

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

CWP-8744-2023 (O&M)
Reserved on: 21.01.2025
Pronounced on: 30.01.2025

BALWINDER KUMAR

...PETITIONER

Vs.

PUNJAB STATE POWER CORPORATION
LIMITED AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Gopal Singh Nahel, Advocate, for the petitioner.

Mr. Amrit Singh Kang, Advocate, for the respondents.

DEEPAK GUPTA, J.

By way of this petition filed under Article 226/227 of the Constitution of India, petitioner prays for issuance of a Writ in the nature of mandamus by directing the respondents to consider his candidature against the unfilled post of Junior Engineer/Electrical, as petitioner is next in the waiting list and to extend the validity of the advertised posts against CRA 294/19 till the time any decision is taken on the candidature of the petitioner.

2.1 According to the petitioner, respondent-department advertised 500 posts of Junior Engineer/Electrical and many other posts vide advertisement No. CRA 294/19 (*Annexure P1*). Petitioner applied in the category of Schedule cast/Others [SC/OT] for the post of Junior Engineer/Electrical. Based on the written examination, in which petitioner secured 42.857 marks, a merit list was prepared, copy of which is Annexure P4. Petitioner was kept in the waiting list. It is contended that out of 500 total posts advertised for the post of Junior Engineer/Electrical, 125 posts were reserved for SC category as per the following bifurcation: -

Category	No. of posts
Scheduled Caste/Mazhabi Balmiki	50
Scheduled Caste/Others	50
Scheduled Caste/Mazhabi Balmiki (Ex-servicemen-self/Dependent)	10
Scheduled Caste/Mazhabi (Sports person)	3
Scheduled Caste/Others (Ex-servicemen-self/Dependent)	10
Scheduled Caste/Others (Sports person)	2
Total	125

2.2 It is contended that in case any posts of Scheduled Caste/Mazhabi Balmiki, Scheduled Caste/ Sports person and Scheduled Caste/Others category remained unfilled, then as per instructions dated 20.12.2001 and 18.12.2020 issued by respondent No.1, the said posts ought to have been filled firstly from Vimukt Jatis/Bazigars and in case no Vimukt Jatis/Bazigars candidate is available and/or eligible, then said posts could have been filled from Scheduled Caste/Others candidates. However later on, the Government of Punjab withdrew their instructions dated 18.12.2020 vide notification dated 15.09.2022.

2.3 It is further contended that department had kept 2% posts reserved for Vimukt Jatis/Bazigars category candidates by relying upon instructions dated 18.12.2020, which means that out of total 500 posts for JE/Electrical, it had kept 10 posts reserved out of the total unfilled posts of Scheduled Caste category. It is submitted that petitioner came to know that none of the eligible candidate was available from Vimukt Jatis/Bazigars category and so, all the 10 posts are lying vacant and therefore, petitioner approached the respondents by making representation dated 12.01.2023 to consider him against the unfilled posts lying vacant being the candidate in the waiting list, but no action had been taken.

2.4 It is further the case of the petitioner that as per his knowledge, it was decided by the respondents that there shall be no further extension in the validity of panel for CRA 294/19 beyond 31.03.2023 and if any posts remain vacant due to non-joining, the same shall be advertised in the next CRA. It is contended that at the time when the letter dated 17.01.2023 (Annexure P8) was issued in this regard, the claim of the petitioner was already pending and as the petitioner is eligible, so he is entitled to be considered for unfilled posts.

3.1 In reply, respondents submit that out of 125 posts reserved for Scheduled Caste category out of total 500 posts for Junior Engineer/Electrical, 8 number of eligible candidates belonging to Vimukt Jatis/Bazigars category, who passed the online computer based examination test of Junior Engineer/Electrical against CRA 294/19, remained available in the waiting list in Vimukt Jatis/Bazigars category merit and so, these 8 seats were reserved for this category (Vimukt Jatis/Bazigars) in view of the Punjab Government instructions/clarification dated 18.12.2020 and CWP-7436-2020 with the approval of higher authorities. Though, the instructions dated 18.12.2020 were later on withdrawn by the concerned department of Punjab Government vide letter dated 15.09.2022, but CWP-7436-2020 was still pending, which was disposed of on 23.03.2023 dismissing the claim of Rakesh Kumar (*petitioner of that petition*).

3.2 It is further submitted that validity of selection panel for the post of Junior Engineer/Electrical against CRA 294/19 has lapsed on 31.03.2023 and so, claim of the petitioner cannot be considered.

4. Submissions made by Ld. Advocates for both sides have been considered and paper-book perused.

5. The entire basis of the petitioner's claim is on the instructions dated 20.12.2001 and 18.12.2020 issued by the respondent so as to claim that in case no Vimukt Jatis/Bazigars candidate is available and/or eligible, then said posts could have been filled from Scheduled Caste/Others category and since the petitioner, falling in Scheduled Caste/Others category, is in the waiting list,

so his claim should be considered for the post of Junior Engineer/Electrical as the vacancy of Vimukt Jatis/Bazigars category is available.

6. Although, parties have not placed on record copy of instructions dated 20.12.2001 as referred in the petition, but said instructions are reproduced in CWP-8833-2013 decided on 23.03.2023. Here itself, it may be noticed that CWP-7436-2020 titled 'Rakesh Kumar Vs. State of Punjab and others', was later on decided in terms of the abovesaid CWP-8833-2013 titled as '***Agya Pal and another Vs. State of Punjab and others***', decided on 23.03.2023.

7. Operative portion of the instructions dated 20.12.2001 issued by the respondent/State, in exercise of powers conferred under Article 162 of the Constitution of India, while providing for some additional reservation in direct recruitment, to the Government posts/service, for the candidates belonging to Vimukt Jatis and Bazigars, reads as under: -

"It has been decided that in direct recruitment to Government services, **the posts left unfilled in the quotas reserved for Balmikis/Mazhbis, Scheduled Caste Ex-servicemen and Scheduled Caste Sportsmen, will be reserved up to 2% for the Vimukt Jatis and Bazigars.** If no candidate of the Vimukt Jatis/Bazigars is eligible, the said post will then be filled by other Scheduled Castes."

8. Later on, the Government of Punjab issued clarification on 18.12.2020 (*Annexures P6 & R1*), in the following manner: -

"It is clarified that maximum number of posts to be filled up from amongst persons belonging to Vimukt jatis and bazigars is 2 % of the total posts advertised for recruitment. All previous clarifications inconsistent with this shall stand withdrawn to the extent of such inconsistency."

9. However, on 15.09.2022, the State withdrew the abovesaid instructions issued on 18.12.2020 by reiterating that original instructions dated 20.12.2001 will prevail. Copy of the letter in this regard is *Annexure R2*.

10. In CWP-8833-2013 titled as ***Agya Pal and another (Supra)***, this Court interpreted the abovesaid policy instructions of the State with reference to reservation for the candidates belonging to Vimukt Jatis and Bazigars. The contention on behalf of the petitioners was raised in that petition that State was consistently following the practice of reserving 2% of the total advertised posts for Vimukt Jatis and Bazigars. On the other hand, the State took the stand that it has already made reservation to the extent of 25% for the Schedule caste candidates and the broad category of Scheduled Caste included the candidates belonging to Vimukt Jatis and Bazigars, who are very much a part of the Scheduled Castes as they fall in the 'other category' as per the provision of the Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006 (hereinafter referred to as '2006 Act'). It was submitted that reservation provided under the policy instructions dated 20.12.2001 is dependent upon an eventuality, which may or may not happen in a particular selection and such reservation was not in addition to what has already been reserved for the Scheduled Caste, inasmuch as intention of the Government was not to carve out and make separate reservation to the extent of 2% of the posts, out of the posts reserved for the Scheduled Castes, particularly when the candidates belonging to Vimukt Jatis and Bazigars are already enlisted as Scheduled Castes in exercise of the powers under Article 341 of the Constitution of India and fall in the sub category 'and Others'.

11. Dealing with the abovesaid contentions of both the sides, This Court in CWP-8833-2013 held as under: -

“11. In the considered opinion of the Court, the answer of the aforesaid question is clear and simple. However, before answering it, it would be appropriate to notice certain precedents on the issue relied upon by the parties. The attention of the Court has been drawn to the judgment passed by a Co-ordinate Bench in ***'Buta Ram Azad and others vs. Union of India and another'* AIR 1983 (P&H) 203** in which the history of persons belonging to the Vimukt Jatis and Bazigars was traced. After examining the old documents and the record, it was found that Vimukt Jatis were earlier known as the criminal tribes during the British regime and an Act was also passed, by the then British

regime, known as Criminal Tribes Act, 1911, which was subsequently amended in the year 1974 and certain tribes were declared as criminal tribes under the said amended Act. In that writ petition, it was claimed that the ancestors of the persons belonging to Vimukt Jatis were in fact Rajputs who migrated from Mewar to the different parts of the country in the 16th century and thus, acquired the nomadic character. Because these tribes did not cooperate with the British regime and bore a nomadic character, they became educationally and economically backward.

12. The learned counsel representing the petitioners vehemently relies upon the judgment passed in ***Pavitar Singh and another vs. State of Punjab and others'* CWP-13983-2012** decided on 29.10.2016. On a careful reading of the aforesaid judgment, it is evident that the writ petition was allowed merely on the basis of the stand taken by the Government in the review applications. The Court directed that quota of 2% for Vimukt Jatis and Bazigars is against the total vacant posts. The learned counsel representing the parties are ad idem that the correctness of aforesaid judgment is pending for reconsideration in appeal before the Letters Patent Bench. The attention of the Court has also been drawn to the judgment passed in ***Navpreet Kumar vs. State of Punjab and others'* CWP-20605-2012** decided on 23.02.2017. The aforesaid judgment is given in the peculiar facts of the case and the Court did not examine the instructions issued on 20.12.2001. Next, the reliance is placed on the judgment passed in ***Kamlesh Kumari vs. State of Punjab and another'* CWP-16903- 2014** decided on 08.05.2018. In the aforesaid writ petition, the petitioner claimed that in the light of the instructions dated 20.12.2001, the State was required to separately reserve 2% of the posts for Vimukt Jatis and Bazigars. The writ petition was dismissed by the Court on the ground that the petitioner had failed to establish that the recruitment made under the project of Sarv Sikhsha Abhiyan Authority, Punjab, shall also be governed by the instructions dated 20.12.2001. Similarly, in ***'Bhupinder Singh vs. State of Punjab' 2015 (4) PLR 703*** the High Court was considering the validity of election of the respondent no.6 to the office of Sarpanch. The writ petition was allowed on the basis of the stand taken by respondent no.4 and 5. In that judgment also, the instructions issued on 20.12.2001 were neither noticed nor they were the subject matter of interpretation. Similarly, in ***Sahil Aggarwal vs. State of***

Punjab and others' 2014 (3) SCT 813 the instructions issued by the State on 20.12.2001 were not the subject matter of interpretation.

13. Now, the stage is set to analyse the arguments of the learned counsel representing the petitioners.

14. The first argument is with respect to the retrospective operation of the instructions issued on 15.09.2022 while withdrawing the clarification dated 18.12.2020. It may be noted here that the basic instructions were issued way back on 20.12.2001. The clarification dated 18.12.2020 was issued on the basis of wrong and incorrect interpretation of the instructions dated 20.07.2001. By clarification dated 18.12.2020, the instructions dated 20.12.2001 were never superseded. Hence, there is no substance in the argument of the learned counsel that the instructions dated 15.09.2022 cannot operate with retrospective effect. In fact, by virtue of instructions dated 15.09.2022, the instructions dated 20.12.2001 continued to operate for the entire period while removing the effect of the instructions dated 18.12.2020 as reiterated by the learned counsel representing the State.

15 to 17 XXXXXXX

18. The argument of Sh. Puneet Gupta, Advocate, also does not has substance because the State while issuing instructions on 20.12.2001 has categorically provided that the additional reservation up to 2% for Vimukt Jatis and Bazigars will come into operation only if the posts are left unfilled in the quota reserved for Balmikis and Mazhbis, Scheduled Caste Ex-serviceman and Scheduled Caste sportsman. Hence, 2% reservations for the Vimukt Jatis and Bazigars cannot be read in a manner as suggested by the counsel as the instructions are neither in addition to the reservation for the Scheduled Caste nor create any sub-category apart from the four categories noticed above. Once the learned counsel representing the petitioners do not dispute that Vimukt Jatis and Bazigars falls within the sub category 'others' of the broad category of Scheduled Caste, then, there is no occasion for the Court to hold that the State intended to provide separate reservation to the extent of 2% from the total posts advertised. In fact, this will come into operation only on the happening of an eventuality. The candidates belonging to Vimukt Jatis and Bazigars are entitled to be considered amongst the Scheduled Caste (Ramdasiyas and

Others). Thereafter, if the posts are left unfilled in the quota reserved for Balmikis and Mazhbis, Scheduled Ex-serviceman and Scheduled Caste Sportsman, then, they are entitled to be considered in that category. **This 2% of unfilled quota is restricted to the quota reserved for Balmikis, Mazhbis, Scheduled Ex-serviceman and Scheduled Caste Sportsman.** This provision is in fact, in the nature of an effort of the State to grant representation to the Vimukt Jatis and Bazigars.”

12. It is true that LPA-916-2023 against the order passed in CWP-7436-2020, which in turn is based upon the decision dated 23.03.2023 in CWP-8833-2013 titled ‘Agya Pal and another Vs. State of Punjab and others’, is still pending, but as of now, decision in ***Agya Pal (Supra)*** case holds the field, as per which State never intended to provide separate reservation to the extent of 2% from the total posts advertised to the sub category of Vimukt Jatis/Bazigars and that this 2% reservation comes into operation only on the happening of an eventuality. The candidates belonging to Vimukt Jatis and Bazigars are entitled to be considered amongst the Scheduled Caste (Ramdasias and Others). Thereafter, if the posts are left unfilled in the quota reserved for Balmikis and Mazhbis, Scheduled Ex-serviceman and Scheduled Caste Sportsman, then they are entitled to be considered in that category. This 2% of unfilled quota is restricted to the quota reserved for Balmikis, Mazhbis, Scheduled Ex-serviceman and Scheduled Caste Sportsman.

13. In view of the abovesaid decision of this Court passed in CWP-8833-2013 decided on 23.03.2023, petitioner cannot claim that out of 500 posts, which were advertised for Junior Engineer/Electrical, 2% thereof i.e. 10 posts were reserved for Vimukt Jatis/Bazigars and since some of the posts of this sub category remained unfilled, so he is entitled for being considered for the unfilled posts of Junior Engineer/Electrical. It is not the case of the petitioner that any posts remained unfilled in the quota reserved for Balmikis, Mazhbis, Scheduled Ex-serviceman and Scheduled Caste Sportsman and as such, petitioner cannot claim to be considered from the unfilled posts reserved for Vimukt Jatis/Bazigars.

14. On account of the entire discussion as above, this Court does not find any merit in the present writ petition and as such, the same is hereby dismissed.

30.01.2025
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>