. Again, in pursuance of the requisition dated 08.12.2020, the commission issued fresh Advertisement No.14 dated 12.12.2020 (P-1) for recruitment of 75 posts, including 20 posts of Punjab Civil Services Executive Branch (for short “PCS EB”) through Punjab State Civil Services Combined Competitive Examination, 2020 for short “competitive examination”. Petitioner as well as respondent no. 4 applied for the posts of PCS EB under Category No. 81 (Balmiki/Mazhbi Sikh, Punjab) and No. 78 (Scheduled Caste Ex-Serviceman, Punjab) respectively.

4. Preliminary examination was conducted on 13.03.2021; both of them remained successful as per their category mentioned above. Main written examination was held from 01.04.2021 to 08.04.2021; both of them qualified under category Nos. 81 & 78 respectively. Petitioner secured 656 marks in written examination; whereas respondent no.4 obtained 653. The interviews were held between 31.05.2021 to 18.06.2021. On the basis of total marks obtained (main written + interview) category-wise merit list was displayed by the Commission on June 18<sup>th</sup>, 2021; wherein, respondent No.4 secured total 758.75 marks (50.58%), but his name is shown under category No.82. On the other hand, petitioner qualified under category No.81 while securing 720.50 marks (48.03%) and he is at serial No.3 in the category-wise merit list.

5. It is the case of the petitioner that as per the advertisement dated 12.12.2020, under category No.81, there were total 02 (two) posts of PCS EB [01 Balmiki Mazbhi Sikh Punjab & 01 Balmiki Mazhbi Sikh, Punjab (Women)]. Also averred that under category No.84 (Balmiki/Mazhbi Sikh Sports-Persons, Punjab), there was 01 (one) post of PCS EB, but no one could qualify, therefore, this post

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has been merged with category No.81; meaning thereby, now under this category i.e. 81, there would be total three posts of PCS EB and as such, petitioner being at No.3 of the category-wise merit list, is well within the zone of consideration.

6. Grievance of the petitioner is that under category No.78, there were total five posts viz. 01 PCS EB; 02 DSP; 01 Employment Generation & Training Officer and; 01 Deputy Superintendent Jail/District Probation Officer (Grade-II), but respondent No.4 opted only for sole post of PCS EB and for remaining services/posts, he did not give any option. Now, the Commission, while publishing the category-wise merit list has shown respondent No.4 in the category No.82, but concededly, there is no post of PCS EB under this category; therefore, again he would be shifted to category No.81. In such a situation, against 03 posts of PCS EB, petitioner would be pushed at No.4 and most likely to be ousted from the zone of consideration.

7. On the other hand, learned State counsel while making a reference to paragraph No.5.2 of the advertisement submitted that during scrutiny of the application form as well as other relevant documents of respondent no.4, it transpired that he applied under category No.78 and cleared the preliminary examination under this category. Thereafter, his name was shortlisted for main examination in the same very category and he qualified the examination while securing 653 marks. On June 7<sup>th</sup>, 2021, when respondent No.4 appeared for interview, then in order to determine his eligibility, the Commission found that actually he belongs to Balmiki/Mazhbi Sikh ESM i.e. category No.82. As a result thereof, respondent No.4 made representation dated 07.06.2021 (R-2&3/1) along with certificate dated February 28<sup>th</sup>, 2018 (R-2&3/2), which was considered by the Commission in its meeting dated 07.06.2021 and allowed him provisionally to participate in the interview till his category is finally established. Also submitted

that subsequently, the Commission in its meeting dated 18.06.2021 unanimously decided that category of respondent No.4 be corrected as Balmiki/Mazhbi Sikh ESM (82) to which he actually belongs and as such, his category was never changed; rather it is corrected on the basis of relevant documents supplied by him.

8. Respondent No.4 has not filed any written response in the matter. Learned senior counsel representing him submitted that respondent No.4 belongs to Scheduled Caste category duly notified in the State of Punjab and a certificate (R.2&3/2) to that effect has been issued by Tehsildar, Bathinda being the competent authority; thus, he is entitled for all the benefits being a Scheduled Caste candidate. Also submitted that mere sub-categorization as Balmiki or Mazhbi Sikh will not disentitle him from claiming the benefit of Scheduled Caste, when the caste to which he belongs, has been declared as Scheduled Caste under the Constitution (Scheduled Castes) Order, 1950. Learned senior counsel, on instructions, further submitted that respondent No.4 applied under category No.78 and he is still ready to be considered under that very category, instead of category No.82. Again submitted that respondent No.4 secured total 758.75 (50.58%) marks which are more than the last candidate in General Category (71) i.e. 744.17 marks (49.61%); therefore, he is entitled to be considered under category No.78 as well as against general category being more meritorious.

9. Heard learned counsel for the parties and perused the paper-book.

10. To decide the matter in controversy, the sole point for consideration of this court would be:-

Whether in view of the facts and circumstances of the present case, the action of the Commission while treating respondent No.4 under Category No.82 (Balmiki /Mazhbi Sikh ESM Pb.) is legally sustainable?

11. Clause 2.1 of the Advertisement being relevant reads as under:-

“2.1 The number of vacancies to be filled on the basis of PSCSCCE-2020 is given in the table below:-

| Sr. No. | Name of Post                                                      | No. of Posts. |
|---------|-------------------------------------------------------------------|---------------|
| 1.      | Punjab Civil Service (Executive Branch)                           | 20            |
| 2.      | Deputy Superintendent of Police                                   | 26            |
| 3.      | Tehsildar                                                         | 04            |
| 4.      | Food Supply and Consumer Affairs Officer                          | 02            |
| 5.      | Block Development & Panchayat Officer                             | 02            |
| 6.      | Assistant Registrar Co-Operative Societies                        | 04            |
| 7.      | Labour and Conciliation Officer                                   | 01            |
| 8.      | Employment Generation and Training Officer                        | 06            |
| 9.      | Deputy Superintendent Jails/District Probation Officer (Grade-II) | 10            |
|         | Total                                                             | 75            |

Perusal of the above tabulation reveals that out of total 75 posts, 20 were meant for PCS EB and as per Clause 2.2 of the advertisement, the tentative break-up of these 20 posts is shown as under:-

| Category with Code No.                        | PCS Post(s) | EB |
|-----------------------------------------------|-------------|----|
| General (71)                                  | 06          |    |
| General (Women)                               | 02          |    |
| ESM/DESM (72/73)                              | 02          |    |
| ESM/LDESM (Women)                             | 01          |    |
| Scheduled Caste Others, Pb (77)               | 01          |    |
| Scheduled Caste Others Pb (Women)             | -           |    |
| Scheduled Caste ESM/LDESM, Pb (78/79)         | 01          |    |
| Scheduled Caste ESM/LDESM Pb (Women)          | -           |    |
| Balmiki/Mazhbi Sikh, Pb (81)                  | 01          |    |
| Balmiki/Mazhbi Sikh, Pb (Women)               | 01          |    |
| Balmiki/Mazhbi Sikh ESM/LDESM, Pb (82/83)     | -           |    |
| Balmiki/Mazhbi Sikh ESM/LDESM, Pb (Women)     | -           |    |
| Balmiki/Mazhbi Sikh Sport Person, Pb (84)     | 01          |    |
| Balmiki/Mazhbi Sikh Sport Person, Pb. (Women) | -           |    |
| Backward Classes Pb. (85)                     | -           |    |
| Backward Classes Pb (Women)                   | 01          |    |

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|                                          |           |
|------------------------------------------|-----------|
| Backward Classes, ESM/LDESM, Pb. (86/87) | 02        |
| Backward Classes, ESM/LDESM, Pb (Women)  | -         |
| Economically Weaker Sections (92)        | 01        |
| Economically Weaker Sections (Women)     |           |
| <b>Total</b>                             | <b>20</b> |

12. Clause 5.4 of the advertisement talks about selection process in the following manner:-

“(i) Preliminary Competitive Examination; and

(ii) Main Competitive Examination (Written and Interview)”

13. Undisputedly, during preliminary test as well as at the time of main written examination, respondent no.4 was a candidate under Category No. 78 and he secured 653 marks in the written examination. Thereafter, he appeared for interview and upon verification of his documents, the commission, vide letter No. 1255 dated 07.06.2021 (R2&3/3) informed him in the following manner:-

“PUNJAB PUBLIC SERVICE COMMISSION

Sh. Manjinder Singh son of Sh. Rajbir Singh  
Roll No. 38818

No. 1255 Dated 07.06.2021

Subject: Regarding conducting provisional Interview due to filling  
wrong category for PSCSCCE-2020

Sir,

You are hereby informed that during the document verification at the time of interviews for Punjab State Civil Services Combined Competitive Examination, 2020, it was found that you have filled category (78) which is Scheduled Castes ESM category but during document verification you have presented the Certificate of Balmiki/Mazhbi Sikh which makes your candidature doubtful.

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The Commission in its meeting dated 07.06.2021 deliberated upon the issue and decided that you would be interviewed provisionally.

Regarding this, if you wish to change the order of preferences given for PSCSCCE-2020, you can do that before the declaration of the final result.

Sd/-  
Secretary Examinations”

In pursuance of the above communication, respondent No.4 submitted written application to the commission on 07.06.2021 (R2&3/1) and that being material is also recapitulated as under:-

“To

The Secretary,  
Punjab Public Service Commission

### PCS EXAMINATION 2020

1. It is stated that I, Manjinder Singh Roll No. 20135 (PCS Mains 2020) had applied for the subject Examination under reserved category code 78 (SC, ESM). On document verification it was conveyed to me that my claim to reservation lies under category (Mazhbi Sikh ESM).

2. It is submitted that the undersigned may please be considered under reservation category code 72 (ESM/78 (SC ESM)/82 (Mazhbi Sikh ESM) as applicable.

Dated: 07 June 2021

Yours Sincerely

Sd/-  
Manjinder Singh  
Roll No.20135  
Reg. No. 20208264626”

After consideration of the above request, respondent No.4 was interviewed provisionally on 07.06.2021 till his category is established. Again the,

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Commission in its meeting dated 18.06.2021 unanimously decided that category of respondent No.4 be corrected to Balmiki/Mazhbi Sikh ESM (code 82) to which he actually belongs and ultimately, the impugned category-wise merit list was published, wherein respondent No.4 is shown to have qualified under category No.82.

14. It is most relevant to mention here that Clause 11 [Note 1 (c)], of the advertisement specifically says that “category once filled by the candidate shall be sacrosanct and no change shall be permitted at any stage of the Examination.” Still further, under Clause 14, there is a specific interdict to the effect that “the category once selected by a candidate will not be changed under any circumstances.” Thus, while issuing above advertisement, the Commission itself has expressly ruled out any change of the category by a candidate at later stage during the selection process.

The Hon’ble Supreme Court in **J&K Public Service Commission vs. Israr Ahmad and others (2005) 12 SCC 498** while dealing with a case regarding change of category at the stage of main examination in paragraph No.5 held as under:-

“We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for

the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal.”

Still further the Hon’ble Supreme Court in case titled as “*Bedanga Talukdar Versus Saifudullah Khan and others AIR 2012 SC (1803)*” ruled that there “cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved” and reference in this regard can be made to paragraph No.28 of the judgment, which reads as under:-

“28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

In view of the above, there remains no doubt that terms and conditions stipulated in the advertisement for recruitment of civil servant(s) are binding upon all concerned, including the Commission and no deviation is permissible under any circumstances, until and unless the advertisement says so; or there is some provision under the statutory rules to that effect. Learned State counsel was not

able to point out any rules enabling the Commission to change the category of respondent No.4 in the present case.

15. Although, learned State counsel tried to justify the action of the commission while making a reference to Clause 5.2 of the advertisement, but that is fallacious for the following reasons:-

(i) Clause 5.2 nowhere empowers the Commission to change the category of a candidate at the stage of interview and the same reads as under:-

“5.2. The scrutiny of application forms shall be done after the conduct of the Mains Examination. During the process of scrutiny, the application forms and other relevant documents, certificates, etc. of the candidates shall be examined to determine their eligibility. Candidates not meeting the eligibility criteria will be rejected after the scrutiny process or any time thereafter if found ineligible. The candidature of the candidate shall be provisional till the time of verification of documents of the candidate at the time of interview, when the candidate will produce his/her original certificates for verification by the Commission.”

From perusal of the clause 5.2, it is not discernable that the Commission was empowered to change the category of a candidate at the stage of interview; rather the clause says that “candidates not meeting the eligibility criteria will be rejected after the scrutiny process or any time thereafter if found ineligible.” Thus, by no stretch of imagination it could be construed that under this clause the Commission was empowered to tinker with the category filled by respondent No.4.

(ii) Perusal of the letter dated 07.06.2021 (R2&3/3) reveals that during verification of documents, respondent No.4 presented the certificate of Balmiki/Mazhbi Sikh, which according to the Commission, made his “*candidature doubtful*”, but he was interviewed, provisionally. The

commission further informed him vide above communication that “if you wish to change the order of preferences given for PSCSCCE-2020, you can do that before the declaration of the final result”. Taking a cue from above letter, respondent No.4 submitted the application dated 07.06.2021 (R2&3/1) and requested that he be “considered under reservation category code 72 (ESM/78 (SC ESM)/82 (Mazhbi Sikh ESM) as applicable.” In this way, respondent no.4 gave three different categories to the Commission for consideration of his candidature and out of them, category No. 82 has been accepted at the stage of interview, despite the fact that there is no post of PCS EB under this category.

(iii) It is relevant to mention here that change of preference has no correlation with change of category; rather the former is relatable to the choice of services/posts i.e. PCS EB or DSP or Tehsildar etc. In order to clarify this aspect of the matter, reference can be made to the “Note” appended under Clause 2.2 of the advertisement, which reads as under:-

**“Note:** The candidates must fill the order of preference for services/posts in the Application Form for the Main Competitive Exam. The choice indicated by the candidate would be final unless changed before the final result becomes available.”

From perusal of the above “Note”, in the opinion of this court, change of preference(s) cannot, by any means be termed as change of category. Thus, if the course adopted by the Commission is allowed to govern the rules of game in such a way, then that would be complete violation of the equality clause under Article 14 of the Constitution resulting into great prejudice to the other candidate(s) like petitioner, as has happened in this case.

16. As noticed in para 14 (supra), despite specific bar under Note 1(c) of clause 11 and clause 14, the Commission shifted respondent No.4 from category

No. 78 to Category No.82 without there being any enabling provision to that effect and as such brazenly violated the terms and conditions of the Advertisement. The Commission is a constitutional body and its actions are supposed to be independent as well as scrupulously in accordance with law. In the present case, the commission has totally disregarded the interdict stipulated in the advertisement, thus negated the rule of law and that cannot be countenanced at any cost.

Prof. A.V. Dicey in his memorable work “The Law of the Constitution” (1st Edition, Macmillan and co.), while propounding the rule of law, summarized as under:-

*“With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the Courts and made in their personal capacity liable to punishment or to the payment of damages for acts done in their official character but in excess of their lawful authority.”*

17. In view of the above, the irresistible conclusion is that the Commission was not legally empowered to shift respondent No.4 from category No. 78 to category No.82 and as such it has acted in gross violation of the imperatives contained in advertisement dated 12.12.2020. Consequently, the impugned category wise merit list dated 18.06.2021 (P-5) qua respondent No.4 is legally indefensible and liable to be set aside.

18. Thus, the writ petition is allowed. The impugned merit list qua respondent No.4 while showing his name under category No.82 is quashed and set aside. It is clarified that passing of this order shall not defeat the claim of respondent No.4, in any manner, for being considered as per his merit in accordance with law. Since the action of the respondent-Commission has been

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found to be wholly illegal and unjustified, therefore, costs of Rs.50,000/- (Rupees Fifty Thousand) are imposed as deterrent against recurrence on their part. Costs be deposited by the Commission in favour of High Court Legal Services Authority within 03 (Three) months from receipt of certified copy of this order.

August 13, 2021

SN

**(MAHABIR SINGH SINDHU)**

**JUDGE**

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

**Whether Reportable: Yes/No**