

2023:PHHC:082509

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

**CWP No.1808 of 2015 (O&M)
Date of decision : 19.05.2023**

Raj Kumar DograPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rishav Sharma, Advocate
for the petitioner.

Mr. Aman Dhir, Dy. Advocate General, Punjab
for respondent No.1-State.

Mr. Varun, Advocate
for respondent No.2.

Mr. S.P. Garg, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

The petitioner is aggrieved of the order dated 27th of January, 2015 placed on record as Annexure P-11 whereby his promotion as Senior Assistant in respondent-Punjab Police Housing Corporation Limited stands annulled and he has been ordered to be reverted back to the original post of Junior Assistant.

2. The petitioner joined respondent-Corporation as Clerk-cum-Typist on adhoc basis on 16th of October, 1989. After being regularized on 27th of February, 1992 he was placed in higher pay-

scale on completion of five years of service w.e.f. 27th of February, 1997 and was further promoted as Senior Assistant on 1st of February, 2006. The petitioner claims to be belonging to a Scheduled Caste Category. He was promoted as Junior Assistant on 27th of February, 1997 against post reserved for Scheduled Caste and was in the year 2006 despite being at Serial No.12 in the seniority list considered for promotion against a roster-point giving him benefit of belonging to Scheduled Caste. Representation was moved before the Corporation that the petitioner has been wrongly granted concession of a Scheduled Caste category as the same is the entitlement admissible to the SC/ST from the State and not for the migrants to the State. The petitioner being a Scheduled Caste from Himachal Pradesh is a migrant in the State of Punjab and thus is not entitled for the said benefit. It is in the said premises that the impugned order has been passed.

3. Counsel for the petitioner submits that the petitioner did not claim benefit of reserved category at the time of his initial recruitment or at the time of his promotion as Junior Assistant but was granted the said benefit only while being promoted as Senior Assistant. It has been contended that Instructions dated 17th of January, 1996 relied upon by the respondent-authorities to non-suit the petitioner for promotion as Senior Assistant do not apply as the petitioner was born in the year 1967 when Himachal Pradesh was part of Joint Punjab.

Thus at the time of his birth his native village being part of State of Joint Punjab he cannot be termed as migrant. Counsel has relied upon law laid down by Division Bench of this Court in **LPA No.1040 of 2018** titled as **Gurvinder Singh vs. State of Punjab and others** to contend that since State of Himachal carved out of State of Punjab and the caste of the petitioner shown as Scheduled Caste in relation to State of Punjab there is no question of the petitioner being treated as migrant.

4. Per contra counsel(s) for the respondents submit that on the day the petitioner was born State of Punjab already stood reorganized and even though Himachal Pradesh was not granted statehood but it was a Union Territory which had its independent existence was not part of State of Punjab and thus, the petitioner is a 'migrant'. The question w.r.t. SC/ST certificate holder in one State claiming benefit of being a SC/ST in other State is no more *res integra* and has been answered authoritatively by the Constitution Bench of the Supreme Court in the case of **Marri Chandra Shekhar Rao vs. Seth G.S. Medical College, (1990) 3 SCC 130** and **Action committee on Issue of Caste Certificate to Scs/STs vs. Union of India, (1994) 5 SCC 244**. Further reliance has been placed upon law laid down by the Division Bench of this Court in **LPA No.1377 of 2018** titled as **Haryana Public Service Commission vs. Shweta Kashyap**.

5. I have heard counsel for the parties and have gone through records of the case.

6. So far as the question regarding claim of the petitioner to the benefit of being a Scheduled Caste/Scheduled Tribe in the State of Punjab on the strength of SC/ST certificate issued by the authorities of State of Himachal Pradesh is concerned, the same is no more *res integra*. As per the law laid down by the Constitution Bench of Apex Court in the case of Action Committee on Issue of Caste Certificate to SCs/STs in the State of Maharashtra (supra) the same need not be dwelled upon further. Even in the judgments cited by both the parties here i.e. in the case of Gurvinder Singh (supra) and in the case of Shweta Kashyap (supra) the Division Benches are *ad idem*. The only issue that remains is w.r.t. the following observations made by the Division Bench in the case of Gurvinder Singh (supra) regarding State of Haryana having been carved out of State of Punjab and thus there being no question of migrant:

“69. But unlike in that case, there is no question of migration in the instant case because as per the Constitution (Scheduled Caste order, 1950) even when originally framed, as regards the State of Punjab, the Balmiki caste was shown as a Scheduled Caste in relation to the State of Punjab. The State of Haryana having been carved out of it, in 1966, even in respect of the State of Haryana, the Constitution (Scheduled Caste order, 1950) mentioned Balmiki to a scheduled Caste.

70. It cannot be said that in such a situation, there is a difference in the degree of the disadvantages of the various elements which constitute the inputs for specifications warranting denial of reservation to the appellant in the State of Punjab.”

In my humble opinion the observations were made by the Division Bench as the provisions of the Punjab Reorganisation Act, 1966 (for short, '1966 Act') were never brought to their notice.

7. Parliament of India enacted Act No.31 of 1966 Act titled as Punjab Reorganisation Act to provide for the reorganization of the existing State of Punjab and for matters connected therewith. The Statement of Objects and Reasons thereof reads as under :

“Statement of Objects and Reasons.- “On the 21st March, 1966, it was announced in the Lok Sabha that Government has decided to accept in principle the reorganisation of the existing State of Punjab on linguistic basis. On the 18th April, 1966, that House was informed that necessary legislation would be brought forward for the reorganisation of the State as soon as the boundaries of the new States were settled and necessary legislation to amend Article 3 of the Constitution to enable the transfer of certain areas of the existing state of the Union Territory of Himachal Pradesh was enacted. The Punjab Reorganisation Bill, 1966, is destined to reorganise te existing State so as to constitute two separate State of Punjab and Haryana and a new Union Territory by the name of Chandigarh and to transfer certain areas of the existing State to the Union Territory of Himachal Pradesh.

The Bill provides for the territories of two States and the new Union Territory and also specifies the areas to be transferred to the Union Territory of Himachal Pradesh and

makes the necessary supplemental, incidental and consequential provisions in relation to such reorganisation, including representation in Parliament and in the State Legislatures.”

8. The relevant provisions of the 1966 Act read as under :

2. Definitions.- In this Act, unless the context otherwise requires,-

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(b) “appointed day” means the 1 st day of November, 1966;

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(l) “State of Punjab” means the State with the same name, comprising the territories referred to in sub-section (1) of section 6;

(m) “successor State”, in relation to the existing State of Punjab, means the State of Punjab or Haryana, and includes also the Union in relation to the Union Territory of Chandigarh and the transferred territory;

(n) “transferred territory” means the territory which on the appointed day is transferred from existing State of Punjab to the Union Territory of Himachal Pradesh;

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5. Transfer of territory from Punjab to Himachal Pradesh.-

(2) On and from the appointed day, there shall be added to the Union Territory of Himachal Pradesh the territories in the existing State of Punjab comprised in-

(a) Simla, Kangra, Kullu, and Lahaul and Spiti districts;

- (b) Nalagarh tehsil of Ambala district;
- (c) Lohara, Amb, and Una Kanungo circles of Una tehsil of Hoshiarpur district;
- (d) the territories inn Santokhgarh Kaunugo circle of Una tehsil of Hoshiarpur district specified in Part I of the Third Schedule;
- (e) the territories in Una tahsil of Hoshiarpur district specified in Part II of the Third Schedule; and
- (f) the territories of Dhar Kalan Kanungo circle of Pathankot tahsil of Gurdaspur district specified in Part III of the Third Schedule;

and thereupon the said territories shall cease to form part of the existing State of Punjab.

(2) The territories referred in clause (b) of sub-section (1) shall be included in, and form part of , Simla district.

(3) The territories referred to in clauses (e), (d), and (ef) of sub-section (1) shall be included in, and form part of Kangra district, and

- (i) the territories referred to in clauses (c) and (d) shall form a separate tahsil known as Una tahsil in that district and in that tahsil the territories referred to in clause (d) shall form a separate kanungo circle known as the Santokhgarh kanungo circle; and
- (ii) the territories referred to in clause (e) shall form part of the Hamirpur tahsil in the said district.

(4) The territories referred to in clause (f) of sub-section (1) shall be included in and form part of, the Bhattiyat tahsil of Chamba district in the Union Territory of Himachal Pradesh and in that tahsil, the villages Dalhousie and Balun shall be included

in, and form part of Banikhet kanungo circle and the village Bakloh shall form part of Chowari kanungo circle.

6. State of Punjab and territorial divisions thereof.- (1)

On and from the appointed day, the State of Punjab shall comprise the territories of the existing State of Punjab other than those specified in sub-section (1) of section 3, 4 and sub-section (1) of section 5

(2) The territories which immediately before the appointed day were part of Ambala district in the existing State of Punjab but are not transferred by virtue of sections 3, 4 and 5, shall together with the territories which immediately before that day were part of the Una tahsil of Hoshiarpur district in the existing State of Punjab but are not transferred by virtue of section 5, form a separate district known as the Rupar district in the State of Punjab and in that district –

(i) the territories which immediately before the appointed day were part of Manimajra kanungo circle of Kharar tahsil of Ambala district but are not transferred by virtue of sections 3 and 4, shall form in that tahsil a separate kanungo circle called the Mullanpur Kanungo circle;

(ii) the territories which immediately before the appointed days were part of Una tahsil of Hoshiarpur district but are not transferred by virtue of section 5, shall form a separate tahsil known as Anandpur Sahib tahsil, and in that tahsil, the territories which immediately before the appointed day were part of Santokhgarh kanungo circle of Una tahsil of Hoshiarpur district but are not transferred by virtue of section 5, shall be included in, and form part of Nurpur Bedi kanungo circle.

7. Amendment of the First Schedule to the Constitution.- On and from the appointed day, in the First Schedule to the Constitution, -

(a) under the heading “I, THE STATES”,-

(i) in the paragraph relating to the territories of the State of Punjab, the following shall be added at the end, namely:-

“and the territories specified in sub-section (1) of section 3, section 4 and sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966”;

(ii) after entry 16 the following entry shall be inserted, namely:-

“17. Haryana: The territories specified in sub-section (1) of section 3 of the Punjab Reorganisation Act, 1966.”

(b) under the heading “II. THE UNION TERRITORIES”,-

(i) in the paragraph relating to the extent of the Union Territory of Himachal Pradesh, the following shall be added at the end, namely:-

“and the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966”;

(ii) after entry 9, the following entry shall be inserted, namely:-

“10. Chandigarh: The territories, specified in section 4 of the Punjab Reorganisation Act, 1966”.

27. Amendment of Schedule Caste Orders.- (1) on and from the appointed day, the Constitution (Scheduled Castes) Order, 1950, shall stand amended as directed in the Eighth Schedule.

(2) On and from the appointed day, the Constitution (Scheduled Castes) (Union Territories) Order, 1951, shall stand amended as directed in the Ninth Schedule.

28. Amendment of Scheduled Tribes Order.- On and from the appointed day, the Constitution (Scheduled Tribes) Order, 1950, shall stand amended as directed in the Tenth Schedule.”

9. In view of the above provisions it is thus clear that the appointed date for reorganization of the State is 1st of November, 1966. From the said date the Joint State of Punjab stood reorganized. The territory transferred to the Union Territory of Himachal Pradesh got severed from the State of Punjab. Accordingly, not only the territories but even the Scheduled Caste orders and the Scheduled Tribes orders stood recasted by amendment. Thus, any person born after the appointed date in the successor Union Territory of Himachal Pradesh (later on becoming State of Himachal Pradesh) cannot claim to be a resident of the State of Punjab and cannot escape from being called 'migrant'. Thus, the observations made in Para No.69 and 70 of the judgment passed in Gurvinder Singh's case being in the teeth of bare provisions of the 1966 Act and the law laid down by Apex Court in the case of Action Committee on Issue of Caste Certificate to SCs/STs (supra) can't be held to be binding.

10. In view of the above, the issue culled hereinabove is answered against the petitioner. The petitioner having been admittedly born after the appointed date of 1st of November, 1966 in the Territories of Successor State of Union Territory of Himachal Pradesh is a 'migrant' to State of Punjab and thus is not entitled to claim benefit in the State of Punjab being a reserved categoric candidate in the State of Himachal Pradesh. Thus the petitioner cannot escape from the

application of Instructions dated 17th of January, 1996 and no infirmity can be hence found in the impugned order dated 27th of January, 2015 (Annexure P-11).

11. As a consequence of the discussion held herein above, the present writ petition is dismissed without any order of costs.

May 19, 2023		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned :	Yes/No
	Whether reportable :	Yes/No