

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 13.12.2023

Date of Decision : 22.12.2023

1. CWP No. 2741 of 2021 (O&M)

Rupambir Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

2. CWP No. 25703 of 2021 (O&M)

Simranpreet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

3. CWP No. 26048 of 2021 (O&M)

Deepshikha Garg

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. D. S. Patwalia, Senior Advocate with
Ms. Rishu Bajaj, Advocate, for the petitioners in
CWP Nos. 2741 and 26048 of 2021.

Mr. Jagtar Singh Sidhu, Advocate for the petitioner in
CWP No. 25703 of 2021.

Mr. R. K. Kapoor, Additional Advocate General, Punjab.

SANJEEV PRAKASH SHARMA, J.

This order of mine will dispose of the aforesaid three writ petitions as
common questions of law and facts are involved therein.

2. The petitioners, six in number, have preferred these writ petitions with
a prayer to quash the advertisement no. 14 issued by the Punjab Public Service

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Commission on the basis of requisition dated 08.12.2020 to the extent of inviting applications for filling up 20 posts of Punjab Civil Service (Executive Branch) by way of direct recruitment. Petitioner No. 2 – Navanjot Singh in CWP No. 2741 of 2021 and petitioner Simranpreet Kaur in CWP No. 25703 of 2021 possess Grade-A Sports Gradation Certificate, whereas other petitioners possess Grade-B Sports Gradation Certificate issued by the Directorate of Sports, Punjab. It is their case that the respondent-State while issuing the aforesaid advertisement failed to incorporate 3% reservation required for Sportsman Category and also failed to include the vacancies under the Sportsman Category, which was to be carried out from the earlier years recruitment.

3. The petitioners submit that the earlier advertisement no.8 dated 04.06.2020 was issued by the Punjab Public Service Commission advertising 20 posts of Punjab Civil Service (Executive Branch), which was later on superseded by advertisement no. 14 dated 08.12.2020 wherein again 20 posts of Punjab Civil Service (Executive Branch) were advertised with reference to roster point following between 341-360. It is stated that the petitioners were entitled to be appointed as they had applied. However, only one post was advertised for Scheduled Caste Balmiki/ Mazhabi Sportsperson category, although earlier posts had remained vacant.

4. It is stated that as per 100 point roster circulated by the Department of Welfare dated 21.08.1997, the roster point nos. 23, 41 and 100 were assigned for reservation under Sportsmen Category. Further from the date the Punjab Recruitment of Sportsmen Rules, 1988 were brought into force and 3% reservation quota was provided for the sportsmen, Seven vacancies arose from the time of notification and from 1988 till the recruitment year 2020 only three candidates

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were appointed while four posts have remained vacant. These were neither advertised nor carried forward.

5. It is further stated that only four posts were advertised between 2009 to 2020 and on 08.12.2020 the respondents failed to advertise four existing back log vacancies to be filled from Sportsman category and instead only one post out of twenty was filled from Balmiki/ Mazhabi Sportsman category.

6. Learned counsel for the petitioners by way of written submissions prepared a chart of the roster register and submitted the note as under:-

II. The chart of the Roster Register is as follows:

<i>Sr. No.</i>	<i>Roster Point</i>	<i>Category of Roster</i>	<i>Actual category of selected candidate</i>
1.	123	Sportsman	Freedom Fighter (Consumed from Freedom Fighter Category and not from sportsman)
2.	141	Scheduled Caste (Sportsman)	Scheduled Caste (Consumed from Scheduled Caste Category and not from sportsman (SC))
3.	170	General	Consumed from Sportsman category.
4.	200	Sportsman	General (Consumed from General and not from Sportsman.)
5.	223	Sportsman	General (Consumed from General and not from Sportsman.)
6.	241	Scheduled Caste (Sportsman)	Scheduled Caste (Consumed from Scheduled Caste not from Sportsman (SC).)
7.	260	Ex-Serviceman	Consumed from Sportsman Category.
8.	300	Sportsman	General (Consumed from General and not from Sportsman.)
9.	323	Sportsman	Sportsman (Consumed from Sportsman Category)
10.	341	Scheduled Caste (Sportsman)	Scheduled Caste (Consumed from Scheduled Caste not from Sportsman (SC))

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			(Advertised in advertisement)
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- Notes :** (I) Roster point 123, 200, 223, 300, 323 are available for Sportsman Category (General).
- (ii) Out of the above given roster points only Roster No. 323 has been given to the Sportsman Category (General).
- (iii) Roster point 170 & 260 has been consumed by Sportsman Category (General).
- (iv) If at all Sportsman Category (General) is seen then also two backlog vacancies in Sportsman Category (General) are available at roster point 223 & 300 and if Sportsman Category (SC) is seen then two backlog vacancies are available in Sportsman Category (SC).
- (v) Date of advertisement : 2009, 2012, 2013, 2015, 2018 & 2020 out of these years the Sportsman Category (General) has been advertised only in 2009 & 2015. Hence, Sportsman could not get any opportunity as per Rules.”

7. It is further submitted that as per 1988 Rules unfilled vacancies were required to be carried forward for two recruitment years whereupon alone they could be de-reserved. However, in the present case, the vacancies were neither carried forward nor advertised. Thus, there are two General Sportsman posts and two Scheduled Castes Sportsman posts, which are still lying vacant to be filled from the said category and the petitioners have claimed themselves for consideration under the advertisement.

8. Per contra, learned counsel appearing for the State, Mr. R. K. Kapoor, Additional Advocate General, Punjab, has submitted written submissions and stated that the petitioners applied only under advertisement no.14 dated 08.12.2020 and prior to that they could not have applied or laid a claim for appointment. It is ascertained that as per roster point 341 only one post was reserved for Scheduled Caste Balmiki/ Mazhabi Sikh Sportsperson, however, as no Scheduled Caste

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Balmiki/ Mazhabi Sikh Sportsperson was available, the post was as per amendment in Rule 3 Sub-Rule 2 of the Punjab Recruitment of Sportsmen (First Amendment) Rules, 2019 (hereinafter referred as “the Amended Rules 2019”), the post which fell vacant was to be filled first from the General Pool of Balmiki and Mazhabi Sikhs and if the person is not available, the same could be filled only from Scheduled Caste other than Balmiki/ Mazhabi Sikh Category. The post, if not filled from the said category, would then be filled from Sportsman from SC Category.

9. Learned counsel for the respondents has quoted the Amended Rule 2 as introduced vide Amendment Rules 2019. It is further stated that the selection process is already completed and the candidate from SC Category Balmiki and Mazhabi Sikhs has already joined and the person has not been impleaded as a party nor his selection has been challenged.

10. Learned counsel for the respondent-State further submits that as the petitioners did not apply under the earlier advertisement they cannot have a claim against the said posts.

11. I have considered the submissions.

12. Rule 3 of the Punjab Recruitment of Sportsmen Rules, 1988 provides 3% reservation of vacancies to be filled by direct recruitment for sportsmen in all the State Civil Services. It also provides under Rule 3 Sub-Rule 2 that if a reserved vacancy remains unfilled for non-availability of sportsman eligible for recruitment, such vacancy may be filled in temporarily from any other source in accordance with the rules regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved. The amendment made in 2019, however, substitutes the aforesaid sub-rule 2 and directs as under:-

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“2. In the Punjab Recruitment of Sportsmen Rules, 1988, in rule 5, for sub-rule (2), the following rule shall be substituted, namely:-

“(2) Where a reserved vacancy remains unfilled for non-availability of a eligible person, for recruitment under these rules, in that case such vacancy shall be filled up in the following manner, namely:-

(A) (a) In case the post reserved for Sportsmen from Scheduled Castes (Balmiki and Mazhbi Sikhs) category, remains unfilled, in that case such post shall be filled up as under:-

(i) Firstly, from amongst the General Pool of Balmiki and Mazhbi Sikhs;

(ii) secondly, from amongst Sportsmen from Scheduled Castes category other than Balmiki and Mazhbi Sikhs; and

(iii) thirdly, from amongst the general pool of Scheduled Castes category other than Balmiki and Mazhbi Sikhs.

(b) In case the post does not get filled up in the manner as specified in clause (a) above, in that case it shall be carried forward to the next recruitment, as a post of Sportsmen from the Scheduled Castes (Balmiki and Mazhbi Sikhs) category;

(c) In case the post gets filled up, in the manner as specified in clause (a) above, in that case in the next recruitment, one post (if available in the category from which the post had been filled up), shall be reduced and shall be added to the quota of Sportsmen from Scheduled Castes (Balmiki and Mazhbi Sikhs) category;

(d) If in the next recruitment, no post is available in the category from which it is to be reduced as specified in clause (c) above, in that case the process prescribed in the said clause, for transfer of post, shall again be followed in the subsequent recruitment.

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(e) If even in the subsequent recruitment, no post is available under clause (d) above, in the category from which the post had been filled under clause (a), in that case the post, and the roster point, shall be treated as consumed;

(f) if a post carried forward under clause (b), or processed under clause (c) or clause (d), still remains unfilled from amongst the Sportsmen from the Scheduled Castes (Balmiki and Mazhbi Sikhs), in that case it shall be carried forward once again to the next recruitment, for being filled up from amongst the Sportsmen from the Scheduled Castes (Balmiki and Mazhbi Sikhs); and

(g) if the post so carried forward under clause (f) still remains unfilled from amongst the Sportsmen from the Scheduled Castes (Balmiki and Mazhbi Sikhs), in that case the post shall be converted into the post for Scheduled Castes (Balmiki and Mazhbi Sikhs) general pool category.

(B)(a) In case the post reserved for Sportsmen from Scheduled Castes (other than Balmiki and Mazhbi Sikhs) category, remains un-filled....”

13. Learned counsel for the petitioners submits that if the posts meant for sportsmen of Scheduled Caste Balmiki and Mazhabi Sikh could not be filled due to non-availability, it should revert back to the other sportsmen category and should not be filled from Scheduled Caste category.

However, this Court finds that as per Rule 3(2)(A)(a)(i) of the Punjab Recruitment of Sportsmen Rules, 1988 (supra), it is apparent that if the post is not filled from Sportsman of reserved category viz. Balmiki and Mazhabi Sikhs then the same shall go to the General Pool of Balmiki and Mazhabi Sikhs and thereafter to sportsmen of Scheduled Caste of other category and then from the general pool of Scheduled Castes category other than Balmiki and Mazhabi Sikhs. The Rule also provides that if the same cannot be filled, it will be carried forward to the next

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recruitment, as a post of Sportsman from the Scheduled Castes Balmiki and Mazhabi Sikhs. Thus, the action of the respondents in filling up the posts of Sportsmen Scheduled Castes Balmiki and Mazhabi from Scheduled Caste of Balmiki and Mazhabi cannot be said to be wrongful or unjustified. It is noticed that the Amended Rules of 2019 have not been challenged by the petitioners in the writ petition and would, therefore, have applicability to the advertisement no.14 dated 08.12.2020 and the action of the respondents is justified.

14. However, this Court finds that the backlog posts of Sportsman category, which could not be filled from the inception of the Rule 1988 till issuing of the advertisement no.14, have remained unfilled. Admittedly, as per the submissions of the learned senior counsel noticed hereinabove (supra) and as per the chart which has not been disputed, this Court is satisfied that there were four posts available as backlog upto 2020 to be filled from Sportsmen Category i.e. two from Sportsmen General and two from Scheduled Caste Sportsmen. The roster is a running roster, and therefore the submissions of the petitioners deserve to be accepted to the extent that as out of the total number of officers in PCS category only two officers are working against the Sportsmen category posts. As pointed out by learned counsel for the respondents, the present post following at roster point no. 341 belonging to Scheduled Caste Balmiki and Mazhabi Sikhs also could not be filled from the sportsperson. In all, therefore, there are four posts which have remained unfilled from sportsmen category including two for general sports persons and two for Scheduled Castes sports persons. Out of the total cadre strength of 310 posts, 155 posts are meant for direct recruitment, out of which 3% are meant for sportsmen category.

15. In *State of Uttar Pradesh and others vs Sangam Nath Pandey and others* 2011(2) SCC 105, the Supreme Court has directed that the posts which are

of backlog are to be filled separately by a separate advertisement. Relevant extract

of the aforesaid judgment are as under:-

"27. In any recruitment year, it may happen that the candidates belonging to the reserved category may not be available to fill the vacancies falling to the share of the particular reserved category. In such circumstances, sub-section (2) of Section 3 enables the State to carry forward the unfilled vacancy/vacancies to be filled through special recruitment as a separate class of vacancy. Such class of vacancy cannot be intermingled with the vacancies of the year of recruitment in which it is filled. It also cannot be counted for the purpose of determining of ceiling of 50% reservation of the total vacancies of that year. The provision contained in sub-section (2) is, notwithstanding anything to the contrary contained in sub-section (1), which provides for a total 50% reservation for the categories of Scheduled Castes, Scheduled Tribes and Other Backward Classes i.e. 21%, 2% and 27% respectively.

28. The terminology of the aforesaid section is clear and unambiguous. Therefore, construed in its ordinary, literal sense, the sub-section provides that the carried-forward vacancies are not to be included in calculating the 50% cap as contained in proviso 2 to Section 3(1). The special recruitment may be held in that very year or in the succeeding year or years of recruitment as a separate class of vacancy."

16. In **Dr. Amod Prabodhi and others vs The State of Bihar and others**

2023 (2) B.L.Jud 513, authored by me, it was held as under:-

"42. This Court finds that the Commission has proceeded with the selection process based on the aforesaid advertisement. Candidates were called for interview category- wise. Thus, when the number of posts had been reduced from the Open Category, B.C. Category, Disabled Category and Other categories, candidates were also called less in number for interview. As this Court has found the bifurcation of post to be erroneous, the Commission would be required to call

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additional candidates for interview from the various categories additionally, according to revised bifurcation.

Therefore, it is directed that the respondents shall revise the bifurcation of post on the principle of calculation of backlog posts as observed as given hereinabove. The said backlog posts shall be treated as a separate class. The post of current vacancies shall be bifurcated in different categories strictly in accordance with the provisions of the Act of 1991 and by treating all the post in various Universities together subject- wise. Backlog posts have to be mentioned separately and current posts separately in the advertisement.”

17. In view of the Amended Rules 2019 as well as the existing Rules, it is apparent that the posts of Sportsman are to be carried forward if not filled. Thus, it is a separate class of posts meant to be filled from sportsmen and in the event of non-availability in that particular selection year, the same have to be filled separately in a subsequent year. In view of the judgment (supra), thus, the only method to fill the posts would be to declare these posts separately as the backlog posts in a separate advertisement. This Court also finds that the respondents did not mention the existing backlog posts for Sportsman category in the advertisement issued in 2020. Their failure to advertise the existing backlog posts against sportsmen category would not deprive the petitioners for their rightful claim.

18. The action of the respondents in not carrying forward nor advertising the posts which were filled from other categories is found to have resulted in a situation where there are no sportsperson available in the cadre except one. In view of above findings, this Court is satisfied that the respondents have not considered the claim of the petitioners for appointment against the said four posts lying with them. In the event of non availability of Scheduled Caste sports persons prior to

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2019, it is binding upon them to have filed those posts in the year 2020 when they issued the advertisement no.14.

19. In the circumstances when the State Government has taken a decision to fill at least 3% posts from sportsmen category, the action of only advertising one post leaving aside four backlog posts has to be declared unjustified. The respondents are, therefore, directed to issue a separate advertisement for four posts of General Sports persons and Scheduled Caste Sports persons and invite applications for the said posts. The selection process as per rules shall be carried out. The petitioners would be treated as eligible for participating in the selection process without objecting to their age or other eligibility conditions. If the petitioners are selected as per their merit, the appointments shall be offered to them for PCS (Executive Branch). The selections which have already been made, therefore, would not stand disturbed.

20. Accordingly, the writ petitions **are allowed in part**, as mentioned above.

21. All pending applications shall stand disposed of accordingly.

22. No costs.

22.12.2023

vs

(SANJEEV PRAKASH SHARMA)
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>