

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

**LPA No.1233 of 2016 (O&M)
alongwith LPA-1256, 1270 & 1732-2016 (O&M)
Reserved on : 03.03.2022
Pronounced on: 16.03.2022**

Raminder Kaur

... Appellant

Versus

State of Punjab & others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present:- Mr.B.S.Sidhu, Senior Advocate
with Mr.H.S.Sidhu, Advocate,
for the appellant in LPA-1233-2016.
Ms.Alka Chatrath, Advocate
for the appellants in LPA-1256 & 1270-2016.

Mr.Kanwaljit Singh, Senior Advocate
with Mr.Ajaivir Singh, Advocate
for the appellant in LPA-1732-2016.

Mr.S.P.S.Tinna, Addl.A.G., Punjab.

None for respondent No.3 in LPA-1732-2016.

G.S. Sandhawalia, J.

The present judgment shall dispose of LPA-1233, 1256, 1270 & 1732-2016, the first three Letters Patent Appeals arise out of the common judgment passed by the Learned Single Judge dated 16.02.2016 wherein CWP-22198-2012 titled *Charanjit Kaur Vs. State of Punjab & others*, CWP-3065-2013 titled *Ravinder Kumar Vs. State of Punjab & others* & CWP-5685-2013 titled *Raminder Kaur Vs. State of Punjab & others* were dismissed and the claim of the appellants-writ petitioners for appointment to the post of Science Master/Mistress was repelled.

Similarly, LPA-1732-2016 arises out of judgment passed by the Learned Single Judge in CWP-13845-2016 titled *Gurbax Singh Vs. State of Punjab & others*, wherein the claim for appointment to the post

of Punjabi Master in the category of Scheduled Caste(M&B)/Ex-serviceman (Dependent) had been rejected. Since the advertisement is common and the principle is common, the present consideration is being done jointly by this Court.

The reasoning given by the Learned Single Judge in the first set of 3 appeals was that consideration under the Reserved Category of Backward Class unlike the Scheduled Caste was a shifting boundary on account of the income limit as per the instructions of the Punjab Government and it could not be compared to the members of the Scheduled Caste Category who are governed by the status at birth without any income criteria. Resultantly, it was held that the petitioner had not produced the Backward Class certificate on the date of the application within the range of one year prior to the last date of application and she relied upon a certificate dated 14.09.2007 which was stale and it could not be her case that she was eligible on the date when she applied. Resultantly, keeping in view the conditions of the advertisement wherein it was prescribed that all the prescribed qualifications had to be fulfilled on the last date of submission of the application and that said certificate should be valid within a period of one year from the last date of submission of the application, as per the instructions issued on 17.01.1994 (Annexure P-4/1) and 17.08.2005 (Annexure P-15). It was held that the petitioner was fully aware of the prescribed qualifications which had to be met on or before the last date of submission of the application. Resultantly, it was held that the instructions are directive in

nature and candidate could not insist that relaxation could be awarded in the eligibility conditions.

Reliance was also placed upon the earlier judgment passed in CWP-5560-2011 titled *Jaspal Kaur & others Vs. State of Punjab & others* on 02.11.2011 wherein the issue had been decided against the petitioners by reading condition Nos.4 & 5 against them and it was held that the certificate dated 10.11.2009 (Annexure P-2) was not liable to be considered since it was one day after the cut-off date. The revision of the merit list had been done on account of the orders passed by the Division Bench in CWP-12275-2000 titled *Neelam Rani Vs. State of Punjab & others* and other connected cases decided on 08.01.2010 wherein seniority-list of both male and female Teachers were to be merged. The petitioner having secured only 64.666 was not liable to be considered against the General Category whereby the cut-off was 65.2255. Once she was not to be considered as a Backward Class candidate. On the issue of discrimination and comparison regarding one Gurdeep Singh and Gyatri Jyoti, it was held that the terms and conditions were different and it was a different advertisement. The case of Mamta Rani was distinguished on account of the fact that she had submitted the Scheduled Caste Certificate which would be valid as there was no element of creamy-layer wherein Jaswinder Singh's certificate had been issued on 05.10.2009, prior to the last date of submission of the application which was 09.10.2009. It was further held that if any such benefit was to be granted it would open up a Pandora's Box and would affect third party rights and would reopen the

recruitment to accommodate similarly situated persons and persons who had read the advertisement and had not applied for lack of valid caste certificate would also start clamoring for a similar consideration.

The reasoning given in the other judgment passed by another Learned Single Judge in Gurbax Singh's case (supra) was that the certificate in question for the claim of right against Ex-serviceman (Dependent) category was issued on 17.11.2009 and again after the cut-off date of 09.10.2009. Regarding the claim for consideration of the certificate dated 04.06.1993 it was held that on the first day of counselling, the petitioner had produced the certificate of 04.06.1993 which was more than 15 years old and therefore, it was correctly rejected. Another grounds which weighed for dismissal of the writ petition was that it was belated by more than 3 years and no interference could be warranted and costs of Rs.5000/- was also imposed which were to be deposited.

Ms.Alka Chatrath, counsel appearing for the appellants in the first set of cases has argued that the last date was extended vide corrigendum dated 27.09.2009, 15.11.2009 & 06.12.2009 till 15.12.2009 and therefore, the Learned Single Judge was not correct in his reasoning. Similarly, reliance is placed upon the instructions dated 24.02.2009 (Annexure P-16) to contend that the income slab of the Backward Class candidates had been raised to Rs.4.50 lakhs which finds mention in the corrigendum and thus, the benefit of the same should have been granted. Reliance was placed upon the benefit given to Jaswinder Singh to claim

that his certificate had been issued on 12.12.2009 (Annexure P-13) which was after the cut-off date and therefore, the issue of discrimination was sought to be raked up. Reliance was accordingly placed upon the judgment in **Dolly Chhanda Vs. Chairman, JEE 2005 (9) SCC 779**, **Manjit Kaur Vs. The State of Punjab & others (1987) 1 SCC 549** and **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & another 2016 (4) SCC 754**. Resultantly, it was argued that the instructions had also been issued on 05.12.1996 (Annexure P-7) to alleviate the hardship of the validity of the certificates issued for reserved categories and to simplify the procedure.

Mr.B.S.Sidhu, Senior Counsel appearing in LPA-1233-2016 has further supplemented the argument on the ground that it was not an academic qualification but the identification of the certified categories and only the current fact has to be ascertained and therefore, the benefit should have been granted by taking the cut-off as 15.12.2009. It is further submitted that in compliance of the interim order dated 21.08.2018, additional affidavit dated 31.07.2018 had been filed and it was noticed that 34 posts in the Backward Class category had been left vacant and the State had been asked as to why the certificate claiming the benefit of Ex-serviceman had not been accepted once the corrigendum had been issued on 06.12.2009. The same had been wrongly sought to be distinguished by the State by filing an affidavit dated 22.01.2019 that the corrigendum related only to certain set of candidates and not to Backward Class Category candidates.

State Counsel has justified the action of the authorities on the ground that the corrigendum never extended the cut-off date to the present category of candidates. Neither any persons who had got lessor marks had been appointed and therefore, the recruitment process itself had come to an end on 09.08.2013 (Annexure R-1) and the waiting list had also been cancelled which was submitted along with the additional affidavit dated 31.07.2018. Thus, it was argued that the petitioners were not liable to be considered even if the vacancies were available as the posts had again been advertised in the year 2012.

It was accordingly contended that the Learned Single Judge was justified in dismissing the writ petition of Gurbax Singh on the ground of delay and laches and imposing costs of Rs.5000/- as the writ petition was filed in the year 2016 after more than 3 years of delay. Mere filing of the writ petition would not extend the period of limitation as recruitment process is a time-bound process and once the candidate was not vigilant enough, he could not seek consideration at a belated stage.

A perusal of the paper-book would go on to show that challenge in the writ petition was to the order dated 25.08.2012 (Annexure P-12) whereby the official respondents had dismissed the representation for consideration of the claims in pursuance to Jaspal Kaur's case (supra). The competent authority had rejected the case on the ground that as per the advertisement dated 23.09.2009, eligibility had to be seen on or prior to the last date of submission of the application i.e. 09.10.2009 but the valid certificate had not been produced. The case of

the petitioner had been considered against General Category where she was lower in merit. Mamta Rani had submitted the certificate dated 01.12.2008 being Dependent of Ex-serviceman before the cut-off date and similarly the Scheduled Caste certificate had been issued on 30.06.2005. Regarding Jaswinder Singh, it was noticed that his Backward Class certificate had been issued on 05.10.2009 and that no relaxation had been given to any candidate regarding the terms of the advertisement. In such circumstances, the certificate having been issued beyond the date of the advertisement, the claim of the petitioner for consideration had been rejected.

The advertisement in question whereby 3638 posts of Science Master/Mistress were sought to be filled had the cut-off date of 09.10.2009. The general conditions which would govern the two set of cases are as under:

“4. The candidates will ensure that they fulfill all the prescribed qualifications and conditions on the last date of submission of the applications. In case before or after the appointment, it is found that they don't fulfill any qualification/ condition or the information given is found false or incorrect, then their right of candidature will be cancelled and criminal proceedings will be initiated separately under the rules.

5. Those candidates who want to avail the benefit of reservation for Scheduled Caste and Backward Classes, they will produce the certificates issued by the concerned competent authority. In this certificate, the caste should be clearly mentioned. The reservation for the Scheduled Caste would be as per The Punjab Scheduled Castes and Backward Classes (Reservation in Services), Act, 2006.

6. The certificate of B.C. is to be of within one year from the last date of submission of applications and this certificates should be in terms of the letter dated 17.01.1994 and 17.08.2005 issued by the Department of Welfare, Punjab Government.

7. The reservation under Ex-serviceman Quota is applicable only in the case of residents of Punjab and in case the Ex-serviceman himself is not a candidate then this reservation would be applicable for the dependents. Such Ex-serviceman/dependents would present the original certificate made prior to the last date of submission of applications and issued by the competent authority appointed by the Government at the time of counseling.

8. ”

Thereafter, on 27.09.2009 (Annexure P-4/1) in continuation of the said conditions, condition No.6 was modified to the extent that the instructions dated 24.02.2009 were applicable. Condition No.6, as amended, reads as under:

“Condition No.6:

The certificate of B.C. category should not be more than 1 year prior to the last date of submission of applications and this certificates should be as per the Punjab Government of Welfare letter No.1/41/93-RS/1/209 dated 24.02.2009.”

As per the note given in this corrigendum, candidates who had applied before the issuance of the corrigendum, such candidates could make correction on line in their applications between 16.10.2009 to 23.10.2009. The said note reads as under:

“Note : Those candidates who had applied before the issuance of the corrigendum, such candidates can make correction on line in their applications between 16.10.2009 to 23.10.2009

upto 5.00 p.m.”

Thus, it is apparent from the above that the date was never extended and it is only the latest prevalent instructions which had been issued and which had not been specified in the advertisement which find mention in the corrigendum for the benefit of the candidates who had applied. Similarly, on 06.12.2009 (Annexure P-4/11), another corrigendum was issued in continuation of the earlier corrigendums dated 27.09.2009 and 15.11.2009 whereby candidates who possessed higher qualifications for the posts of Vocational Master/Mistress, Assistant Librarians and Art & Craft Teachers had been given liberty to apply against the said posts which are also part of the 3638 posts advertised. This factual aspect has specifically been clarified on 22.01.2019 by the Deputy Director, Education Recruitment Directorate, Department of School Education, Punjab in response to the interim order dated 21.08.2018. Relevant portion reads as under:

“3. That in this regard, it is respectfully submitted that the Backward Class category certificate dated 10.11.2009 submitted by the appellant was issued after the last date of submission of applications i.e. 09.10.2009. It is humbly submitted that the Corrigendum dated 06.12.2009 (Annexure P-4) mentioned in the above orders only related to candidates possessing higher qualifications against the prescribed minimum qualifications for the posts of Vocational Master/Mistress, Assistant Librarians and Art & Craft Teachers, while the appellant is an applicant for post of Science Mistress under B.C. category.”

Similarly, if the relevant portion of corrigendum dated

06.12.2009 as reproduced below, is seen, the same also is in the same terms:

“It is in continuation to the advertisement published by Department of School Education on Sept. 23.2009, read with subsequent corrigenda dated 27.09.2009 & 15.11.2009 in Hindustan, Times, Punjab Kesari Rozana Ajit newspapers regarding recruitment of Teachers on Contractual Basis. In this connection, on the representation of many candidates, it is to clarify that the candidates who possess higher qualification against the prescribed minimum-qualification for the posts of Vocational Master/Mistress, Assistant Librarians and Art & Craft Teachers will be considered. Hence in view of this it is hereby informed that such interested candidates can also apply online against these posts by visiting at <http://recruitment.cdacmohali.in> as per the schedule given below, however the procedure for applying and all other terms and conditions remains unchanged.”

Thus, the arguments which are now being raised that their were 34 vacancies and the petitioners could be considered against the same, is without any basis as the extension was never done of the cut-off date of 09.10.2009 in the case of Science Master/Mistress or Punjabi Master/Mistress. Rather, vide decision dated 09.08.2013 it was specifically decided that all waiting lists had been cancelled and also the fact that the selection process had been completed in the year 2011 for filling up the 7654 posts of various cadres. The decision dated 09.08.2013 of the Government read as under:

“Govt. of Punjab
Department of Education
(Recruitment Cell)

Order No.8/3-2013 RC (1, 2, 5, 7)

Dated: Mohali: 09-08-2013

Govt. of Punjab, Department of Education published an advertisement on 23-09-2009 to fill up 7654 posts of various cadres. This selection process was completed in the year of 2011 by the Departmental Selection Committee.

The Education Department again advertised 5178 posts in the year of 2012, which remained vacant on account of non-joining of the candidates, who were selected against the 7654 posts by treating these posts unfilled.

Certain candidates, who were applicants in furtherance of 7654 posts, represented the department that some candidates lower in merit have been selected and keeping in mind the facts of various court cases, a decision has been taken to refer this matter to the department of Vigilance Punjab for further inquiry. Further, this selection is already in question hence there is no logic to operate the waiting list.

Keeping in view the above mentioned facts, a decision has already taken to not operate the Waiting List, which prepared during the recruitment of 7654 teachers, hence these waiting lists are cancelled with immediate effect.

Anjali Bhawra,
Principal Secretary, Govt. of Punjab,
Department of School Education”

Thus, from the above marshalling of the events, it would be clear that the appellants' certificates firstly were dated 14.09.2007 which was more than one year prior to the last date of submission of the applications and it had been clarified vide corrigendum dated 24.09.2009 also that the instructions dated 24.02.2009 were applicable since they were already in force when the advertisement dated 23.09.2009 had been issued. Thus, the clarification had been made on 27.09.2009 that the same would be applicable and the annual income limit had been fixed to be less

than Rs.4.50 lakhs raising it from Rs.2.50 lakhs.

The appellant thus cannot rely upon the first certificate dated 14.09.2007 which was only showing her family income as less than Rs.2.50 lakhs per annum which was as per the earlier instructions dated 17.08.2005 and therefore, the currency of the said certificate had validly run out and as per the terms of the advertisement, the same was not liable to be taken into consideration. Thereafter the certificate was issued only on 10.11.2009 (Annexure P-2) and the same was after the cut-off date of 09.10.2009 and therefore the same was rightly not taken into consideration. It was the duty of the appellant-writ petitioner to have obtained a valid certificate which had been issued prior to the advertisement upto the extent of one year and thus, no fault could be found with the action of the State which has been duly noticed by the Learned Single Judge that the income of the family can keep on fluctuating. It was not the case of the appellant-writ petitioner that she fell under such a Reserved Category wherein by virtue of birth in the said category she was entitled to get the benefit irrespective of the cut-off date.

The principles laid down in Dolly Chhanda (supra) would thus not be applicable wherein it was a case of an Ex-serviceman and a wrong certificate had been issued by the Zila Sainik Board. The benefit had been granted that the candidates lower in merit had been granted admission and it was also admitted fact that her father was a NIAK in the Indian Army and accordingly, the benefit had been granted to the said candidate.

Similarly, in Manjit Kaur (supra) the Apex Court was dealing with a Physically Handicapped litigant with amputation of distal phalanx of the right thumb and the medical certificate issued was rejected on the ground that it was not in proper format. Resultantly, it was held that not the format rather the substance of the certificate is to be seen.

The judgment in Ram Kumar Gijroya (supra) has also been relied upon wherein the benefit was granted to a candidate under the OBC category who submitted the certificate after the last date. The said view is under re-consideration by the Apex Court in SLP(C) No.14948 of 2016 titled *Karn Singh Yadav Vs. Govt. of NCT of Delhi & others* and therefore the same would not be distinguishable in the facts and circumstances. The said reference order dated 24.01.2020 reads as under:

“In view of the acute problem of unemployment, whenever few vacancies are notified by any public authority, it is common that thousands of applicants apply for such posts. If the applicants are permitted to rectify applications after cut-off dates, the same would render the scrutiny process indefinite. In the course of such recruitment process, many persons, though they belong to the OBC category or SC/ST category, might not have obtained the required caste certificate before the cut-off date. Such persons, being law abiding and being conscious of the bar contained in the notification of the cut-off date, might not have applied seeking employment. In case the authority starts accepting caste certificates subsequent to the prescribed cut-off dates whenever a candidate approaches the authority, the remaining candidates who had not applied would definitely be affected. If the applicants are allowed to submit certificates in proof of their claim of reservation subsequent to the notified cut-off date, it would create administrative chaos.

In practice, for every advertisement, there are such belated claims claiming reservation, though the candidates did not submit certificate from the competent authority, before the cut-off date. In view of the general importance of the question, we are of the view that the issue which fell for consideration in the case of Ram Kumar Gijroya (supra) requires to be considered by a larger Bench of three-Judges.

Accordingly, we refer the matter for consideration by a larger Bench of three Judges. Registry to place the papers before Hon'ble the Chief Justice for appropriate orders."

Rather on a subsequent occasion in **The State of Bihar & others Vs. Madhu Kant Ranjan & another 2022 (1) SCT 223** the Apex Court had set aside the judgment of the Division Bench which had reversed the view of the Learned Single Judge who had specifically noted that there was no pleading in the writ petition that the petitioner had the NCC 'B' certificate. Relevant observations read as under:

"9. As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Also, only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent No.1 – original writ petitioner did not produce the photocopy of the NCC 'B' certificate alongwith the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC 'B' certificate. In these circumstances, the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No.1 – original writ petitioner on the post of Constable

considering the select list dated 08.09.2007 and allotting five additional marks of NCC 'B' certificate.

10. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the Division Bench of the High Court is hereby quashed and set aside and judgment and order passed by the learned Single Judge dismissing the writ petition is restored. In the facts and circumstances of the case, there shall be no order as to costs."

The argument raised by Mr.Sidhu that it was not an academic qualification but an identification to a certain reserved categories has already been dealt by the Learned Single Judge. The consideration is to be on the basis of the instructions issued by the Government dated 24.02.2009 and the requisite certificate had to be obtained within a period of one year for a candidate to fall in the Backward Class category to claim the benefit of reservation. Therefore, the eligibility has to be as per the instructions of the Government itself and therefore, the argument that the benefit has to be granted as it is only a fact which is to be ascertained, cannot be accepted. The factual matrix can be varying from candidate to candidate at the given point of time as per the instructions. The applicant may be dependent of a family who possess Government employment and if the income goes beyond Rs.4.50 lakhs per annum, the candidate would not be entitled to get benefit of the Reserved Category on account of lack of financial exigency.

The argument which was raised that the last date had been extended is not correct for both the Science Masters/Mistress and Punjabi Master/Mistress as per the corrigendum issued and also the categorical

stand of the State as has been noted above.

Another valid reason to dismiss the present set of three appeals would be that it is a second round of litigation by the appellants-writ petitioners and they are only taking a chance on the ground that the State had discriminated and allowed similarly situated persons to be appointed, which, as noticed above, is not the case. In Jaspal Kaur's case (supra) the Learned Single Judge had rejected the claim on merits by noting the fact that condition No.6 had been modified by referring to the instructions dated 24.02.2009 and for the Dependents of Ex-serviceman also condition No.8 had been modified. Reliance had been placed upon Dolly Chhanda's case (supra) and reasoning given was that the second instructions reiterate that the Backward Class certificate shall continue to be valid till the candidate falls within the creamy-layer and it was for this precise reason the condition was put of one year's validity.

Only on account of the fact that similarly placed candidates were eligible in the second round of counselling and had produced the reservation certificates subsequently, liberty had been granted to the petitioners as they had appeared with the similarly situated candidates. The claim had been rejected on 25.08.2012 by noting that there was no such discrimination and therefore, the second limb of litigation was unwarranted for especially on the issue of the corrigendum having been firstly rejected in Jaspal Kaur's case (supra).

The argument of Mr.Kanwaljit Singh, Senior Advocate appearing in LPA-1732-2016 that there was no condition of one year for

Ex-serviceman and merely the certificate dated 04.06.1993 should be taken into consideration and that persons lower in merit had been appointed, has rightly been countered by the State. The ground is that as per the scrutiny form, the said candidate had only produced the lineal dependent certificate 17.11.2009 (Annexure P-6) which was after the cut off date when he had appeared for the second counselling on 07.11.2011. It was submitted that a speaking order had been passed in the said case also wherein it had been noticed that there was no such certificate dated 04.06.1993 (Annexure P-5) and it was being produced for the first time.

The case of the candidate had been considered in the Scheduled Caste (M&B) Category wherein she was out of the zone of consideration having secured only 43.5455 marks against the last candidate for Punjabi Master who had secured 55.2667 marks. It has also been pointed out that speaking order was passed in pursuance of the directions issued in CWP-18834-2012 on 21.09.2012(Annexure P-11) wherein also reference had only been made of the certificate dated 17.11.2009 and the condition that the certificate could be produced before the Counselling Officer which had weighed with the Court to decide the representation in the year 2012. It is, thus, rightly submitted that there was never any certificate dated 04.06.1993 which had been possessed by the candidate which was now produced before the Writ Court for the first time in the second round of litigation. It has thus rightly been contended that the selection had already been finalized in the year 2011 and posts had been advertised in the year 2012. Therefore,

merely filing the writ petition in the year 2012 and getting directions to decide the representation would not revive a dead cause of action whereby speaking order was passed on 15.07.2013 (Annexure P-12). As noticed above, the recruitment process had come to an end on 09.08.2013 and posts had been advertised again.

It is not disputed that the writ petition before the Learned Single Judge was also filed after a period of almost 3 years in May, 2016 and therefore, for that reason also the Learned Single Judge was correct in dismissing the writ petition in limine on 09.08.2016 and no reason would arise to interfere in the said order, in view of the above facts and circumstances.

Resultantly, this Court is of the opinion that the well reasoned judgments dated 16.02.2016 and dated 09.08.2016, passed by the Learned Single Judges dismissing the writ petitions warrant no interference. Accordingly, the present appeals are dismissed. Accordingly, in view of the main appeals having been dismissed, all pending applications (if any) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

March 16th, 2022
Sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No