

406 (3 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-6739-1997 (O&M)
Date of Decision:11.10.2023

TARA SINGH AND OTHERSPetitioners
V/s.
STATE OF PUNJAB AND ANOTHERRespondents

CWP-8186-1996 (O&M)

BHUPINER SINGH AND OTHERSPetitioners
V/s.
STATE OF PUNJAB AND ANOTHERRespondents

CWP-5816-1997 (O&M)

BHUPINER SINGH AND OTHERSPetitioners
V/s.
STATE OF PUNJAB AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Nirmal Singh, Advocate,
 for the petitioners in CWP-6739-1997.

 Mr. Shreesh Kakkar, Advocate, for
 Mr. Kapil Kakkar, Advocate,
 for the petitioners in CWP-5816-1997 and CWP-8186-1996.

 Mr. D.K. Singal, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of these connected Writ Petitions as the issue involved in all the three Writ Petitions is common. However, for the sake of convenience, the facts are being extracted from CWP-6739-1997.
2. The petitioners, in these Writ Petitions, have raised very important question relating to promotions of the reserved category candidates over and above their quota.

3. It is stated that already more than the quota required, persons from reserved category were holding the promotion posts and view of the law laid down by the Constitution Bench in “**R.K. Sabherwal Vs. State of Punjab**”; (1995) 2 SCC 745, the roster point could not have been continued after the reservation representation was completed.

4. Learned counsel for the petitioners submits that in 100 points, roster, once the percentage of Scheduled Caste and Backward Class have been filled, the roster cannot be allowed to continue as a running account. He submits that after 10.02.1995, there was no occasion for further making promotions, but the respondents ignoring the verdict of the apex Court proceeded to make further promotions to 26 candidates of the SC category and 6 of BC category on the post of Headmaster, and 17 candidates for SC category on the post of Headmistress, thereby depriving the petitioners who belong to the general category for their due promotions. Learned counsel submits that such persons who were promoted, had already been granted **asserted** promotion and in view of the law settled by the Hon’ble Supreme Court in the cases of **Ajit Singh Januja Vs. State of Punjab**; (1996) 2 SCC 715 and **Ajit Singh Vs. State of Punjab**; 1999 SCC 209, and the excess promotions granted to the respondents or to the reserved category candidates ought to be set aside. He, therefore, prays that such promotions granted to the reserved category persons be quashed and set aside.

5. Learned counsel for the petitioners has also relied upon a judgment rendered in the case of **A.Janardhana Vs. Union of India and others**; 1983 (2) SLR 113 to submit that since the action of the respondents is under challenge, he need not to implead the concerned persons as parties.

6. While the principles laid down in **R.K.Sabherwal** (Supra) is to be followed without fail, in the facts of the present case, this Court finds itself unable to grant any relief to the petitioners for the following reasons:-

- A) The petitioners have not been able to place the complete facts in the Writ Petition showing as to how the promotions were granted to the SC and BC candidates who are counted in the cadre of Headmasters. There may be some SC/BC candidates who may have been promoted on their own merit such persons, therefore, would not fall in the kitty of SC quota for the purpose of filling up the roster point. In absence of any such data available to this Court, a verdict on general assertion that out of the total cadre strength, certain numbers of SC and BC candidates are to be counted on head basis, cannot be made as assumption of filling up of the reservation quota.

It may not be out of place to mention that in the case of R.K. Sabherwal (Supra), the apex court has specifically held that those persons from reserved category, who are appointed on basis of their own merit, would not be considered to be counted for the purpose of counting the filling up of reserved quota.

The Supreme Court in the case of R.K. Sabherwal (Supra) held that *if a person from reserved category scores marks over and above than the open category candidate, he would*

be placed in the open category and the seat of reserved category shall be offered to the next candidate from the said reserved class.

- B) The Writ Petition also suffers from a basic defect as the promotions which have been granted by the respondents cannot be quashed unless opportunity of hearing is provided to the candidates, who the petitioners allege to have been wrongfully promoted. If any such promotions are made, the said order is required to be quashed, the candidates who have been promoted are the necessary parties. In absence of such parties, no orders can be passed. In **Prabodh Verma And Others** Vs. **State Of UP;** 1984 (4)SCC 251, The Supreme Court held as under:-

“The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number

was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

In Arun Tewari Vs. Zila Mansavi Shikshak Sangh; 1998(1) SCT 533, the same principle was retreated and it was observed that at least some of the persons who may be affected by the orders ought to be impleaded as party.

7. In view of non-impleadment of any person who was promoted during the period between 10.02.1995 and 31.03.1996 on the post of Headmistress from the concerned SC and BC category, no orders can be passed to set aside such promotions. View has been again re-iterated in the case of K.H. Siraj Vs. High Court of Kerala and Others; (2006) 6 SCC 395.

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8. In view of the above, the Writ Petition fails and accordingly dismissed.

9. All the pending applications in this Writ Petition stand disposed of accordingly.

October 11, 2023
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No