

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

LPA No.1040 of 2018 (O&M)

Reserved on: 07.02.2023

Date of Decision: 21.02.2023

GURVINDER SINGH

.....Petitioner

Vs.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: **HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO**
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: - Mr. Shreesh Kakkar, Advocate & Mr. Nirmal Sharma, Advocate,
for Mr. Kapil Kakkar, Advocate, for the appellant.

Mr. Aman Dhir, DAG, Punjab.

Mr. S.S. Bedi, Advocate, for respondent No.2.

M.S. RAMACHANDRA RAO, J.

This Appeal is preferred against the judgment dt.20.02.2017 passed in CWP No. 3761 of 2014 (O&M).

Background facts

The Punjab State Ware Housing Corporation (Respondent No.2) had issued an advertisement on 23.09.2011 for recruitment of Accountants and Accounts Clerk to be posted in various *Districts of Punjab*, and it invited on-line applications from eligible candidates.

The eligibility conditions, reservation and other conditions were laid down in the advertisement.

The last date for submission of such applications was 17.10.2011 and the selection was to be made on the basis of a written examination.

The advertisement mentioned that there were total 55 posts for Accounts Clerks out of which 37 were reserved for the Scheduled Caste candidates.

The appellant belongs to the *Balmiki* caste which is recognized as a Scheduled Caste by the Punjab Government vide letter dt.07.06.1954. He was also in possession of the requisite educational qualifications, and fulfilled all other eligibility conditions.

He applied on-line in the Scheduled Caste category for the post of Accounts Clerk and submitted his application before the last date.

He had submitted along with his application the certificate that he belong to the Scheduled Caste category issued by the Sub Divisional Officer (C), Amabala, *State of Haryana*.

He also appeared in the written examination held by the respondents on 18.12.2011 for the post of Accounts Clerk, and was issued an offer letter of appointment on 16.03.2012 (Annexure P-3) in the pay band of ₹5910-₹20200 (₹1900 Grade Pay).

When the appellant went to join his duties within the stipulated period, he was not allowed by the respondents to join on the ground that his caste certificate was issued by the State of Haryana.

According to the appellant, his father was an employee of the Punjab Government, though he had now retired from service, and he is drawing his pension from the Punjab Government.

He placed reliance on (a) instructions issued by the Personnel Department, Punjab dt.14.06.1999 (Annexure P-4) by the Punjab Government, and (b) also a certificate issued by the Principal of the School where his father was employed as a Lecturer in Economics prior to his retirement mentioning that appellant's father was an ex-employee of the Punjab Education Department, that he retired as Lecturer in Economics from

Govt. Senior Secondary School, Handesra, District S.A.S. Nagar, Mohali, Punjab in connection with the affairs of the Punjab Government for a period of past three years, and that the appellant's father belongs to the Scheduled Caste category (*Balmiki*) as per his service record.

When the respondents did not permit him to join the duties as Accounts Clerk, he made a representation to respondent No.2 on 16.04.2012 & 26.04.2012 requesting him to allow him to join his duties, and also on 22.06.2012 to respondent No.1 along with proof of his belonging to the Scheduled Caste community. The said representations were filed as Annexures P-6 to P-8.

On receipt of the appellant's Annexure P-8 representation, the Department of Welfare (Reservation Cell), Punjab Government forwarded his application in original annexing the documents to respondent No.2, and asked them to send their remarks to the said Department within 2 days vide Annexure P-9 dt.25.07.2012.

In the said letter, a reference is made to certain instructions issued by the Punjab Government on 20.05.1997, 06.06.1996 and 14.06.1999 which directed that children/ward of the pensioner of Punjab Government irrespective of the fact that the original house of the retiree is in the State other than Punjab or he has settled after retirement in or outside Punjab, be treated as having the same caste as his parents.

Certain reminders were sent by the Department of Welfare, Punjab even subsequently including Annexure P-10 dt.04.10.2012, and on receipt of Annexure P-10, respondent No.2 addressed a letter on 30.10.2012 to respondent No.3 seeking clarification as to what is to be done in the matters

where caste certificate had been issued by other States, and the candidates are seeking reservation on that basis for the purpose of appointment.

The Punjab Welfare Department (respondent No.3) wrote to the Managing Director of respondent No.2 on 23.01.2013 advising them to do the needful, and allow the appellant to join his duties as Accounts Clerk in view of the selection after participating in the selection process, and keeping in mind the Government instructions issued in that regard from time to time.

Instead of complying the advice given by respondent No.3, vide letter dt.19.02.2013 (Annexure P-12), respondent No.2 once again sought clarification with regard to what is to be done in the matters where caste certificate had been issued by the other State, and the candidates are seeking reservation on that basis for the purpose of appointment.

CWP-3761-2014

The appellant then filed CWP No.3761 of 2014 in this Court for a direction to the respondents to allow him to join as Accounts Clerk in the respondent No.1-Corporation in view of Annexure P-3 appointment order dt.16.03.2012, and also seeking consequential benefits.

He contended that in the advertisement in question, the posts were advertised under the provisions of the Punjab Scheduled Castes and Backward Classes (Reservations and Services) Act, 2006, and as per Section 2 of the said Act, “Scheduled Castes” are defined as Scheduled Castes notified by the President of India under Article 341 of the Constitution of India by the Constitution (Scheduled Caste order 1950) as amended from time to time.

He contended that in the list notified by the President of India, the *Balmiki* caste, to which the appellant belongs has been included in the

State of Punjab as can be seen from Annexure P-13 list. He relied on a Government letter No.2245-WG-11-54/31488 dt.07.06.1954 where *Balimiki* caste had been declared as a Scheduled Caste.

He also relied on the caste certificate issued to his father vide Annexure P-14 that he belong to the Scheduled Caste. He therefore contended that he is undoubtedly a member of the Schedule Caste community, and he cannot be deprived of his valuable right of public appointment.

The appellant alleged that as per the provisions of the Constitution, a member of the Scheduled Caste community notified in any of the States within the territories of India, having regard to the provisions contained under Article 341 of the Constitution of India, is entitled to get the benefit of the said status for the purpose of entering into a Government service, and therefore action of the respondents is not sustainable in the eyes of law.

He pointed out that his father had been an employee of the Punjab Government, and was a pensioner from the said Government though he is settled in the State of Haryana, and he did not lose the status of the Scheduled Caste by such residence, so the benefit of the Schedule Caste status cannot be denied to the appellant, and such an action is totally unjust and unfair.

Stand of Respondent No.2-State Ware Housing Corporation in CWP-3761-2014.

It was pointed out in the written statement filed in CWP-3761-2014 by respondent No.2-State Ware Housing Corporation that the appellant had applied for the post of Accounts Clerk pursuant to the advertisement issued on 23.09.2011, and even Annexure P-3 appointment

letter dt.16.03.2012 issued to him contend a stipulation that *the offer was subject to verification of caste/academic and other certificates by the concerned Department.*

It is stated that the document submitted by the appellant regarding his reserved status and residence were submitted at the office of Director, SC/BC & Social Welfare Department, Chandigarh for verification, and the Welfare Department had returned the reservation certificate of the appellant with a comment that it is not valid for reservation in the Punjab State since the Scheduled Caste certificate was issued from the State of Haryana.

It is stated that since the said Department did not verify/accept the caste certificate of the appellant for the purpose of appointment in the State of Punjab, he was rightly not permitted to join the post reserved for the reserved candidate from the State of Punjab.

It is further contended that the Govt. instructions relied on by the appellant grant the benefit to the Punjab residents, and also provides for the prescribed proforma for issuance of caste certificate; that the certificate submitted by the appellant was not in the prescribed proforma as it had not been issued by the authorities in the State of Punjab, and so was not accepted by respondent No.3.

Reliance is placed on memo No.1/9/2011-RS1/878 dt.21.10.2011 clarifying that Scheduled Caste/Scheduled Tribe person *on migration from the State of his origin to another State* will not lose his status as SC/STs, but he would be entitled to concessions/benefits admissible to the SC/STs from the State of his origin and not from the State where he has migrated.

It is contended that the appellant is not a resident of the State of Punjab, and he is a resident of Ambala in the State of Haryana, and his caste certificate was issued by the Haryana Government and was not accepted by respondent No.3 i.e. Social Welfare Department.

It is contended that since the caste certificate submitted by the appellant was not accepted by respondent No.3, his conditional appointment lapsed.

Stand of Respondent No.1 in CWP-3761- 2014.

Respondents No.1 & 3 has filed the written statement contending that the appellant was wrongly claiming the benefit of reservation in the State of Punjab by producing a Scheduled Caste certificate of his father, and it has to be got issued from the Revenue Authority of the State of Punjab.

It is contended that the caste certificate produced by the appellant is of *Balmiki* Caste, but it was issued by the Sub Divisional Officer (Civil), Ambala, State of Haryana.

A reference is also made to instructions issued on 22.03.1977 (Annexure R-1) to all State Governments/Union Territories clarifying that the prescribed authority of the State Governments/Union Territories can issue Scheduled Caste/Scheduled Tribe certificates to a person who is a *bona fide* or permanent resident of that State on or before the date of notification of the Presidential order declaring caste of that State as Scheduled Caste/Scheduled Tribe; and in case of persons born after the date of notification of the Presidential order, the place of residence for the purpose of acquiring Scheduled Caste/Scheduled Tribe status is the place of permanent abode of

their parents at the time of the notification of the Presidential order under which they claim to belong to such a caste/tribe.

Reference is also made to the instructions dated 06.08.1984 (Annexure R-2) issued by the Government of India circulated to all the States which clarify that the person, on migration from the State of his origin will not get the benefit from the State where he has migrated.

The order of the learned Single Judge

Learned Single Judge then passed the impugned order on 20.02.2018 dismissing CWP-3761-2014 filed by appellant herein.

He referred to Clause 7 (a) of the advertisement which stated as under:-

“7. Candidates selected in the written examination shall;

(a) Produce their original certificates/testimonials in person as and when required by the Punjab State Warehousing Corporation, Chandigarh. The sports persons seeking reservation under sport quota shall submit Sports Gradation Certificate issued by Director Sports, Punjab, as per latest instructions and the SC/ST category certificate shall be in accordance with the instructions of the department of Welfare, Punjab and the certificate for the Ex-servicemen shall be in accordance with instruction of the concerned Department. Candidates already in service to submit 'No Objection Certificate' from their Departments.”

He held that it was incumbent on the part of the appellant as per the said Clause to submit the caste certificate as indicated therein; that instead he had supplied the certificate issued by the authorities of the State of

Haryana; the Government of India issued Policies/Instructions from time to time in this regard and instructions dt. 06.08.1984 circulated to all the States clarified that person *on migration* from the State of his origin will not get the benefit from the State where he has migrated. He therefore held that the appellant cannot take benefit of reservations in the State of Punjab.

The LPA

Assailing the same, this appeal is filed.

Learned Counsel for the parties have reiterated the contentions raised before the learned Single Judge.

Consideration by the Court.

Articles 16, 19, 340 and 341 of the Constitution were enacted for the persons like the appellant in the form of incentives, preferences, and benefits to put them on even field with others who have hitherto enjoyed a major share of facilities for development and growth offered by the State, so that they may, in the course of the time, be able to overcome the handicap caused on account of denial of opportunities.

It cannot be denied that the Scheduled Castes and Scheduled Tribes had to suffer social disadvantages and was denied facilities for development and growth in certain States, and to grant equality in those States where they suffered and were denied benefits for developed and growth, certain incentives in the form of reservation etc. had been provided to them to enable them to compete on equal terms with more disadvantageous and developed sections of the Society.

This is an important factor to be kept in mind.

From the facts narrated by the appellant, it is clear that appellant's father had been employed in the State of Punjab as Lecturer in Economics in the Government Senior Secondary School, Handesra, District S.A.S. Mohali in connection with the affairs of the Punjab Government, that he has retired from service, and as per Annexure P-5, appellant's father belonged to the Scheduled Caste *Balmiki*.

After retirement, the appellant's father appears to have settled down in Ambala City in the State of Haryana because of which the appellant had been issued the caste certificate (Annexure P-2) by the Sub Divisional Officer (Civil), Ambala on 14.02.2000.

This was the certificate which the appellant had presented before respondent No.1 when he applied in response to the advertisement issued by respondent No.2 for the post of Accounts Clerk.

No doubt the advertisement contained Clause (7) referred to by the learned Single Judge which states that the appellant had to produce the Scheduled Caste certificate in accordance with the instructions of Department of Welfare, Punjab, and the appellant did not do so.

The question is whether the appointment issued to him can be cancelled on the said pretext by the respondents.

As per Article 341 of the Constitution of India, the President may with respect to any State, after consultation with the Governor thereof, by public notification, specify the castes, races, tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that State, as the case may be.

Exercising this power, Constitution (Scheduled Caste order, 1950) Annexure P-13 was issued.

In this order issued by the President of India, it is mentioned the caste of *Balmiki* as a Scheduled Caste at Sr.No.7 as regards the State of Punjab. This is the very caste to which the appellant's father belongs to.

Normally, the son of a person who is a Scheduled Caste would also be a Scheduled Caste, and if the father of the appellant belongs to the Scheduled Caste *Balmiki*, by descent, the appellant would also belong to the same caste.

We may also point out that the State of Haryana was constituted on 01.11.1966 as a result of the partition of former State of Punjab into two States i.e. Haryana and Punjab, under the Punjab Re-organization Act, 1966.

After the creation of the State of Haryana, there was an amendment to the Constitution (Scheduled Castes Order, 1950) and in Part V relating to State of Haryana also, it is mentioned at Sr. No.2 that *Balmiki* caste is a Scheduled Caste.

So even in State of Haryana, *Balmiki* caste is treated as a Scheduled caste. This is not disputed by respondents.

It is on the basis of this amendment that the appellant had been issued caste certificate from Haryana clarifying he belongs to the *Balmiki* Caste since he also happened to be resident of Haryana at that time.

No doubt the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 mentions in Section 5 that a candidate who claims to be a member of the Scheduled Caste, shall support his candidature as such by a certificate of caste identification issued under the

Constitution (Scheduled Caste Order, 1950) notified by the President of India for the State of Punjab.

But if the person who is applying for a job in Punjab, resides in the State of Haryana, and belongs to *Balmiki* Caste which is a Scheduled Caste even in the State of Haryana, can it be insisted upon that he should get a Scheduled Caste certificate from the authority in the State of Punjab?

Can it be said that he comes within the definition of the term “migrant”, and he should be denied employment on the said count.

The fact that the State of Haryana was carved out from the composite State of Punjab in 1966 and Ambala City, prior to such re-organization, formed part of the composite State of Punjab, though post re-organization fell in the State of Haryana, is an important factor to take note of.

Persons who had been in the composite State of Punjab and who continued to reside in the area covered by the composite State of Punjab even after re-organization into separate States of Punjab and Haryana, cannot be said to have lost the Scheduled Caste status which they enjoyed in the composite Punjab State after re-organization, more so, when the caste to which they belong to, is specifically notified as a Scheduled Caste community even after the re-organization, in the State of Haryana as well in the Constitution (Scheduled Caste order, 1950) as amended.

Once the *Balmiki* community is treated as Scheduled Caste both in the States of Punjab and in the State of Haryana as per the Constitution (Scheduled Caste order, 1950), and competent authority in the State of Haryana issued the certificate certifying that the appellant belongs to *Balmiki*

Scheduled Caste, in our opinion, it is not necessary for the appellant to secure a caste certificate from the competent authority in the State of Punjab particularly when his father, having secured an employment in the Scheduled Caste category of *Balmiki* had worked in the State of Punjab, and retired.

The concept of migration invoked by the respondents cannot be said to apply in this case, and the circular dt.06.08.1984 also cited by them would not apply to this case because in both of the States of Punjab and Haryana, *Balmiki* caste is notified as a Scheduled Caste community and the State of Haryana was carved out of the composite State of Punjab in 1966.

We therefore do not agree with the reasoning given by the learned Single Judge in the impugned order that the appellant is a migrant, and is therefore disqualified on that count, and the caste certificate produced by the appellant issued by the competent authority of State of Haryana would not entitle him to take the benefit of the reservation in the State of Punjab.

We may also point out that all procedure is a handmaid of justice, and the procedural requirement of obtaining caste certificate in the instant case from the Department of Welfare, Punjab, which is impossible for the appellant to do because of his residence in the State of Haryana, cannot come in the way of his getting appointment in the State of Punjab. More so because the *Balmiki*, caste to which he belongs, being admittedly a Scheduled Caste in both the State of Punjab and Haryana, and no doubt is expressed on the genuineness of the caste certificate issued to the appellant by the authority in the State of Haryana.

No doubt the decision of the larger bench of the Supreme Court in *Action Committee on issue of Caste Certificate to Scheduled Castes and*

*Scheduled Tribes in the State of Maharashtra Vs. Union of India*¹ cited by the counsel for the respondents holds that migrants are not entitled to claim benefit of reservation in other State where they migrated from the present State would not apply to the instant case for the aforeasaid reasons.

In that case, the Supreme Court held that when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made “in relation to that State” can be treated as specification in relation to any other State whose Governor the President has not consulted.

It held that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or Backward Classes in a given State would depend on the nature and extent of disadvantages, and social hardships suffered by that Caste, Tribe or Class in that State which may be totally non-existent in another State to which persons belonging thereto may migrate.

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.

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

¹ 1994 (5) SCC 244

inputs for specifications warranting denial of reservation to the appellant in the State of Punjab.

So the said decision cannot apply to the instant case.

Therefore, on the peculiar facts and circumstances of the instant case, we are of the view that the action of the respondents in denying to the appellant the benefit of the reservation in the State of Punjab on the ground that he produced a caste certificate issued by the State of Haryana cannot be sustained, and it would defeat the Constitutional mandate provided in Articles 16, 19, 340 and 341.

Accordingly, this Appeal is allowed; impugned order dt. 20.02.2018 passed by the Learned Single Judge in CWP No.3761 of 2014 (O&M) is set aside; the respondents are directed to allow the appellant to join pursuant to the appointment order dt.16.03.2012 (Annexure P-3) within six weeks from the receipt of certified copy of this order. The appellant is also entitled to notional seniority and consequential benefits without any monetary benefits w.e.f. 16.03.2012.

Pending application(s), if any, shall also stands disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 21, 2023

Ess Kay

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No