

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

Judgment Reserved on 30.11.2022

Date of Decision: 15.12.2022

Civil Writ Petition No.16059 of 2012 (O&M)

Ashwani Kumar and others **...Petitioners**

Versus

State of Punjab and others **..Respondents**

2. Civil Writ Petition No.16030 of 2012

Prabhjot Kaur Dhaliwal **...Petitioner**

Versus

State of Punjab and others **..Respondents**

3. Civil Writ Petition No.8254 of 2014

Vikram Jit **...Petitioner**

Versus

State of Punjab and others **..Respondents**

4. Civil Writ Petition No.6588 of 2015

Supnandan Deep Uppal **...Petitioner**

Versus

State of Punjab and others **..Respondents**

5. Civil Writ Petition No.6463 of 2015

Gurtej Singh **...Petitioner**

Versus

State of Punjab and others **..Respondents**

6. Civil Writ Petition No.11165 of 2018

Jaskeerat Singh Ahir

...Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. J.S. Gill, Advocate, for the petitioners
(in CWP-16059-2012).

Mr. Veneet Sharma, Advocate,
for the petitioner (in CWP-8254-2014).

Mr. Pawan Kumar, Advocate for
Mr. Saurabh Arora, Advocate,
for the petitioner (in CWP-11165-2018).

Ms. Manmohan Kaur Dhaliwal, Advocate,
for the petitioner (in CWP-16030-2012).

Mr. Sarbjeet Singh, Advocate,
for the petitioner (in CWP-6588-2015).

Mr. V.M. Gupta, Addl A.G., Punjab.

Ms. Saigeeta Srivastava, Advocate,
for respondent No.5.

Mr. Rajiv Atgma Ram, Senior Advocate with
Mr. Brijesh Khosla, Advocate,
for respondents No.5 & 8 (in CWP-16059-2012).

Mr. S.S. Swaich, Advocate,
for respondent No.19 (in CWP-16059-2012).

Mr. Vikas Sharma, Advocate,
for respondents No.7 & 36 (in CWP-16059-2012).

Mr. Rakesh Sobti, Advocate,
for respondent No.54 (in CWP-16059-2012).

Mr. Amandeep Singh Manaise, Advocate,
for respondent No.62 (in CWP-16059-2012).

Mr. Ajay Pal Singh Rehan, Advocate,
for respondents No.120 and 172 (in CWP-16059-2012).

Mr. B.S. Patwalia, Advocate,
for respondent No.129 (in CWP-16059-2012).

Mr. Sandeep Jain, Advocate, for respondent No.81.
Mr. J.S. Mehel, Advocate, for respondent No.144.

Mr. Abhijeet Partap, Advocate, for respondent No.153.

SUDHIR MITTAL, J.

The issue involved in these writ petitions being identical, they are being decided by a common judgment. For ease of reference, the facts are being extracted from CWP No.16059 of 2012.

2. The Punjab Public Service Commission (hereinafter referred to as the PPSC) issued instructions sometime in the year 2009 for the Punjab State Civil Services Combined Competitive Examination to be held in the same year. A total of 143 posts were advertised out of which 38 posts were for selection to the Punjab Civil Service (Executive Branch), hereinafter referred to as the PCS (EB). By way of corrigendum, the total number of posts were increased to 180. In all, 21 posts were reserved for the Category of Balmiki/Majbi Sikhs.

3. Preliminary examination was held on 19.12.2010. Having qualified the same, the petitioners appeared in the main competitive examination held between 14.09.2011 to 10.10.2011. A list of 514 shortlisted candidates was released by respondent No.4-PPSC for interview. Viva-voce examination was conducted between 14.05.2012 to 13.06.2012. After completion of the examination process, category-wise merit list was released. The list of candidates belonging to the Balmiki/Majbi Sikh category contained 25 names out of which petitioner

No.1 was at Sr. No.22 and petitioner No.2 was at Sr. No.23. Petitioner No.3 was at Sr. No.6 and was selected as Excise Taxation Officer. Petitioner Nos.1 & 2 were not selected. The list of General Category candidates is on record as Annexure P-4 and contains names of 254 candidates. According to the petitioners, out of the 38 posts for PCS (EB), 17 belonged to the General Category and 04 were reserved for Balmiki/Majbi Sikhs.

4. From the foregoing narration, it is evident that the petitioners belong to the Balmiki/Majbi Sikh category. They have approached this Court because petitioner nos.1 & 2 have not been selected and petitioner No.3 has not been selected to the PCS (EB). Their precise grievance is that Rajdeep Kaur and Amandeep Kaur who are at Sr. Nos.1 & 2 in the list of successful candidates belonging to the Balmiki/Majbi Sikh category have scored more marks than Tejdeep Singh Saini at Sr. No.11 in the list of General Category candidates. Thus, they should have been placed in the list of General Category candidates. Had this been done, petitioner No.3 would come at Sr. No.4 in the merit list of candidates belonging to Balmiki/Majbi Sikh category. There being 04 vacancies in PCS(EB) for the said category, he would get a better service. Petitioner Nos.1 & 2 would come at Sr. Nos.20 & 21 in the same merit list. There being total of 21 vacancies for Balmiki/Majbi Sikh category, they would get appointed to one of the allied services. Thus, the merit list as declared is illegal and deserves to be recast. Reliance has been placed upon a judgment of the Supreme Court in **R.K. Sabharwal & ors. vs. State of Punjab & ors., 1995 (2) SCC 745.**

5. Learned Senior counsel for the petitioners has argued that the law is well settled. If a reserved category candidate scores higher marks than the General Category candidate, he/she must be considered in the General Category.

6. On behalf of the respondents, arguments have been led by Senior counsel appearing for respondent No.5. The said candidate is at Sr. No.16 in the merit list of General Category candidates and has been allotted PCS (EB), as a total of 17 General Category posts were available. According to him, the Rule that Scheduled Caste Category candidates scoring higher marks than General Category candidates be included in the list of General Category candidates is not an absolute rule. The choice of the candidates is also relevant. In the instant case, Rajdeep Kaur and Amandeep Kaur have sworn affidavits that they would like to retain their respective Reserved Category seats and thus, they cannot be forced to become a part of the General Category. Further, the rule is subject to policies framed by the State Government. Policy dated 19.11.1992 stipulates that no appointment should be made to a higher service after completion of the selection process. This policy would be violated if the prayer of the petitioners is granted. Recasting of the merit list would also result in disturbing candidates who have been occupying the posts to which they were appointed for a long period of time. This is not permissible as has been held by the Supreme Court in *Bharat Sanchar Nigam Ltd. & anr. vs. Sandeep Choudhary & ors.*, 2022 AIR (SC) 2975 and *Narender Singh vs. State of Punjab & ors.*, 2022 (1) SCT 518. In para 6 of the writ petition, it has been averred that there are 06 vacant

posts in PCS (EB). If at all, petitioner No.3 is to be adjusted in PCS(EB) he can be adjusted against one of these vacancies. Recasting of the complete merit list is not required. It has also been submitted that requisition dated 04.11.2008 was sent by the Govt. of Punjab to the Secretary, PPSC for filling up 05 backlog posts of Scheduled Castes and Backward Class Category. The breakup of these posts was; one post for Balmiki/Majbi Sikh, one for Scheduled Cast (General) Category and three for Backward Class Category. These backlog posts were also filled up in the selection process, as a result of which there were a total of 05 posts for Balmiki/Majbi Sikhs and not 04 as highlighted by learned Senior counsel for the petitioners. Candidate Amandeep Kaur has scored equal number of marks as Tejdeep Singh Saini who is at Sr. No.11 in the merit list of General Category candidates. Thus, she cannot be shifted to the General Category. Only Rajdeep Kaur can be shifted. Resultantly, petitioner No.3 would come at Sr. No.5 and the candidate at Sr. No.5 has been appointed as Excise Taxation Officer, which post petitioner No.3 is already holding. He would thus, get no benefit from the exercise. Similarly, petitioner No.2 would also not make the cut as he would come at Sr. No.22 whereas only 21 vacancies exist for Balmiki/Majbi Sikhs. Thus, the writ petition deserves to be dismissed.

7. On behalf of the State of Punjab, it has been argued that the candidates at Sr. Nos.1 & 2 in the merit list of Balmiki/Majbi Sikh Category have not approached the Govt. for considering their names against the General Category and thus, they have not been so considered. The Govt. cannot go against their wishes. It has also been argued that

considering Reserved Category candidates with higher merit than General Category candidates against General Category vacancies would deprive them of getting a better service. Thus, the rule of considering Reserved Category candidates with higher merit in the General Category has not been followed. Even the Supreme Court has approved of this in ***Union of India Vs. Ramesh Ram & ors., 2010 (7) SCC 234.***

8. In rebuttal, learned Senior counsel for the petitioners has stated that the backlog vacancies cannot be added to the advertised seats. The judgment in ***Ramesh Ram (supra)*** is not applicable to the facts of this case because the candidates to be displaced would be getting the same service as at present. Only if a Reserved Category candidate is getting a less preferred service, can he refuse to be considered against General Category. Thus, the affidavits submitted by the candidates at Sr. Nos.1 & 2 in the merit list of Balmiki/Majbi Sikh category candidates have no legal value. He has also referred to ***Union of India & anr. vs. Satya Prakash & ors., 2006 (4) SCC 550.***

9. Two related issues having a bearing on the main controversy and raised by the learned counsel are being decided first. These two issues are regarding 06 vacant posts being available in the PCS (EB) and consideration of 05 backlog vacancies along with the selection process.

10. In para 12 of the writ petition, it has been specifically averred that at least 06 candidates have not joined the PCS (EB) and these posts can be offered to the persons next in order of merit. In response thereto, in para 12 of the written statement filed on behalf of the State reference has been made to Regulation 44 (v) of the Punjab Public Service Commission

Regulations Part III (hereinafter referred to as the Regulations). According to the said Regulation, if a candidate does not join service, the vacancy so created should be carried forward as additional vacancy to the next year. Such a course has been provided as otherwise the whole merit list would be upset. No rejoinder has been filed on behalf of the petitioners to the submission made on behalf of the State. Thus, it has to be held that no vacancies exist in the PCS (EB) and that vacancies created on account of non-joining of certain candidates, have been carried forward to the next selection.

11. In the written statement filed on behalf of respondent No.5, it has been specifically pleaded that 05 backlog vacancies were also considered along with the present selection and a copy of the requisition dated 04.11.2008 has been annexed as Annexure R-5/1. Again, there is no rejoinder to this categoric averment. However, no such averment has been made by the State in its written statement. In the written statement filed on behalf of the State, a total of 04 vacancies for Balmiki/Majbi Sikh category candidates have been pleaded. All submissions made therein are based upon existence of 04 vacancies for Balmiki/Majbi Sikh candidates. No reference whatsoever has been made to any backlog vacancies and thus, the assertion in this regard made on behalf of respondent No.5 is rejected.

12. The writ petition is thus being decided on the premise that there were no backlog vacancies nor were their 06 vacant posts in PCS (EB).

13. Having perused the various judgments cited at the bar, there appears to be a general rule, even in the State of Punjab, to consider

candidates belonging to the Reserved Category and scoring higher marks than the General Category candidates, in the General Category. In this regard, reference can be made to judgment dated 23.12.2016 passed in CWP No.8555 of 2008 ***Rajesh Dhiman vs. State of Punjab & ors.*** The petitioner therein belonged to the Backward Class Category and had applied for the post of PCS (EB) in the examination held in the year 1998. He made the cut but the examination was cancelled on account of allegations having been made against the then Chairman of the PPSC. A re-examination was conducted in 2003 wherein, he came at merit list No.5 in the OBC Category and was appointed Tehsildar. The first 04 candidates in the said Category were appointed to the PCS (EB). The last selected General Category candidate had scored less marks than the candidate at No.2 in the Backward Class Category and it was accordingly held that the said candidates should have been shifted to the General Category. While deciding so, reliance was also placed upon a circular dated 11.09.2015 issued by the Govt. of Punjab, Department of Welfare/Reservation Cell as well as subsequent Instructions dated 11.09.2015. This judgment also refers to ***Indira Sawhney vs. Union of India, AIR 1993 SC 477*** and ***R.K. Sabharwal vs. State of Punjab, 1997 (6) SCC 538***. An identical view has been taken in judgment dated 15.12.2017 passed in CWP No.12618 of 2014 titled as ***Parminder Singh & ors. vs. State of Punjab and other connected cases.***

14. In ***Satya Prakash (supra)*** selection for the Central Civil Services held by the Union Public Service Commission (UPSC) was in question. Although 174 vacancies existed for OBC Category candidates

only 138 candidates were appointed, the remaining 36 having been included in the General Category merit list. Thus, a question arose whether the candidates selected against vacancies meant for General Category could be considered as OBC Category candidates for the purpose of placement/allocation of service. It was held that the same is permissible but such a candidate would not be counted while computing the percentage of reservation. This position in law has however been reversed by a Constitution Bench judgment in *Union of India vs. Ramesh Ram & ors., 2010(7) SCC 234*. Rule 16.2 of the Civil Service Examination Rules notified on 04.12.2004 providing for adjustment of Reserved Category candidates recommended against General Category posts against reserved vacancies for getting a service of preference was upheld. The judgment in *Satya Prakash (supra)* was distinguished. The reason given was that otherwise, the Reserved Category candidates selected in General Category may not get a service of preference whereas a candidate belonging to the Reserved Category and appointed against the said Category would do so. Such a situation would be unfair to a more meritorious candidate. The counting of such a candidate towards the total percentage of Reserved Category was held to be reasonable as otherwise it would result in exceeding 50% quota meant for reservation.

15. Coming back to the facts of the present case. Merit list of Balmiki/Majbi Sikh Category candidates is as follows:

Sr. No.	Roll No.	Name	Exam Marks	Viva Voca	Grand total	%age	Merit
1.	2498	Rajdeep Kaur	565.00	62.56	627.56	62.7560	1
2.	1068	Amandeep Kaur	585.50	42.00	627.50	62.7500	2

3.	1903	Jyoti Bala	537.00	59.00	596.00	59.6000	3
4.	1355	Brahmneet Kaur	529.50	62.30	591.80	59.1800	4
5.	2674	Rupinder Kaur Bhatti	524.50	64.89	589.39	58.9390	5
6.	2052	Madhur Bhatia	539.50	43.11	582.61	58.2610	6
7.	2964	Supnandandeep Uppal	513.00	60.78	573.78	57.3780	7
8.	1231	Anurag Bharti	513.50	54.60	568.10	56.8100	8
9.	1886	Jeetpal Kaur	514.00	52.33	566.33	56.6330	9
10.	1581	Gurpreet Singh	506.50	55.10	561.60	56.1600	10
11.	2943	Sumit Thapar	513.00	46.33	559.33	55.9330	11
12.	2027	Lakhbir Singh	505.50	53.33	558.83	55.8830	12
13.	1048	Akashdeep Singh	498.50	58.80	557.30	55.7300	13
14.	2245	Narinder Kumar	498.50	56.22	554.72	55.4720	14
15.	1615	Harbhajan Singh	498.00	54.50	552.50	55.2500	15
16.	1567	Gurmit Singh	496.50	53.50	550.00	55.0000	16
17.	2282	Navkash Deep Singh	490.50	50.00	540.50	54.0500	17
18.	2867	Simrat Kaur	490.00	50.44	540.44	54.0440	18
19.	2986	Surinder Singh	496.00	44.00	540.00	54.0000	19
20.	1112	Amardeep Singh	482.00	54.80	536.80	53.6800	20
21.	3094	Vikram Jit	487.50	48.78	536.28	53.6280	21
22.	1266	Ashwani Kumar	487.00	46.50	533.50	53.3500	22
23.	2658	Rohit Lotia	479.00	51.56	530.56	53.0560	23
24.	1110	Amardeep Bawa	482.50	47.00	529.50	52.9500	24
25.	2194	Mohit Kalyan	489.00	40.00	529.00	52.9000	25

16. Relevant extract of the merit list of General Category candidates is also reproduced below:-

Sr. No.	Roll No.	Name	Exam Marks	Viva Voca	Grand total	%age	Merit
1.	1097	Amaninder Kaur	637.50	70.70	708.20	70.8200	1
2.	2738	Sanjeev Sharma	603.50	52.44	655.94	65.5940	2

3.	2759	Sargun	582.00	66.22	648.22	64.8220	3
4.	2434	Pooja Sayal	571.50	72.90	644.40	64.4400	4
5.	1133	Amit Bamby	593.00	50.50	643.50	64.3500	5
6.	1108	Amarbir Kaur Bhullar	574.00	68.90	642.90	64.2900	6
7.	2358	Paramdeep Singh	572.50	69.80	642.30	64.2300	7
8.	2696	Sakatar Singh	576.50	58.38	634.88	63.4880	8
9.	1685	Harpreet Kaur	567.50	63.57	631.07	63.1070	9
10.	1276	Avneet Kaur	564.00	64.50	628.50	62.8500	10
11.	3024	Tejdeep Singh Saini	565.50	62.00	627.50	62.7500	11
12.	1644	Harjeet Singh Sandhu	574.00	52.40	626.40	62.6400	12
13.	2561	Rakesh Kumar Popli	555.50	70.20	625.70	62.5700	13
14.	1187	Anand Sagar Sharma	573.50	52.00	625.50	62.5500	14
15.	2552	Rakesh Kumar	573.00	51.00	624.00	62.4000	15
16.	1760	Isha Singal	546.00	76.60	622.60	62.2600	16
17.	2493	Rajat Oberoi	568.50	53.70	622.20	62.2200	17
18.	1092	Amandeep Singh Brar	551.50	70.20	621.70	62.1700	18
19.	1295	Baljinder Singh	545.50	73.70	619.20	61.9200	19
20.	1691	Harpreet Singh	566.00	52.70	618.70	61.8700	20
21.	1039	Ajit Pal Singh	546.00	71.80	617.80	61.7800	21
22.	1114	Amareshwar Singh	551.00	66.70	617.70	61.7700	22
23.	1002	Aaditya Gupta	550.00	67.40	617.40	61.7400	23
24.	1227	Anupam Talwar	548.00	68.80	616.80	61.6800	24
25.	1713	Harsimrat Kaur Grewal	541.00	73.60	614.60	61.4600	25

17. A comparison of the aforementioned merit lists shows that Rajdeep Kaur (at No.1 in the merit list of Balmiki/Majbi Sikh Category) has scored higher marks than the candidate at Sr. No.11 in the merit list of General Category candidates whereas Amandeep Kaur (at Sr. No.2 in the merit list of Balmiki/Majbi Sikh candidates) has scored the same number

of marks. Thus, in accordance with the General Rule, Rajdeep Kaur would come at merit No.11 in the merit list of General Category candidates, Tejdeep Singh Saini would be pushed to No.12 and Amandeep Kaur would come at No.13. As a result, Isha Singal at merit No.16 (respondent No.5) would be pushed out of the list of selected candidates as there are only 17 vacancies for General Category candidates. Petitioner No.6 would be pushed up to Sr. No.4 in the merit list of Balmiki/Majbi Sikhs and Rupinder Kaur Bhatti at Sr. No.5 would be pushed up to Sr. No.3. Both these candidates have been appointed as Excise & Taxation Officers (ETOs) and would get entitled to be appointed to the PCS (EB). Petitioners No.1 & 2 who are respectively at Sr. Nos.22 & 23 in this list would get pushed up to Sr. Nos.20 & 21, hence, entitled to be selected, there being a total of 21 vacancies in the Reserved Category of Balmiki/Majbi Sikhs. However, if the same is done, it would result in 02 candidates belonging to the General Category losing the jobs obtained by them in the year 2012. It would also result in recasting of the merit list of ETOs and allied services after a period of 10 years. This would be gravely prejudicial to the interests of the selected candidates as they were in no way responsible for preparation of the respective merit lists. A similar situation arose in **BSNL (supra)** and the Supreme Court struck a balance by accommodating the displaced candidates against additional vacancies created by it by issuing directions under Article 142 of the Constitution of India. In **Narender Singh (supra)**, the candidate displaced was ordered to be accommodated against a vacant post. In the instant case, there are no vacancies nor does this Court possess powers akin to those available to the

Hon’ble Supreme Court under Article 142 of the Constitution of India. Thus, even though the prayer made in the writ petition is justified, no relief can be granted to the petitioners as it would result in unsettling the selected candidates. In comparison, petitioner No.3 being in service already would not be gravely prejudiced and petitioners No.1 & 2 would have moved on, a long period having elapsed since the completion of the selection process.

18. For the foregoing reasons, the writ petition is dismissed.
19. Pending miscellaneous applications, if any, stand disposed of.

15.12.2022
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes