

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

CWP No. 5188 of 2021 (O&M)

Date of decision: 02.03.2022

Neeraj Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Akshay Bhan, Senior Advocate assisted by
Mr. Aman Bansal, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana,
for respondent no.1.

Mr. Kanwal Goyal, Advocate, for respondent no. 2- HPSC.

ARUN MONGA, J.

Petitioner seeks quashing of an order dated 15/17.2.2021 (Annexure P-17) by which his claim for appointment in Haryana Civil Services (Executive Branch) has been rejected. His claim *inter alia* is premised on the ground that the impugned order is in violation of administrative instructions dated 15.03.2019 (Annexure P-10), inasmuch as, not treating/taking the post which was earlier reserved for Special Backward Class Category (SBC) into account to fill up the same in the General Category.

2. Succinct undisputed facts first. Vide a notification dated 24.01.2013 (Annexure P-1), five castes namely Jat, Jat Sikh, Ror, Bishnoi and Tyagi were declared Special Backward Classes. Said Special Backward Classes were provided ten percent reservation in jobs under Government/Government Undertakings and

Local Bodies as well as in educational institutions in exclusion to the already notified 27% reservation provided for the Backward Classes. Through an advertisement dated 20.02.2014 (Annexure P-2) Haryana Public Service Commission invited applications for 55 posts of HCS (Executive Branch) and other Allied Services. Out of them, 30 posts were of HCS (Executive Branch) and the remaining were of Other Allied Services. Said 30 HCS (Executive Branch) posts were bifurcated thus: General-16, SC of Haryana-6, BC of Haryana-3, SBC of Haryana-1, ESM of Haryana-1, Physically Handicapped Persons of Haryana-2. Petitioner also applied in the General Category. One post was thus reserved for Special Backward Class (SBC). The bone of contention herein is this one post which remained vacant as the reservation for Special Backward Class category was withdrawn vide a subsequent notification dated 31.03.2016 (Annexure P-4).

3. Preliminary examination was conducted on 03.08.2014 followed by the main written examination from 14.04.2016 to 20.04.2016 and then the interviews etc.

4. However, before the declaration of result the aforesaid Special Backward Class reservation was assailed in this Court vide CWP Nos. 2441, 6076, 13150 of 2014 and 9132 of 2015, wherein the Division Bench then seized of the matter passed following order in CWP No. 9132 of 2015 dated 27.07.2015 (Annexure P-3) :-

“Written statement has been filed on behalf of respondents No. 1 and 2 in Court today. The same is taken on record and a copy thereof has been supplied to learned counsel for the petitioners.

We have heard learned counsel for the parties on the prayer of staying the operation of the impugned notifications dated 24.01.2013 (Annexure P-2) and 28.02.2013 (Annexure P-3). Undisputedly, the impugned reservation in favour of five

classes of people, namely Bishnoi, Jat, Jat-Sikh, Ror and Tyagi residing in Haryana State has been made by the State of Haryana on the basis of Justice K.C. Gupta Commission's report. The said report was not accepted by Hon'ble the Supreme Court while giving judgment in Ram Singh and others Vs. Union of India, 2015(3) Scale 570, whereby reservation of Jat community in the Central List of Other Backward Classes, has been set aside.

Keeping in view the said judgment and the fact that Justice K.C. Gupta Commission's report, on the basis of which the impugned reservation has been made by the State of Haryana, was not accepted, and also keeping in view the dismissal of review application by the Supreme Court, we restrain the State of Haryana to give any employment in the Government service and admission in educational institution on the basis of the impugned notifications.

Admitted.

To be listed for regular hearing within one year.”

5. In view of the aforesaid Division Bench order, prior even to the main written examination, State Government issued instructions dated 21.08.2015 (Annexure R-2/1). The relevant part of the aforesaid instructions is re-produced as under:-

“3. All the candidates who have applied within Special Backward Classes category may be issued provisional admit cards with the condition that their final result will be declared after final outcome of the pending writ petitions in the Hon'ble High Court. For this purpose, corrigendum may be given with reference to their earlier advertisements by HPSC/ HSSC and other quarters concerned making recruitment. These candidates, except those who have availed the benefit of age relaxation, shall be considered against general of vacancies if successful in the examination and within the merit of general candidates in case the final judicial verdict quashes the impugned notification.

In case the writ is not decided till the recruitment process is over and result is ready to be declared then the result of the Special Backward Classes candidates who have availed the benefit of age and fee relaxation and have competed in general category on merit shall be withheld till the decision of the writ. In case the Special Backward Classes reservation notification is quashed, then these Special Backward Classes candidates

result will be null and void as they become ineligible on grounds of age.

In the case of those Special Backward Classes candidates who competed without benefit of age relaxation, against general vacancies and succeeded on merit, there is no hitch in declaring the result.

In case the writ/ decision upholds the Special Backward Classes notification, then the SBC candidates, whether with/ without benefit of age relaxation shall be selected as per the same ratio that other reserved category candidates are selected i.e. candidates who succeed in general merit be counted in general/ open vacancies and the other against the Special Backward Classes quota, as is the legally settled procedure for SC/ ST/ OBC vacancies also.”

6. Per above instructions, the Commission on 27.01.2016 published an announcement in the news papers on 28.01.2016 (Annexure R-2/2) informing the candidates regarding status of SBC category candidates. Operative part thereof reads as under:-

“i) The SBC category candidates will be issued provisional Admit Cards with the condition that their result will be declared after final outcome of the aforesaid pending writ petitions.

ii) The SBC category candidates who have not availed the benefit of age relaxation shall be considered against the vacancies of General category.

iii) The result of SBC category candidates against the post reserved for SBC category shall be withheld till the final outcome of the aforesaid writ petitions and will be decided accordingly.”

7. The result of the main examination was declared on 05.07.2016 (Annexure P-6). In the result, note 2 is crucial qua the controversy in hand, which reads as under:-

“2. The one post reserved for SBC category of Haryana is not being filled up in view of the fact that notification dated 28.02.2013 providing reservation to SBC category has been withdrawn as has been mentioned in the orders dated 14.04.2016 of the Hon’ble High Court passed in CM No. 4160-CWP of 2016 in/and CWP No. 9132 of 2015 (O&M). The candidates who had applied against SBC category

have been considered as General Category candidates subject to the fulfillment of all eligibility conditions meant for General Category candidates. The result of the candidates who have availed age relaxation is treated as null and void as per instructions dated 21.08.2015 of the Govt. of Haryana.”

8. After viva-voce, final result was declared on 02.09.2016 (Annexure P-7) and recommendations were sent by the Commission (respondent No.2) on 05.09.2016 (Annexure R-2/3) stating therein that it was decided not to fill up one post of HCS (Executive Branch) reserved for SBC.

9. Petitioner was placed at No. 17 in the merit list as per result of the General Category. There were only 16 seats in the General Category and the 17th post of HCS (Executive Branch) was reserved for Special Backward Class category. The petitioner was thus not selected/given appointment in HCS (Executive Branch). Instead, he was selected and appointed in the Allied Services as District Food and Supplies Controller. Petitioner submitted a representation dated 03.02.2017 (Annexure P-8) to the Chief Secretary of the Government of Haryana as well as to the Secretary of Haryana State Public Service Commission pleading that vacant post of SBC in HCS (Executive Branch) at slot no. 17 be filled by a General Category candidate and he be given benefit thereof.

10. Petitioner then filed CWP No. 27630 of 2017. Upon a reference from respondent No. 1 in this connection, reply letter dated 26.02.2019 (Annexure P-9) was sent by respondent No. 2 with the subject “CWP No. 27630 of 2017 – Neeraj Sharma vs State of Haryana” informing that the name of Shri Neeraj Sharma was at Sr. No. 17 in the merit and he had been recommended for the post of DFSC and that if the 17th post of HCS (Executive Branch) reserved for SBC category is to be considered in the general category, then the name of Shri Neeraj

Sharma is to be considered against this post and consequently the post of DFSC will fall vacant.

11. The Chief Secretary to the Government of Haryana wrote a letter dated 05.03.2019 (Annexure P-10) to the Secretaries of HPSC and HSSC informing them that in a litigation related to matter of recruitment of police constables (CWP No. 25983 of 2018 - Krishan and others vs State of Haryana) this Court had held vide judgment dated 20.02.2019 that *“the present petition stands disposed of with a direction to the respondents to consider the case of the petitioner against the post meant for SBC category, which are now being filled treating these posts to be under General Category”*. Keeping this in view, the State Government had decided *inter alia* that in respect of all advertisements where there was no court stay but the result of SBC had been with-held, the SBC posts shall be treated to be under the Unreserved/General Category.

12. Petitioner has averred that in CWP No. 6025 of 2019 disposed of vide order dated 06.03.2019 (Annexure P-11), the posts of TGT (Physical Education) were advertised vide advertisement No. 3/2015, final result was declared on 04.01.2019 and that vide order dated 06.03.2019 (Annexure P-11) this Court had directed to convert the posts of SBC category into General Category and that the Commission had vide notice dated 05.12.2019 converted the SBC category posts into General Category and recommended the General Category candidates against those posts on 05.12.2019.

13. The petitioner has also averred that in CWP No. 6073/2019 disposed of vide order Annexure P-12, the posts of PGT Physics were advertised vide advertisement No. 4/2015, final result was declared on 31.10.2018 and that although no case was filed but still the HSSC (Haryana Staff Selection

Commission) relying upon the instructions dated 05.03.2019 had converted the posts of SBC category into General Category and recommended general category candidates vide notice dated 20.05.2020.

14. This Court in CWP No. 25983 of 2018 ‘Krishan and others vs State of Haryana’ pertaining to selection of Constables in Haryana Police while relying on its earlier judgment in CWP No. 13384 of 2011 – ‘Garima Jindal vs HVPNL and another’ recorded a finding on the basis of submissions made by learned counsel for the State that in the State of Haryana the vacancies of SBC are now being filled up from General Category candidates. Accordingly, CWP No. 25983 of 2018 ‘Krishan and others vs State of Haryana’ was disposed of vide order dated 20.02.2019 (Annexure P-18) with a direction to the respondents to consider the case of the petitioners against posts meant for SBC category, which were then being filled treating these posts to be under General Category. Petitioner has also averred that those posts of Constables were advertised vide advertisement No. 8/2015, final result was declared on 29.10.2016 and that the Commission had vide notice dated 29.08.2018 converted the SBC category posts into General Category and recommended General category candidates against those posts.

15. The petitioner also asserted that his case is similar to the case for selection for Naib Tehsildar’s post. Respondent No.2 had advertised 70 posts of Naib Tehsildars vide advertisement No. 1/2015 and had converted the SBC posts into General and recommended candidates for appointment. The posts of Naib Tehsildars were advertised by respondent No. 2 vide advertisement No.1 dated 23.07.2015. In them, 34 posts were for General Category and 4 posts were for SBC category. These 4 posts of SBC category were converted into General

Category and 38 candidates instead of 34 of General Category were recommended for appointment on 16.08.2019.

16. This Court allowed the petitioner herein to withdraw CWP No. 27630 of 2017 – Neeraj Sharma vs State of Haryana vide order dated 18.03.2019 with liberty to file it with better particulars on the same cause of action. The request for withdrawal of the petition was made in view of the directions of this Court on the issue in question and in view of consequent instructions dated 05.03.2019 issued by the Chief Secretary, Government of Haryana.

17. The petitioner then submitted detailed representation dated 15.03.2019 (Annexure P-14) to the Chief Secretary to the Government of Haryana for being appointed as HCS (Executive Branch).

18. Thereafter the petitioner filed another CWP No. 8185 of 2019 ‘Neeraj Sharma vs State of Haryana’. It was disposed of vide order dated 03.10.2019 (Annexure P-15) directing the Chief Secretary to the Government of Haryana to consider the representation dated 15.03.2019 within a period of two months. The Secretary, Haryana Public Service Commission informed the Chief Secretary to the Government of Haryana that the recruitment to the HCS (Executive Branch) 2014 was completed in July 2016. It was further mentioned in the letter that one post which was meant for the candidates belonging to the Special Backward Class category had been left vacant. It was further mentioned that letter dated 05.03.2019 was issued after a gap of more than two and half years so the directions issued therein could not be made applicable with retrospective effect.

19. Vide the impugned order (Annexure P-17), Chief Secretary, Government of Haryana, rejected the representation dated 15.03.2019 made by the petitioner despite admitting that one unfilled post of HCS (Executive Branch)

reserved for SBC had reverted to the general pool. It was also observed that there was then (on 15.03.2019) no vacancy of Special Backward Class in existence which could be diverted to the General category as the same had been treated as unreserved vacancy in view of Government notification dated 01.04.2016. Hence, the writ petition.

20. In the return filed by the respondents, the petition has been resisted *inter alia* on the ground that the reliance placed on the Government instructions dated 05.03.2019 (Annexure P-10) is totally misplaced and the said instructions are not applicable in the present case.

21. I have heard the rival contentions of learned counsel for the parties, perused the record appended with the writ petition and the return filed thereto.

22. Learned senior counsel appearing for the petitioner would emphatically argue that reservation for SBC for the first time was carved out in the year 2013 and was horizontal in character. Hence, once it is a conceded case of the respondents that the reservation for SBC stood withdrawn and the post was left unfilled/ withdrawn, the post in question has to inevitably and automatically return to the general category. Learned counsel would argue that once it is established that the post in question being of horizontal reservation, the claim of the petitioner to be appointed against the said post/ unfilled post at slot no. 17 is firmly cast in stone. He would argue that the reservation was withdrawn in the year 2016 prior to the declaration of the result and yet the 17th post of HCS (Executive Branch) was not filled up by the Commission despite the availability of a General Category candidate i.e. the petitioner. He would further argue that once the reservation has been withdrawn, the post cannot be kept vacant.

23. Illustratively, learned counsel for the petitioner would cite a past precedent adopted by the Government as more particularly stated in para 10, ground (iv) of the writ petition, showing that four posts of Naib Tehsildars in SBC category were though originally advertised on 23.07.2015 by Haryana Public Service Commission but were later on filled up from General Category candidates after the SBC reservation was withdrawn. Likewise, he would argue that in the present case also on the same analogy once the SBC reservation was withdrawn, the post in question must be filled up from the General Category. Reliance has also been placed on Single Bench judgment of this Court in CWP No. 13384 of 2011 Garima Jindal vs HVPNL and another.

24. Per contra, learned counsel for the State as well as learned counsel appearing for the Commission would argue in unison that argument of the petitioner's learned senior counsel that Special Backward Class reservation is horizontal is complete fallacy both in law and facts. They would argue that perusal of notification 23.01.2013 (Annexure P-1) makes it clear that the reservation is vertical in nature and has been provided on social consideration to the five castes mentioned therein. They would rely on Article 16(4) of the Constitution of India and contend that the State Government was fully empowered to make reservation in favour Special Backward Classes by way of vertical reservation. Accordingly, once the notification qua the aforesaid vertical reservation was withdrawn, the reserved vacancy cannot devolve on the general category. In this aspect they also place reliance on Supreme Court judgment rendered in Rajesh Kumar Daria vs Rajasthan Public Service Commission 2007 (8) SCC 785, wherein paragraph 7, in addition to explaining how the vertical reservation works, it has been observed as under:-

“7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class.

Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745) Union of India vs Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Shah vs Dr. Y. L. Yamul (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example :

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question

of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]”

25. Learned counsel further submitted that in this very judgment, principle of Horizontal reservation has been discussed in paragraph 5, which is reproduced as under:-

5. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In Indra Sawhney vs Union of India [1992 Supp.(3) SCC 217], the principle of horizontal reservation was explained thus (Pr.812) :

"all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4) may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same."

A special provision for women made under Article 15(3)), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta vs. State of U.P. [1995 (5) SCC 173] thus :

"The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further

question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.) [Emphasis supplied]

26. In the aforesaid premise, learned counsel for the respondents sought dismissal of the writ petition emphatically stating that the SBC post in question was that of vertical reservation and it was treated as un-reserved in view of the Government notification dated 01.04.2016 vide which the earlier notification dated 24.01.2013 providing reservation to SBC was withdrawn. All the candidates who had applied under SBC category were considered by the Commission against General Category posts. There is no decision of the Government on the file to fill up the one unreserved post (reserved for SBC) in the same selection process. Rather, there is a specific note in the interview notice dated 05.07.2016 and the recommendation dated 05.09.2016 issued and made by HPSC that it has been decided not to fill up one post reserved for SBC since the notification dated 28.02.2013 has been withdrawn vide notification dated 01.04.2016. One post which was initially reserved for SBC but later on unreserved, therefore, went to the general pool. It was thereafter under the Haryana Backward Classes (Reservation In Services and Admission in Educational Institutions) Act, 2016 that the Government again granted reservation to BC-C category (earlier called SBC). Out of total 56 vacancies of HCS and Allied Services available upto 31.12.2017, 2 posts were reserved for BC-C category, as per the reservation provided under the 2016 Act. These posts were neither included in the requisition, nor filled up pursuant to advertisement dated 02.08.2018 and the

same are now to be treated as General and un-reserved vacancies as per the Government instructions dated 05.06.2019 for being filled up in the subsequent selection. Therefore, as on today, there is no vacancy of SBC reserved under notification dated 24.01.2013 and advertised vide advertisement dated 20.02.2014, in existence, which can be diverted to General Category. The same has already been treated as un-reserved vacancy in view of Government notification dated 01.04.2016. Moreover, the selection process initiated vide advertisement dated 20.02.2014 concluded in September 2016. The appointed candidates joined in the HCS (Executive Branch) or the Allied Services allocated to them. Any change in the placement of one candidate at this stage will have a cascading effect not only on the merit list of the said selection but also the subsequent selection of HCS (Executive Branch) 2017 Batch, which was concluded in the year 2019, leading thereby to multitude of administrative complications regarding settling of seniority and connected litigation.

27. Having noted the rival contentions of learned counsel for the parties, I shall now proceed to deal with the same and render my opinion thereupon along with reasons as hereinafter.

28. Petitioner's claim, inter alia, is that his case is analogous to the four instances mentioned above in paras 9 to 12 and that he ought to be treated on parity with those cases.

29. The petitioner made averments to the following effect in para 10(ii), (iii) and (iv) of the petition (which have been quoted above in paras 12 to 15):

(a) In CWP No. 6025/2019 disposed of vide order Annexure P-11, the posts of

TGT (Physical Education) were advertised vide advertisement No. 3/2015,

final result was declared on 04.01.2019 and that vide order dated

06.03.2015 Annexure P-11 this Court had directed to convert the posts of SBC category into General Category and that the Commission had vide notice dated 05.12.2019 converted the SBC category posts into General Category and recommended the General Category candidates against those posts on 05.12.2019.

(b) In CWP No. 6073/2019 disposed of vide order Annexure P-12, the posts of PGT Physics were advertised vide advertisement No. 4/2015, final result was declared on 31.10.2018 and that although no case was filed but still the HSSC (Haryana Staff Selection Commission) relying upon the instructions dated 05.03.2019 had converted the posts of SBC category into General Category and recommended general category candidates vide notice dated 20.05.2020.

(c) In CWP No. 25983 of 2018 disposed of vide order Annexure P-18, the posts of Constables were advertised vide advertisement No. 8/2015, final result was declared on 29.10.2016 and that the Commission had vide notice dated 29.08.2018 converted the SBC category posts into General Category and recommended General category candidates against those posts.

(d) Respondent No.2 had advertised 70 posts of Naib Tehsildars vide advertisement No. 1/2015 and had converted the SBC posts into General and recommended candidates for appointment. The posts of Naib Tehsildars were advertised by respondent No.2 vide advertisement No.1 dated 23.07.2015. Out of them, 34 posts were for General Category and 4 posts were for SBC category. These 4 posts of SBC category were converted into General Category and 38 instead of 34 candidates of General Category were recommended on 16.08.2019 for appointment.

30. In their reply to the petition, respondents No. 1-2 pleaded, as regards the selection for appointment of Naib Tehsildars, that the selection process for HCS (Executive Branch) and Other Allied Services Examination, 2015 was completed in 2016. The selection process of various recruitment/vacancies advertised by HSSC had not attained finality. Hence the Commission had provided benefit to the aspirants as per letter dated 05.03.2019 of the State Government for filling up the posts advertised under SBC category from General Category candidates. The remaining averments in the petition as quoted at (a), (b) and (c) in the foregoing para were not specifically dealt with and denied by the respondents. The same are deemed admitted.

31. Admittedly, in the instant case, the process for selection started with the issue of advertisement Annexure P-2 dated 20.02.2014. For HCS (Executive Branch), there were 16 posts of General Category and one post was reserved for SBC Category. The reservation for Special Backward Class category was withdrawn vide notification dated 31.03.2016 (Annexure P-4). Final result was declared vide result sheet dated 02.09.2016 and communicated by respondent No.2 to respondent No.1 vide letter dated 05.09.2006 stating inter alia that respondent No. 2 (Commission) had decided not to fill up one post of HCS (Executive Branch) reserved for SBC category. The petitioner was at serial No. 17 in the merit list of candidates from General Category. As per merit, his name was, therefore, recommended for the Allied Service of District Food & Supplies Controller.

32. It is thus apparent that the instant case for selection to the HCS (Executive Branch) & Allied Services is analogous to the cases referred to at (a), (b) and (c) in para 25 above. Of course, in those cases, writ petitions were filed

by the affected persons and orders (Annexures P-11, P-12 and P-18) were passed by this Court that the unfilled posts meant for the SBC be filled up by candidates from the general category as per instructions dated 05.03.2019. In the instant case too, the petitioner is the affected person and is before this Court. In fact he had made detailed representation dated 03.02.2017 (Annexure P-8) to the respondents to consider him for selection/appointment against the one post, which had been advertised as reserved for SBC category, as the said reservation stood withdrawn. Since then, he has been pursuing his claim with the respondents and in various rounds of litigation in this Court, including the instant third writ petition.

33. This being the position, I am of the considered opinion that on the sole ground of similarity and parity with the aforesaid cases at (a), (b) and (c) in para 25 above, the petition deserves being appropriately allowed and that the impugned order dated 15/17.2.2021 (Annexure P-17) passed by respondent No. 1 rejecting the petitioner's representation dated 15.03.2019 (Annexure P-14) is liable to be set aside. It is held accordingly.

34. In the light of the view taken above, it does not seem necessary for the disposal of this case to adjudicate upon or express any opinion about the rival contentions of the parties for and against treating the reservation of SBC Category as horizontal or veridical. Yet, the same having been raised before the Court, are also being dealt with hereunder.

35. As noted above, in Rajesh Kumar Daria's case *ibid* the Hon'ble Supreme Court explained the nature of vertical reservation and horizontal reservation and held that social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations', while Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal

reservations'. In present case, vide Haryana Government notification dated 24.01.2013 (Annexure P-1), the five castes namely Jat, Jat Sikh, Ror, Bishnoi and Tyagi had been declared Special Backward Classes and provided ten percent reservation in jobs under Government/Government Undertakings and Local Bodies as well as in educational institutions for these Special Backward Classes in exclusion to the already notified 27% reservation provided for the Backward Classes. Viewed in the light of judgment *ibid*, to my mind, the reservation for SBC Category was a type of social reservations in favour of and confined to the specified five castes and thus was 'vertical reservations'. Accordingly, It is held by accepting the contention on behalf of the respondents that the reservation for SBC Category was 'vertical reservations' and not horizontal reservation as canvassed on behalf of the petitioner.

36. Respondent No. 1 has pleaded, *inter alia*, that after withdrawal of reservation for SBC category vide notification dated 31.03.2016 (Annexure P-4), the State Government enacted "The Haryana Backward Classes (Reservation In Services and Admission in Educational Institutions) Act, 2016 and provided six per cent reservation to BC-C Category in class I and II posts. Its operation was stayed by this Court vide order dated 26.05.2016 in CWP No. 9931 of 2016 *Murari Lal Gupta v. State of Haryana & other*. The State Government further decided to fill up all the vacancies of HCS (Executive Branch) for Register-B (direct recruitment) as available upto 31.12.2017. There were total 56 vacancies of HCS (Executive Branch) for Register-B available upto 31.12.2017. After retaining two vacancies for BC-C category from unreserved category and 6 vacancies for EBP GC category, the remaining 48 vacancies for register –B (direct recruitment) were available upto 31.12.2017. Requisition for selection for these posts was sent to the HPSC. These were advertised by the HPSC on 02.08.2018.

After completion of process for selection, the final result was declared on 19.12.2019 by HPSC. As on today, there is no vacancy of SBC reserved under notification dated 24.01.2013 and advertised vide advertisement dated 20.02.2014, in existence, which can be diverted to General Category as the same has already been treated as un-reserved vacancy in view of Government notification dated 01.04.2016. Moreover, the selection process initiated vide advertisement dated 20.02.2014 concluded in September 2016. The appointed candidates joined in the Executive Branch or the Allied Services allocated to them. Any change in the placement of one candidate at this stage will have a cascading effect not only on the merit list of the said selection but also the subsequent selection of HCS (Executive Branch) 2017 Batch, which was concluded in the year 2019, leading thereby to multitude of administrative complications regarding settling of seniority and connected litigation.

37. Learned counsel for the petitioner did not dispute the factual position that pursuant to the selection process initiated vide advertisement dated 20.02.2014 concluded in September 2016, the appointed candidates had joined in the HCS (Executive Branch) or Other Allied services allocated to them and that for subsequent 2017 Batch also, the selection of HCS (Executive Branch) was concluded in the year 2019.

38. Petitioner seeks a mandamus against respondent No. 2 to recommend his name for the post of HCS (Executive Branch) in General Category and has prayed that he be considered to have been appointed to the post of HCS (Executive Branch) from the date his other batch mates have been appointed with consequential benefits. Doing so at this stage would adversely affect the seniority of persons who have in the meantime been appointed to cadre of HCS (Executive

Branch) after petitioner's batch mates. For passing any such order, such appointees have to be heard. Petitioner has not arrayed them as parties to the lis. Secondly, the petitioner's retrospective appointment to the post of HCS (Executive Branch) as sought would cause vacancy of his post of DFSC. That may give rise to a claim by the person next below the petitioner in merit for appointment as DFSC and so on with ripple effect till selection for the last vacancy of Allied Services in General Category. This too is likely to entail considerable administrative problems and ramifications.

39. It has been held above that the petition deserves being appropriately allowed and the impugned order dated 15/17.2.2021 (Annexure P-17) passed by respondent No.1 rejecting the petitioner's representation dated 15.03.2019 (Annexure P-14) is liable to be set aside. In view of that conclusion and also taking into consideration the aforesaid overall present scenario/ circumstances and for mitigating the petitioner grievance to the extent feasible, it would be appropriate if the respondents are directed to consider the petitioner for appointment prospectively to post of HCS (Executive Branch) against an existing vacancy and failing that the next available vacancy for direct recruitment and to reckon his seniority with reference to the date of such appointment.

40. Accordingly, the petition is partly allowed, the impugned order dated 15/17.2.2021 (Annexure P-17) passed by respondent No. 1 rejecting the petitioner's representation dated 15.03.2019 (Annexure P-14) is set aside, the respondents are directed to consider the petitioner for appointment prospectively to the post of HCS (Executive Branch) against an existing vacancy and failing that the next available vacancy for direct recruitment and to reckon his seniority with reference to the date of such appointment. By completing the required process,

necessary orders shall be issued within three months of the supply of certified copy of this order or the availability of required vacancy, whichever is later.

41. With these directions the petition is disposed of.

42. Pending applications, if any, also stand disposed of.

02 .03.2022

vs

(Arun Monga)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No