

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

Reserved on : 07.02.2023

Pronounced on : 03.03.2023

1. CWP-24811-2021 (O&M)

Chandandeep Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

2. CWP-26306-2021

Prabhjot Kaur

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. G.S. Sandhu, Advocate
for the petitioner in CWP-24811-2021.

Mr. Vikas Mohan Gupta, Additional A.G, Punjab.

Mr. Rajiv Atma Ram, Sr. Advocate with
Ms. Sanah Sahni, Advocate
for the petitioner in CWP-26306-2021 and
for respondent No.5 in CWP-24811-2021.

Mr. Puneet Gupta, Advocate and
Mr. Kshitiz Goel, Advocate
for respondent No.5 in CWP-26306-2021.

PANKAJ JAIN, J.

By way of present judgment, I intend to dispose off above said
two writ petitions as common question of law and facts are involved therein.

For the sake of convenience, facts are being taken from CWP-24811-2021.

2. Petitioner has raised challenge to the action of official
respondents claiming that while issuing public notice dated 11.12.2020

(Annexure P-9), one backlog post of Deputy Superintendent of Police was wrongly earmarked for reserved category of Scheduled Caste (Sports Person) (Woman), whereas the same belong to Scheduled Caste (Sports Person) category.

3. On the statement made by State Counsel on 16.12.2021, counselling for the post of Sportswoman under SC Category for the post of DSP has not been carried out to await the decision of this instant writ petition.

4. Pursuant to requisition received from the State Government, respondent No.4 vide public notice dated 04.06.2020 invited applications for recruitment to 77 posts in various State Services to be filled through the Punjab State Civil Services Combined Competitive Examination-2020. These 77 posts included 26 posts of Deputy Superintendent of Police in Punjab police and the break up thereof reads as under:-

CATEGORY	DSP
General (71)	10
ESM/LDESM (72/73)	03
Sports Person, Pb (75)	-
Persons with disability, Pb. (76 A) Blind and low vision	-
Scheduled Caste others, Pb (77)	01
Scheduled Caste ESM/LDESM Pb (78/79)	02
Scheduled Caste Sports, Pb (80)	01
Balmiki/Mazhbi Sikh, Pb (81)	02

Balmiki/Mazhbi Sikh ESM/LDESM, Pb (82/83)	01
Balmiki/Mazhbi Sikh Sport Person, Pb (84)	-
Backward Classes, Pb. (85)	02
Backward Classes ESM/LDESM, Pb. (86/87)	01
Economically Weaker Sections (92)	03
Total	26

5. In the Scheduled Caste, Sports, Punjab Category with code 80, there was another one post of DSJ/DPO advertised vide aforesaid public notice as well. Thus, in total in the category of Scheduled Caste, Sports, Punjab, there was one post of DSP and one post of DSJ/DPO. Petitioner applied for the same in the category of SC (Sports Person), Punjab. Print out of his application form is on record as Annexure P-2. The last date for filling up of application form was 30.06.2020. Before the process initiated vide P-1, could proceed beyond stage of infancy, Government of Punjab on 21.10.2020 notified Punjab Civil Services (Reservation of Posts for Women) Rules, 2020 (in short ‘2020 Rules’) for providing reservation in services for women in direct recruitment. The rules provided for horizontal and compartmentalized reservation in favour of women in all posts Group A, B, C and D. The rules further explained that the compartmentalized and horizontal reservation meant reservation within each category i.e. Scheduled Caste, Backward Classes, Other Backward Classes, Economically Weaker Sections and Open Category. The rules also prescribed procedure for reservation of posts. With the advent of the aforesaid rules, respondents- State vide order dated 04.12.2020 withdrew the earlier requisition on the

basis of which respondent-Commission issued advertisement dated 04.06.2020 and decided to compile fresh requisition as per the amended rules/instructions/new rules. However, at the same time, State took a conscious decision that the candidates who have applied pursuant to P-1 should not be put to inconvenience and suggested respondent No.4-Commission to evolve appropriate mechanism to be put in place to ensure that such candidates who have already applied pursuant to P-1 should not face any inconvenience. On receiving fresh requisition, respondent-Commission issued public notice dated 09.12.2020 withdrawing public notice dated 04.06.2020 and issued fresh public notice dated 11.12.2020 inviting applications to fill 75 posts in the State Civil and Allied Services through Punjab State Services Civil Combined Competitive Examination-2020 (Annexure P-9).

6. The category Scheduled Caste, Sports Person, Punjab (80) came under change in the fresh public notice and in syne with 2020 Rules, another category came into being known as ‘Scheduled Caste, Sports, Punjab (Woman)’. One post of Deputy Superintendent of Police advertised in the category of Scheduled Caste, Sports Punjab was notified in the category of Scheduled Caste, Sports, Punjab (Woman) and in Scheduled Caste, Sports, Punjab category, only one post of DSJ/DPO was left.

7. The candidates including the petitioner participated in the selection process in the category of Scheduled Caste, Sports Person, Punjab.

Following merit list was prepared:-

Sr. No.	Roll No.	Name of Candidate	Category Code	Mains Exam Marks	Interview Marks	Grand Total	Percentage	Merit
	<u>Date of Birth</u>			<u>GENDER</u>				
	Category Code	80	Category Name SC SPORTS PERSON, PUNJAB					

116	20766	CHANDANDEEP SINGH	80 Male	569.00	108.00	677.00	45.13	1
117	20250	PRABHJOT KAUR	80 Female	527.00	76.50	604.00	40.27	2
118	20633	DUPINDER DEEP SINGH	80 Male	520.50	65.44	585.94	39.06	3
119	20892	MONICA	80 Female	485.50	49.35	534.85	35.66	4

8. Petitioner figured at merit No.1. Added respondent No.5 came at merit No.2. Petitioner claims that it is at this stage it came to his notice that one post of DSP Scheduled Caste, Sports Person, Punjab was being illegally reserved for women candidates and he represented to the authorities vide P-11. Reliance is being further placed upon communication dated 25.11.2021 issued by the Office of Social Justice, Empowerment and Minorities Department (Reservation Cell) to Principal Secretary, Punjab Government, Department of Home Affairs and Justice claiming that the post of DSP advertised vide P-9 under the category of Scheduled Caste, Sports (Woman), Punjab is not in accordance with communication dated 29.01.2021 (P-4) issued by the Personnel Department.

9. In the background of the aforesaid facts, petitioner has filed the present writ petition claiming that reservation in favour of women vide P-9 ought not have been made. It has been claimed that reserving the post for women is beyond 2020 Rules. The rules nowhere provide for reservation for women in the category of Scheduled Caste (Sports Persons). The explanation appended to rule 4 further makes it clear that the reservation is horizontal and compartmentalized. The compartmentalized reservation has been explained to be reservation in each water tight category namely Scheduled Caste, Backward Classes, Other Backward Classes, Economically Weaker Sections and Open Category. Thus, the reservation

of one post of DSP on the strength of 2020 Rules cannot be sustained. It has been further claimed that 2020 Rules further got amended vide notification dated 29.11.2020 i.e. a day before the last date of submission of application forms pursuant to P-9 and the 33 % reservation has to be as per Annexure A. Resultantly, the same has to be governed as per the roster points. Any such grant of reservation to women under Scheduled Caste, Sports Person category would lead to excessive reservation beyond 33% provided under 2020 Rules. As per settled law, the amended rule would have an effect from the date of original rule and thus would be applicable to the present advertisement as well. There being a direct conflict between public notice issued and the statutory rules, the public notice has to pave way to the rule. Reference has been made to the communication issued by Department of Social Justice, Empowerment and Minorities. Senior counsel has relied upon the rules of business of the State Government to submit that the issue w.r.t. reservation being purely within the domain of the said department, the view of the same would be binding.

10. Per Contra, Mr. Gupta submits that as per the stand taken by Department of Social Justice, Empowerment and Minorities, the post reserved for Scheduled Caste Sports Person (Woman) is not as per letter dated 29.02.2021, as roster point No.41 is only reserved for SC Sports Persons and not for Scheduled Caste Sports Person (Woman). Whereas the Department of Home Affairs and Justice-respondent No.1 has also filed a detailed written statement reiterating that one post for Scheduled Caste Sports Person (Woman) was reserved as per the requisition received from DGP Office which is in accordance with 2020 Rules. The specific stand is that as per 2020 Rules, two posts from the Scheduled Caste category have been reserved for Women. Sports Person (SC) (Woman) at roster No.171

and the one Scheduled Caste (R&O) at roster No.185. It has been claimed that the post at roster No.177 was a backlog post under the category of Scheduled Caste Sports Person and thus in view of 2020 Rules, the said roster point having reserved for Sports Persons (SC) (Woman), no fault can be found with the same. So far as 100-point roster issued by respondent No.3 is concerned, the same being prospective in its effect, would regulate the roster point of backlog vacancy.

11. Mr. Rajiv Atma Ram, Senior counsel appearing for respondent No.5 submits that the writ petition is misconceived. It has been asserted that there being no challenge to the advertisement (P-9), the plea raised by the petitioner cannot be looked into. On merits, it has been contended that out of 26 posts of Deputy Superintendent of Police advertised vide P-9, 8 posts were to be reserved for women (33%). The reservation being horizontal and only five candidates including the petitioner cleared the physical test for the post of Deputy Superintendent of Police. Out of the said five, the first two opted for PCS Executive Branch. The reservation being horizontal, petitioner is entitled for appointment. Since no other Scheduled Caste woman has successfully cleared the physical test for the post of DSP except respondent No.5, she is entitled for appointment. He further contends that as per the settled proposition of law, the reservation is the end and roster points are only means to achieve the same. The absence of roster point cannot have an effect of defeating the right of reservation vested under the rules in vogue. The petitioner at the time of applying was fully conscious of the fact that there is no post of Scheduled Caste Sports Person category of DSP. The only post in Category 80 was reserved for Scheduled Caste Sports Person (Woman). Petitioner participated in whole of the selection process knowing the same fully well is estopped from

raising objection after declaration of the result.

12. Counsel further submits that the instructions dated 29.01.2021 cannot be put in service to regulate the post already advertised. It has been thus contended that the writ petition being bereft of merit deserves to be dismissed.

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

14. In the considered opinion of this Court, the primary issue that needs to be decided before dealing with the merits of the case is whether the present writ petition can be entertained in the background of pleas raised without there being any challenge to the advertisement. A bare perusal of the prayer made in the writ petition would show that in the present writ petition, there is no challenge to advertisement P-9. The comparative table of the vacancies of Scheduled Caste Sports, Punjab (80) in the public notice dated 04.06.2020 (P-1) and dated 11.12.2020 (P-9) reads as under:-

P-1

CATEGORY	PCS (EB)	DSP	Tehsil dar	FS CAO	BDPO	AR Co-OP	LCO	E G & T O	DSJ/ DPO	Total
Scheduled Caste Sports, Pb (80)	-	01	-	-	-	-	-	-	01	02

P-9

CATEGORY	PCS (EB)	DSP	Tehsil dar	FS CAO	BDPO	AR Co-OP	LCO	E G & T O	DSJ/ DPO	Total
Scheduled Caste Sports, Pb (80)	-	-	-	-	-	-	-	-	01	01
Scheduled Caste Sports, Pb (Women)	-	-	-	-	-	-	-	-	-	01

15. After 2020 Rules were notified on 21.10.2020, requisitions issued by the Government to respondent-Commission were withdrawn vide communication dated 08.12.2020. The same reads as under:-

“To

Secretary

Punjab Public Service Commission

Patiala

Memo No. 10/35/18-6P.P.3/P-1/1202

Dated: 08.12.2020

**SUBJECT: Regarding Punjab Civil Service Combined
Competitive Examination-2020**

Reference: With reference to the aforementioned subject and letter no. 10/35/18-6P.P.3/P-388, dated 17.04.2020.

With reference to the aforementioned subject and the reference you were sent the requisition for 77 posts which were obtained from different Departments for the Punjab Civil Services Combined Competitive Examination 2020. In pursuance to which you had advertised the said posts vide Advertisement No. 8 dated 04.08.2020. The last date to apply online for this examination was extended upto 30.06.2020. The Preliminary examination for the said examination has not been conducted yet because of administrative reasons. During this period the below mentioned important developments have taken place.:

- i. Amendment in Rule 2. Clause (d). Sub-Clause (a) of the Punjab Recruitment of Sportsmen Rules, 1988.
- ii. Issuance of letter no. 7/42/2020-5FP1/741-754 dated 17.07.2020 issued by the Finance Department regarding carrying on the new recruitment and the ongoing recruitment process wherein the examination has not taken place yet, as per the pay scales of the 7th CPC of Central Government.
- iii. Notification of the Punjab Civil Services (Reservation of Posts for Women) Rules, 2020 which were notified on 21.10.2020. which are concerned with giving 33% reservation to women in direct recruitment to Group A, B, C and D posts.**

02. In view of this situation, vide letter No. 10/35/18-6P.P.2/P-1/1176-1185 dated 04.12.2020 issued by the Punjab Government, the Departments have decided to take back the requisition which was sent for the Punjab Civil Service Combined Competitive

Examination-2020. (Annexure-1)

03. The requisition sent by various concerned Departments for the Punjab Civil Service Combined Competitive Examination-2020 to the Personnel Department has been withdrawn and the same is being sent to you. (Annexure-II)

04. The fresh requisition as per the amended Rules/Instructions/New Rules with respect to the present examination is being compiled and sent to you. (Annexure-II)

05. The requisition which was sent to you vide the letter mentioned in the subject be sent back immediately and action be taken on basis of the new requisition.

06. As many candidates have applied in pursuance to the Advertisement no. 08, dated 04.06.2020, therefore appropriate mechanism be put in place so as to ensure that such candidates do not face any inconvenience on issuance of the new Advertisement which will be issued as per the new requisition.”

16. On strength thereof, Commission issued public notice withdrawing P-1 dated 04.06.2020 itself. The public notice reads as under:-

“PUBLIC NOTICE

RECRUITMENT TO 77 POSTS OF PCS & ALLIED SERVICES

(Punjab State Civil Services Combined Competitive examination-2020)

1. This is for the information to the Candidates who had applied for the ibid posts that the Department of Personnel, Govt. of Punjab vide its letter no. 10/35/18-6PP3/P1/1176-85 dated 04/12/2020 has withdrawn the requisition for the 77 posts of PCS & allied services. The advertisement no. 08 dated 04/06/2020 for PCS & allied services issued by PPSC, therefore stands withdrawn.
2. Candidates should await the fresh notification for PCS & allied services which will be issued shortly.

Sd/-

Navreet Kaur Sekhon, PCS
Secretary Examinations”

Date: 09/12/2020

17. Fresh public notice was issued inviting applications for 75 posts. It was specifically provided in the public notice that reservation of posts for women is as per the notification of Department of Social Security Women and Child Development dated 21.07.2020, the Punjab Civil Services (Reservation for Women), Rules 2020 and the notification was also attached at appendix 6. In consonance with the desire of the State that the candidates who earlier applied pursuant to advertisement No.8 dated 05.06.2020 should not be put to inconvenience, the advertisement specifically provided as under:-

“HOW TO APPLY FOR PSCSCCF-2020

(IMPORTANT NOTICE):

1. The candidates who had already applied for the PCS & allied services posts as per the earlier PPSC 06/2000 SHOULD NOT apply again. Their applications Advertisement No. & published dated already registered with the PPSC stand valid for their Candidature for this advertisement subject to fulfilling the eligibility conditions as per this new advertisement.
2. The candidates can **ONLY** apply by Filling Online Application Form, a link of which is available on the website of the Panjab Public Service Commission www.n.gov.in Further, the candidates are **NOT REQUIRED** to send the Hard Copy of the Online Application Form to the office of Punjab Public Service Commission.
3. Candidates who had applied for the posts as per PPSC advertisement No. 8 published on 05/06/2020 and who now wish to with their candidature due to changes in rules may so by 30/12/2020. The procedure and the link for withdrawal will be uploaded shortly on PPSC website.
4. Last date for Filling Online Applications Form: **30/12/2020**

5 to 8 xx xx xx

9. Candidates can apply for a post in only one category. If any candidate applies for the same post in more than one category, the category in which he/she registered first will be considered and the subsequent applications will automatically stand rejected. Therefore, Any candidate who had applied for PCS & allied services in response to advertisement no. 08 dated 05/06/2020 fills the application form again in response to the advertisement no. 14 dated 11/12/2020, Only his previous registration shall be considered valid.”

18. It further carried a stipulation to the following effect:-

“Note (1 c) Category once filled by the candidate shall be sacrosanct and no change shall be permitted at any stage of the Examination.”

19. Thus, the petitioner cannot deny the fact that his application form is being considered vis-a-vis public notice dated 11.12.2020 (P-9) and also that under P-9, there is no post for Deputy Superintendent of Police for Scheduled Caste Sports, Punjab. There is only one post that too is reserved for Scheduled Caste Sports, Punjab (Woman).

20. Coming to the issue w.r.t. to the reservation being in violation of roster points also does not impress this Court. Roster points admittedly were fixed vide communication dated 29.01.2021 (R-4) which is after the last date of submitting applications i.e. 30.12.2020. It is also not denied that Department of Home Affairs never revised/reviewed their requisition and they strict to their requisition of one post reserved for SC Sports Person (Woman). Trite it is that roster point are merely means to achieve the end of reservation. Apart from that during the course of arguments, senior counsel for the petitioner was asked specific question to the following effect:-

“(i) For which post did the petitioner apply pursuant to P-9 in Category 80 as there was no post of DSP on that date.”

21. Senior Counsel admitted that on date date, there was no post of DSP in Category 80 apart from the one reserved for women. Though, the petitioner applied pursuant to P-1 in Category 80, as per notification P-9, his application was considered vis-a-vis public notice dated 11.12.2020 as public notice dated 04.06.2020 stood withdrawn on that date.

22. In view of the fact that in public notice dated 11.12.2020 against which the candidature of the petitioner was considered there is no

post of DSP for which the petitioner can be considered as the only post is reserved for SC Sports person (Woman) and there being no challenge to the advertisement, the arguments raised by the counsel cannot be entertained.

23. The issue needs to be analyzed from another angle as well. *“Can the petitioner be ordered to be appointed for a post which was not even advertised?”*. There can be no other answer but 'No'.

24. The precise issue was dealt with by a Co-ordinate Bench in the case of **Om Parkash vs. State of Haryana and others – CWP No.5200 of 2009** decided on 21st of February, 2014 wherein despite it having been proved that the respondent erred in issuing advertisement, the Court dismissed the petition holding as under :

“That apart, it is by now well settled that public post which is not advertised cannot be filled up without giving others reasonable opportunity to compete for the selection and appointment, which would violate Articles 14 and 16 of the Constitution of India. The Court cannot be a party to such a situation, especially when the petitioner had an opportunity to challenge the advertisement at the initial stage and at this belated stage when having participated in the selection process and competed for the advertised 2 posts of Scheduled Caste category and having been unsuccessful, now cannot be permitted to assert a claim or point out a flaw in the advertisement. This would attract the principle of estoppel against the petitioner which will disentitle the petitioner to the claim in the writ. On this ground also, the writ fails.

Merely because an inadvertent mistake has taken place on the part of the respondents while preparing and issuing the advertisement, which is not in consonance with the instructions especially with regard to the number of posts to be reserved for a particular category cannot be put right at this belated stage in the manner suggested by the petitioner, especially when the said post has not been advertised. This type of mistake, as in the present case, can only be removed/rectified by issuing a separate advertisement or the said short fall in the reserved category post in the Scheduled Caste can be taken care of in the subsequent

succeeding selection process, but a candidate who has participated in pursuance to an advertisement which had only advertised specified number of posts for a particular category, cannot claim, as a matter of right, the filling up of the unadvertised post may be because of the mistake in the advertisement which is unchallenged.”

25. Finding no merit in the present writ petition, the same is ordered to be dismissed.

26. At this stage, it may be further mentioned as a footnote that admittedly the petitioner joined on the post of Deputy Superintendent Jail (though under protest).

27. Respondent No.5 has also filed a separate writ petition wherein she also claims to be considered. Keeping in view that the present writ petition is being dismissed, this Court finds that CWP-26306-2021 at the behest of respondent No.5 has been rendered infructuous.

28. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

03.03.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No