

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-312-2018 (O&M)

Date of Decision: 24.01.2023.

Haryana Vidut Parsaran Nigam Ltd. and othersAppellants.

Versus

Balbir Singh

...Respondent.

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

.....

Present: Mr. Samarth Sagar, Advocate for the appellants.

Ms. Sangita Dhanda, Advocate for the respondent.

M.S. RAMACHANDRA RAO, J.(Oral)

The instant LPA has been preferred by the appellants challenging the order dt. 07.12.2012 passed in CWP-23315-2015.

The respondent herein had filed the writ petition challenging the order dt.08.10.2015 (Annexure P-16) by which his services had been dispensed with stating therein that he had wrongly been appointed vide order dt.22.06.2015.

The respondent had originally applied for appointment to the post of an Assistant Linesman pursuant to an advertisement issued on 02.03.1992 by Haryana State Electricity Board (HSEB), in the General category and he was also selected at that point of time.

But the said selection was quashed by an order dt.29.11.1995 of this Court passed in CWP-7382-1993 being '*Jagbir Singh and others Vs. Haryana State Electricity Board, Ambala and others*'.

Subsequently, the posts were re-advertised on 04.03.1996 (Annexure P-5) by HSEB, but it was mentioned in the said advertisement that the candidates who had earlier applied for the said post against advertisement issued on 02.03.1992 need not apply again and they would be considered on the basis of their applications.

Since the respondent had applied to the post of Assistant lineman against the said advertisement, he did not make any fresh application.

In the meantime, it appears that a notification had been issued by the State of Haryana notifying the *Gujjar* caste, to which the respondent belongs, as a Backward Class.

The respondent applied for a certificate to the competent authority and secured the said certificate on 07.09.1997 that he belongs to BC-B community. The respondent was not selected by the HSEB in the selections made pursuant to the advertisement dt.04.03.1996 as his candidature was considered in the General category and not in the BC-B category.

In the meantime, the Scheduled Castes, Scheduled Tribes and Backward Class Employees Association had approached this Court by CWP-17812-1997 contending that 336 reserved category candidates had obtained sufficiently high place in the merit to be considered for the appointment as Assistant Lineman under the general category, but they were appointed in reserved category and if they are removed from the quota of

reserved category, equal number of reserved category candidates would have been entitled to be appointed.

The said writ petition was allowed on 03.12.2008 and a direction was given to the HSEB to consider appointments to at least 336 reserved category candidates for the posts of Assistant Lineman from amongst the candidates of reserved category who may have been ousted as a result of others wrongly been appointed in reserved category, even though they were entitled for appointment on the basis of their merit even in the General category.

On 29.05.2009, the HVPNL put up on its website category wise and Roll number wise list of reserved category candidates and also issued a fresh notice in two regional newspapers inviting representations regarding correctness of names, categories mentioned in the list belonging to the reserved category within 15 days of issue of press notice i.e. by 10.06.2009.

In May, 2014, the respondent filed CWP-8799-2014 against the HVPNL and others seeking appointment on the post of Assistant Lineman on the ground that he has got 71 marks which were higher than the last selected candidate in the category BC-B.

When that writ petition was listed, the counsel for HVPNL, on instructions, stated that the respondent would be considered for appointment if he is found higher in merit than the last selected candidate as per the merit list dt.05.10.2009 prepared in compliance of the order dt.03.12.2008 passed by this Court in CWP-17812-1997. The respondent was, therefore, directed by this Court to make a representation to the HVPNL, which was directed to be decided within 30 days and the CWP-8799-2014 was thus disposed of.

Pursuant to the said order, the HVPNL passed an order dt.15.05.2015 (Annexure P-12) accepting that the respondent belongs to the BC-B category and that he is entitled for issuance of an offer of appointment by virtue of marks secured by him.

Thereupon, offer of the appointment was also made to the petitioner issued on 22.06.2015 (Annexure P-13).

Unfortunately, the same was withdrawn vide order dt.08.10.2015 (Annexure P-16) by the HVPNL. It was stated in the said order that the Managing Director had directed withdrawal of the offer of appointment issued to the respondent for the post of Assistant Lineman as his case has been reconsidered and his candidature has been considered in General category and not in BC-B category and that the respondent does not qualify for the post of Assistant Lineman in General category.

Assailing the same, the respondent filed CWP-23315-2015.

The case of the appellant before the learned Single Judge was that the respondent had never applied in the BC-B category and he could not have been given appointment in that category even pursuant to the directions to this Court to consider his case for such appointment and that appointment letter dt.22.06.2015 (Annexure P-13) was wrongly issued, since he was not within the zone of selection as per merit in the general category. The learned Single Judge framed a question:-

“as to whether respondent had not applied afresh in the re-selection process conducted in the year 1996-97 in the BC-B category, even though by that time his caste Gujar had been declared to be a backward class by the Haryana Government, he can be considered for appointment to a post reserved for that category, though upon the original selection process conducted in the year 1992 having been quashed, candidates were otherwise not required to fill in a new application from as per directions of this Court issued in CWP-7382-1993 by which the selection process of 1992 had been quashed.”

It was contended by the appellant that the respondent had not raised any objection at any stage and so he cannot now claim to be appointed in the BC-B category, since he had approached this Court only in 2014 by filing CWP-8799-2014, which was disposed of on 11.12.2014.

Learned counsel for the respondent however contended that a public notice had been issued on 07.01.2014 from all persons like the respondent and pursuant thereto the respondent had approached the Court and there is no delay on the part of the respondent.

The learned Single Judge held that admittedly the respondent belongs to the BC-B category and a certificate in that regard (Annexure P-6) had been issued on 07.01.1997 by the competent authority and it was not being challenged on the ground that it was a fake or forged certificate; that the impugned order Annexure P-16 is not valid particularly when in the BC-B category respondent secured marks enough for him to have been considered for appointment in that category above the last candidate appointed; and merely because the certificate stating that the respondent belongs to the BC-B category was not placed on record at the right time either by way of a separate application filed in the re-selection process in the year 1996-97 or even when objections were invited in the year 2009, respondent cannot be denied the job in question.

Learned Single Judge also held that the appellants, having given him an appointment pursuant to the order dt.11.12.2014 passed in the CWP-8799-2014, it would be unfair to now oust him from the said post.

Assailing the same, this LPA has been filed by the appellants.

Learned counsel for the appellants contended that there is abnormal delay and laches on the part of the respondent in seeking benefit of reservation as a BC-B candidate and the respondent's conduct in not informing the appellants that he belongs to the BC-B category after he secured the certificate in that regard on 07.01.1997 and making a claim only in 2014 ought to disentitle him to the said post and therefore the order of learned Single Judge deserved to be set aside.

Learned counsel for the respondent however refuted the said contentions and pointed out that because of the public notice issued on 07.01.2014 by the appellants, the respondent had come forward to make the claim and there are no laches on the part of the respondent.

We have noted the contentions of both sides.

It is not in dispute that when the respondent initially applied pursuant to the advertisement issued in the year 1992 for the post of Assistant Lineman, the caste of *Gujjar*, to which he belonged, had not been notified as a BC-B caste by the State Government and therefore his application for the said post was not made in that particular category, and the respondent had stated that he belongs to the General category. When the selection pursuant to the advertisement of the year 1992, came to be cancelled in CWP-7382-1993 and the same posts were re-advertised on 04.03.1996, then HSEB itself said that the persons like the respondent who had previously applied need not apply again and therefore the respondent did not chose to make an application afresh pursuant to the advertisement dt.04.03.1996, but even by then the caste of *Gujjar* had been notified as a BC-B category in 1995 and the respondent obtained a certificate in 1997 from the competent authority.

Though there appears to be some delay in disclosing the said fact to the appellants, the fact remains that when the respondent filed CWP-8799-2014, the appellant No.1 did not raise any objection about the laches on the part of the respondent in filing the said Writ Petition, but a concession was made, on instructions, that the case of the respondent would be considered for appointment if he is found higher in merit than the last selected candidate as per the merit list dt.05.10.2009.

In our considered opinion, it was open to the appellants to have contended at that point of time in that Writ Petition that the representation of the respondent cannot be entertained on the ground of laches, but they have waived the said condition. Therefore, they are estopped from raising the said contention in this writ petition. Also, the said contention can be said to be barred by the principle of constructive *resjudicata* as well.

Persons belonging to the reserved category like the respondent cannot be deprived of appointment in the said category on the basis of technical objections like the one being raised by the appellants in the instant case.

Having accepted in Annexure P-12 dt.15.05.2015 that the respondent's case deserved consideration for appointment in the reserved category of BC-B and having issued Annexure P-13 appointment letter dt.22.06.2015 in that category, it is not open to the appellants to pass the order on 08.10.2015 doing a volte-face by contending that his candidatures cannot be considered in the BC-B category and would only be considered in the General category.

In our opinion, the appellants are estopped for taking such a stand.

Therefore, we do not find any merit in the appeal and the same is accordingly dismissed.

All pending applications, if any, stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

24.01.2023
Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No