

121.

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

**RA-CW-18-2023 & CMs-1280, 1282, 1284,
1286-CWP-2023 IN CWP-20307-2021**

Date of Decision: 31.01.2023

DHARAM PAL AND OTHERS

.... Petitioners

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anil Mehta, Advocate, and Mr. Mayank Sharma, and Ms. Sukriti Kaur, Advocates, for the petitioners.

Mr. Anant Kataria, DAG, Haryana.

Mr. Dushyant Saharan, Advocate, for respondents No.2, 3 and 6.

Mr. Rajesh Hooda, Advocate, for the applicant/intervener.

JAISHREE THAKUR.J (Oral)

1. Applicant Sonu Rani, has come forward with an application for being impleaded as party respondent to the writ petition fixed for 01.03.2023; further praying to stay operation of order dated 10.01.2023; another application for review of the same order and for producing additional evidence on record under Order 41 Rule 27 CPC.

2. She has approached this Court after final order dated 10.01.2023 was passed in *CWP-20307-2021 Dharam Pal and others Versus State of Haryana and others* and an application (CM-1076-CWP-2023) had been filed for correction of order dated 10.01.2023. By order dated 10.01.2023, this Court had allowed the petitioners to join service after furnishing an

undertaking that they would be bound by the decision rendered in SLP (Civil) No.23544-23547 of 2016 titled as *State of Gujarat Versus Ms Dulari Mahesh Basarge and another*, pending before the Supreme Court in EBPGC candidates. The applicant/intervener urges that the issue regarding notification dated 27.09.2013 which came to be issued regarding 10% reservation for Economically Backward Persons in General Castes (EBPGC) is pending where there was a stay on making any further appointments and, therefore, the State herein, who had concurred to the appointments being offered even with an undertaking that they would be bound by the decision rendered in the matter of State of Gujarat (supra), is playing a fraud upon the Court. Therefore, once there is a stay on any appointments being made by giving any benefit to persons like the petitioners who have claimed the benefit of the said notification, the order dated 10.01.2023 is not sustainable and, therefore, a review of the order is sought. Counsel appearing on behalf of the intervenor would take this Court through several of the orders as passed in CWPs pending before the Division Bench.

3. At this stage, it would be appropriate to note few facts which have led to the passing of the order sought to be reviewed.

4. The State of Haryana, vide its notification dated 27.09.2013, had allowed 10% reservation for **Economically Backward Persons in General Castes** candidates (EBPGC for short). The petitioners herein availed of that 10% reservation and were successful in their category seeking appointment as Shift Attendant against advertisement No.3 of 2016, dated 20.02.2016. Certain persons, who were aggrieved against 10% reservation, as allowed,

approached the Division Bench in various writ petitions, which led to the passing of certain orders. There is order dated 07.12.2017 passed by the Division Bench of this Court in CWP No.18514 of 2016 and other connected cases, directing that the impugned notification be not given effect to. The relevant part of the order is reproduced as under:-

“We have noticed that the High Court of Gujarat has quashed a similar ordinance. The matter is pending before the Hon'ble Supreme Court which has passed the following order:-

“Pending further orders, we direct that the admissions made to any educational institution prior to the pronouncement of the impugned order shall not be disturbed. We make it clear that since the impugned Ordinance has been struck down by the High Court, no further action towards implementation of the reservation made under the said Ordinance can be taken qua education and service matters.

Hearing expedited.

The appeals shall now be listed before a three Judge Bench.”

Learned State counsel contends that the matter is being re-visited in view of the pendency of the proceedings before the Hon'ble Supreme Court.

If that be so, then it would be in the fitness of things that the impugned notification be not given effect to.

List on 3.7.2018.

A photocopy of this order be placed on the files of the afore-numbered connected cases.”

Thereafter another order was passed by the Division Bench on 28.08.2018 in CWP No.21544 of 2018, which reads as under:-

“Notice of motion.

Mr. Samarth Sagar, Addl. A.G., Haryana, waive service on behalf of State of Haryana.

List on 17.09.2018 along with CWP-18178-2018.

Ad interim stay till the next date of hearing.”

Then following order was passed in the bunch of CWP No.18178 of 2018 on 06.02.2019:-

“By consent of counsels of either side, put up all these matters before this Court on 11.02.2019.

Interim order dated 28.08.2018 passed in CWP No.21544 of 2018 is modified and clarified that said ad-interim order shall continue to operate only in respect of Economically Backward Person in General Castes category. There is no impediment in issuing appointment letters/orders to the candidates of other categories.

A photocopy of this order be placed on the other connected case files.”

In CWP No.21544 of 2018, there was a challenge to order dated 28.08.2018 by way of SLP No.20828 of 2020 and the SLP came to be dismissed on 09.08.2021 whereby the order of interim stay was affirmed.

5. At this juncture, it would also be appropriate to point out that the State of Gujarat vide its notification issued on 01.05.2016 had made a similar reservation for offering appointments to EBPGC candidates which notification was challenged before the High Court of Gujarat and the said

notification was set aside. State of Gujarat then challenged the orders of the Gujarat High Court in SLP which came to be registered as SLP (Civil) No.23544-23547 of 2016 titled as ***State of Gujarat and others Versus Ms Dulari Mahesh Basarge and another***, which subsequently have been registered as Civil Appeal No.9546/9569 of 2016. This was the case that was referred to by the Division Bench of this High court while passing order dated 07.12.2017. Since a similar issue was already pending before the Supreme Court regarding the validity of the notification allowing reservation for EBP GC candidates by the State of Gujarat, one of the candidates, namely, *Sunil Rathee* in CWP No.7607 of 2019, who was aggrieved of the notification as issued by the State of Haryana, approached the Supreme Court for transfer of the issue pending in this High Court to the Supreme Court to be heard along with the matter already pending in State of Gujarat (supra) case. The said transfer petition was allowed on 23.07.2020 and ordered to be heard with Civil Appeal No.9546/9569 of 2016 titled as ***State of Gujarat and others Versus Ms Dulari Mahesh Basarge and another***.

6. Now reverting back to the proceedings in this High Court, in the meantime, an order came to be passed on 18.05.2018 in CWP No.18514 of 2016 titled as ***Kalindi Vashishtha Versus State of Haryana and others***, wherein order dated 07.12.2017 as passed in CWP No.18514 of 2016 was modified. For reference sake, order dated 07.12.2017 had placed an embargo on any appointments being made considering the fact that similar notification/Ordinance had been struck down by the State of Gujarat and the matter is now pending in the Supreme Court and by the modification dated

18.05.2018, the State was permitted to complete the selection process and the appointment process under the advertisements which process had been initiated prior to the passing of the restraint order i.e. 07.12.2017 with a condition that all those incumbents, who joined, would furnish an undertaking that they would be bound by the outcome of the decision in the matter pending before the Supreme Court in ***State of Gujarat Versus Ms Dulari Mahesh Basarge and another***. Pursuant to order dated 18.05.2018, instructions came to be issued by the State of Haryana on 01.06.2018 directing all concerned departments to complete the selection and appointment process in respect of all cases whereby selection process was notified prior to 07.12.2017 with a specific condition to be included in their appointment letter. The incumbents would be bound by the outcome of the proceedings pending before the Supreme Court in the appeal filed by the State of Gujarat on a similar issue.

7. This Court disposed of CWP No.20307 of 2021 by taking note of the order passed by the Division Bench on 18.05.2018, the subsequent instructions issued by the State of Haryana itself, which, as informed, have not been challenged so far and the orders of the Supreme Court rendered by the Constitutional Bench in ***Janhit Abhiyan Versus Union of India, 2022 SCC OnLine SC 1540***. The issue before the said Constitutional Bench was to determine the validity of 103rd amendment of the Constitution of India which came into effect on 14.01.2019 whereby Articles 15 and 16 of the Constitution of India had been amended by adding two new clauses i.e. Clause 6 to Article 15 with explanation and Clause 6 to Article 16 whereby

the State has been empowered *inter alia* to provide for a maximum of 10% reservation for the Economically Weaker Sections (EWS) of citizens other than the Scheduled castes (SCs), Scheduled Tribes (STs) and Non-Creamy Layer of the Other Backward Classes. The matter was concluded in paragraph 233 and the reservation and the amendment was upheld. It has been held that the, *reservation for economically weaker sections of citizens up to ten per cent in addition to the existing reservations does not result in violation of any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India on account of beach of the ceiling limit of fifty per cent because, that ceiling limit itself is not inflexible and in any case, applies only to the reservations envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution of India.* Pursuant to the judgment rendered in ***Janhit Abhiyan (supra)***, all matters including the proceedings in ***State of Gujarat (supra)*** and transfer petition of ***Sunil Rathee (supra)*** were ordered to be taken up for final disposal, being covered by said judgment, since these cases had been kept in abeyance pending decision of the Constitutional Bench. The orders keeping the matter in abeyance are dated on 28.02.2019 and 30.08.2022.

8. At this stage, learned counsel appearing on behalf of the intervener would submit that as on date, even though there is a judgment rendered by the Constitutional Bench in ***Janhit Abhiyan (supra)***, upholding the validity of the amendments made to Articles 15 and 16 of the Constitution of India permitting reservations, the notifications under challenge i.e the notification issued by the State of Haryana dated

27.09.2013 or the notification issued by the State of Gujarat have yet not been washed of and, therefore, review ought to be allowed. This argument is not acceptable to this Court primarily for the reason that even through this Court was not made aware of the fact that there are writ petitions pending, however, this Court primarily pursued the orders passed by the Division Bench dated 18.05.2018 whereby the State had been allowed to complete the selection process which had been initiated prior to order dated 07.12.2017 and the instructions subsequently issued on 01.06.2018 which are not under challenge. The selection process initiated in the present writ petition was initiated in 2016 pursuant to the advertisement issued. All orders as relied upon by counsel for the intervener are prior to the modification dated 18.05.2018. The statement given by the Advocate General, Haryana on 16.05.2019 was only for a limited period. Consequently, this Court finds no ground to allow the intervener's request for review.

9. Review Application along with the other misc. applications filed by the intervener for impleadment, stay and additional evidence etc. are dismissed.

CM-1076-CWP-2023

This application for modification of order dated 10.01.2023 had been adjourned to 01.03.2023 on 23.01.2023 upon intervention of Sonu Rani, applicant.

Since the intervener is out of way for the present, the application is preponed from 01.03.2023 and taken up for hearing today itself.

The correction sought in the order dated 10.01.2023 being clerical in nature and unopposed from the other side, the application is allowed. The order is modified as prayed.

(JAISHREE THAKUR)
JUDGE

31.01.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No