

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

**CWP No.24773 of 2018
Date of decision : 27.04.2023**

Harish Kumar and another

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Avin Kaur Sandhu, Advocate
for the petitioners.

Mr. Aman Dhir, Dy. Advocate General, Punjab.

Mr. Vikas Chatrath, Advocate
for respondents-PSPCL.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Article 226/227 of the Constitution of India, petitioners pray for issuance of a writ in the nature of certiorari seeking quashing of the impugned list dated 4th of June, 2018 (Annexure P-5) whereby the candidates lower in merit *viz-a-viz* the petitioners have been appointed on the panel of Assistant Lineman.

2. Respondent No.1-Corporation put to public notice 1500 vacancies of Assistant Lineman. 750 posts were for General Category. The requisite/desired qualifications for the said posts as published in the public notice read as under :

“4. QUALIFICATION :

The candidates should meet with the following qualification :

- i) Matriculation.
- ii) 2 years National Apprenticeship Certificate in Lineman Trade.
- iii) The candidate who possess higher education i.e. Degree/Diploma in Electrical Engineering will be considered only if they have minimum qualification i.e. National Apprenticeship Certificate in Lineman Trade.

Note: Preference will be given to those candidates who have done Two Years Apprenticeship in the trade of lineman from PSPCL/PSTCL or erstwhile PSEB. If above candidates are not available, the other candidates having Two Years Apprenticeship in the trade of Lineman from any other State/BBMB etc. will be considered.”

3. Petitioners applied in the General Category. Petitioner No.1 was placed at Sr. No.146 in the merit list with the percentage of 85.61. Petitioner No.2 was placed at Sr. No.138 having secured percentage of 85.79. However, the petitioners were not appointed even though the persons junior to them in the merit list got appointment.

4. Counsel for the petitioners submits that denial of appointment to the petitioners amounts to hostile discrimination against them. They were in possession of requisite qualification yet they have been non-suited claiming that the candidates who have

attained their apprenticeship in the trade of Lineman from PSPCL/PSTCL or erstwhile PSEB have a preferential right. Counsel asserts that the occasion to grant benefit of such preference would arise only when two candidates are equal in merit. The authorities have misconstrued the 'doctrine of preferential right' by interpreting the preferential clause to mean as if the candidates in possession of apprenticeship certificate from PSPCL/PSTCL or erstwhile PSEB have a right of appointment over and above the other candidates de hors merit. In order to hammer-forth her contention, counsel for the petitioners has relied upon the law laid down by Apex Court in '**The Secretary, Andhra Pradesh Public Service Commission vs. Y.V.V.R Srinivasulu & Ors.**', (2003) 5 SCC 341, **State of U.P. & another vs. Om Prakash and others**, (2006) 6 SCC 424, **Secy. (Health), Deptt. of Health vs. Dr. Anita Puri**, (1996) 6 SCC 282 and **J. Ashoka vs. University of Agricultural Sciences & others**, (2017) 2 SCC 609. She further relies upon Clause 9 of the public notice, which reads as under :

“9. **SELECTION PROCESS:**

Selection will be made purely on merit basis. The merit will be made as per marks obtained in National Apprenticeship Certificate in Lineman trade. The percentage marks obtained shall be rounded off to the nearest 2nd decimal digit for preparing the merit. No weightage shall be given for higher

qualifications.”

and asserts that as per this stipulation selection has to abide only by merit.

5. Per contra, Mr. Chatrath submits that Note granting preferential right to the candidates in possession of apprenticeship certificates from PSPCL/PSTCL or erstwhile PSEB is couched in a manner that the other candidates would be considered only when such candidates are not available. He further submits that there being no challenge to the said clause in the public notice, petitioners are precluded from claiming any relief in the present writ petition. In order to buttress his contention, Mr. Chatrath relies upon '**Dhani Ram Chaudhary vs. State of Haryana**', 2005(1) SCT 571, '**Ramesh Chandra Shah and others vs. Anil Joshi and others**', (2013) 11 SCC 309, '**Tata Chemicals Ltd. vs. Commissioner of Customs (Preventive), Jamnagar**', 2015(4) RCR (Civil) 88 and '**Sohan Lal vs. State of Haryana**', 2001(4) RCR (Civil) 483.

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

7. The issue involved is regarding interpretation of a Note given in Clause 4 which reads as under :

“Note: Preference will be given to those candidates who have done Two Years Apprenticeship in the trade of

lineman from PSPCL/PSTCL or erstwhile PSEB. If above candidates are not available, the other candidates having Two Years Apprenticeship in the trade of Lineman from any other State/BBMB etc. will be considered.”

8. The contention put-forth by Mr. Chatrath is misconceived and cannot be accepted for more than one reason. In case what is being contended is accepted, it would mean that all these posts are reserved for the candidates in possession of apprenticeship certificate in the trade of lineman from PSPCL/PSTCL or erstwhile PSEB. In other words it would mean that the Note amounts to 100% reservation in favour of such candidates. Any interpretation that militates against the mandate of Articles 14 and 16 of the Constitution of India deserves to be rejected. It will otherwise also reduce whole process to be farce. Secondly, the preferential right in such circumstances is no more *res integra* and already stands interpreted in '**The Secretary, Andhra Pradesh Public Service Commission vs. Y.V.V.R. Srinivasulu & Ors. (2003) 5 SCC 341**', where in Apex Court held as under :

“11. Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being

qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered.”

9. Similarly in the case of '**State of U.P. and another vs. Om Parkash and others**', (2006) 6 SCC 474, Apex Court held that :

“16. In the instant case, the requisite academic qualification for the post of homeopathy as prescribed in the advertisement was a recognized degree in Homeopathy or a recognized diploma in Homeopathy. A proviso has been added that preference will be given to degree holders. This would mean that a recognized diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word preference would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-à-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability.”

10. Near home, similar view was taken by a Co-ordinate Bench of this Court in **C.W.P No.10101 of 2014** titled as '**Pinky vs.**

State of Haryana', dated 4th of October, 2017 wherein it has been held as under :

“10. The Apex Court in Om Parkash's case (supra) has held that preference would mean that claim of all eligible candidates who were eligible and possessed the requisite educational qualification, then there is a tilting factor in favour of the said candidates. Accordingly, the appeals were allowed and the judgments of the High Court were set aside, whereby the preference had been given to the degree holders, who had preferred the writ petition on the ground that they have given preference over and above the diploma holders. The relevant part of the said judgment reads as under:-

“15. The interpretation of the preference clause given by the High Court runs into the teeth of the decisions rendered by this Court in a catena of cases.

16. This Court has consistently held that when selection is made on the basis of merit assessed through the competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability.

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19. In the instant case, the requisite academic qualification for the post of homeopathy as prescribed in the advertisement was a recognised degree in Homeopathy or a recognised diploma in Homeopathy. A proviso has been added that preference will be given to degree holders. This would mean that a recognised diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word preference would mean

that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-a-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability.”

11. Apex Court has held that the question of preference would arise only when two candidates are equal in merit. The third reason this Court needs to observe is that preference has been given only as a foot note to provision 4. Provision 9 of the public notice mandates that selection will be purely on merit. Trite it is that a Note appended to the main provision cannot have an overriding effect over the other substantive provision. Thus selection has to abide by merit and preferential right will come into play only when candidates are at par in merit. It cannot have an effect of defeating the merit. While issuing notice of motion two posts of Assistant Lineman in General Category were ordered to be kept in abeyance.

12. In view of above, the present petition is allowed. Respondent-Corporation is directed to consider the claim of the petitioners and grant them appointment from the date persons junior to them in the same selection process were ordered to be appointed.

13. Needless to say the petitioners will not be entitled for

salary for the intervening period on the principle of 'No Work No Pay'.
However all other benefits like seniority etc. would be applicable to
them from the date persons junior of them in the merit list stand
appointed within a period of 8 weeks from the date of receipt of
certified copy of this order.

April 27, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No