

GURPREET SINGH CHAUHAN v. STATE OF PUNJAB , 2013 PLRonline 0105

PUNJAB AND HARYANA HIGH COURT

Justice Augustine George Masih

GURPREET SINGH CHAUHAN v. STATE OF PUNJAB

CWP No. 9135 of 2011

4.5.2013

Service matter -

Plea that in case no candidate has been found to be eligible under the Scheduled Caste (Sportsperson) category, the post should have been advertised for the scheduled caste category and all scheduled caste candidates would have had an opportunity to apply for the same and as such the petitioner has been deprived of his right to consideration for appointment to the post in question by the action of the respondents in appointing respondent No. 4, which is in total violation of the advertisement - Instructions clearly specified that if eligible candidates for filling up the reserved posts meant for Scheduled Caste (Ex-serviceman) and Scheduled Caste (Sportsmen) are not available then these posts shall stand reverted to the general category of Scheduled Caste and will be filled up from the eligible candidates of Scheduled Caste, the action of the official respondents is in accordance with law.

Held,

Admittedly, respondent No. 4 belongs to scheduled caste category and with the operation and implementation of instructions dated 20.10.2009, was eligible for consideration for appointment to the post of Assistant District Attorney under the Scheduled Caste category although, he has been found to be ineligible under the Scheduled Caste (Sportsperson) category. Further, it has been stated by the official respondents that when the candidature of respondent No. 4 was considered under the scheduled caste general category, he obtained first position in the merit list and has thus, been rightly appointed.[Para 10]

Mr. Navdeep Chhabra, Advocate, for the petitioner. Mr. I.P. Goyat, Additional Advocate General, Punjab, for respondents No. 1 to 3. Mr. Harsh Aggarwal, Advocate, for respondent No. 4.

AUGUSTINE GEORGE MASIH, J. - Petitioner has approached this Court challenging the appointment of respondent No. 4-Shiv Dev Singh Gill to the post of Assistant District

Attorney being violative of the Punjab Government instructions dated 20.12.2001 (Annexure-P-6), according to which, posts left unfilled in the quota reserved for Balmikis/Mazhabis, Scheduled Caste Ex-servicemen and Scheduled Caste Sportsman are to be reserved upto 2% for the Vimukat Jatis and Bazigars and only if no candidate of these two categories is eligible then the post can be filled up from among other scheduled caste candidates.

2. Briefly, the facts are that an advertisement dated 17.10.2009 (Annexure-P-1) was issued by the Department of Prosecution and Litigation, Punjab, inviting applications from candidates on a specified proforma for filling up 98 posts of Assistant District Attorneys on [contract](#) basis, district wise. For the district of Sri Muktsar Sahib, total number of posts to be filled up were three. The break-up of the said post was one each for general, scheduled caste (sportsperson) and backward class. Since none of the scheduled caste sportsperson was found eligible from the three applicants who had applied for the same, a fresh advertisement dated 29.5.2010 (Annexure-P-2) was issued by the Department of Prosecution and Litigation, Punjab, for filling up the unfilled post of Scheduled Caste (Sportsperson). Thereafter, vide corrigendum dated 15.6.2010 (Annexure-P-3), advertisement dated 29.5.2010 issued qua the vacancy of Scheduled Caste (Sportsperson) category in district Sri Muktsar Sahib, was cancelled. Petitioner came to know that the said action has been taken by the respondents so that respondent No. 4 Shiv Dev Singh Gill could be appointed to the post of Scheduled Caste (Sports) category and as a matter of fact appointed.

3. Petitioner has thus, approached this Court challenging the selection and appointment of respondent No. 4 on the ground that the said respondent having been found to be ineligible in pursuance to the advertisement dated 17.10.2009 (Annexure-P-1) under the category of Scheduled Caste (Sportsperson), cannot be appointed to the post of scheduled caste, treating it as a general seat when as per the instructions dated 20.12.2001 (Annexure-P-6), the said post could be filled up only in case a candidate from Vimukat Jatis/Bazigars were not available. Petitioner belongs to the Vimukat Jati and, therefore, was entitled to be considered for appointment to the said post.

4. Another assertion, which has been made by the petitioner, is that in case no candidate has been found to be eligible under the Scheduled Caste (Sportsperson) category, the post should have been advertised for the scheduled caste category and all scheduled caste candidates would have had an opportunity to apply for the same and as such the petitioner has been deprived of his right to consideration for appointment to the post in question by the action of the respondents in appointing respondent No. 4, which is in total violation of the advertisement dated 17.10.2009 (Annexure-P-1) and the instructions dated 20.12.2001 (Annexure-P-6).

5. Upon notice, reply has been filed by the respondents wherein the locus of the petitioner for challenging the selection and appointment of respondent No. 4 has been contested. It has been stated that the petitioner did not apply for the post in pursuance to the advertisement dated 17.10.2009, whereas respondent No. 4 and others applied for the post of Scheduled Caste (Sportsperson) category and appeared in the interview held on

20.11.2009. Since respondent No. 4 and two other candidates, who had applied for the post of Scheduled Caste (Sportsperson) category, were not found to be eligible as they did not possess the requisite certificates as required under the Punjab Recruitment of Sportsmen Rules, 1988. To fill up the unfilled post of Scheduled Caste (Sportsperson) category in district Sri Muktsar Sahib, advertisement dated 29.5.2010 (Annexure-P-2) was issued by the respondents.

6. Instructions dated 22.10.2009 (Annexure-R-4/T) issued by the Government of Punjab, Department of Welfare (Reservation Cell) came to the notice of the official respondents, which prescribe that in the absence of non-availability of Scheduled Caste (Sportsperson) category candidate, the post would revert to the Scheduled Caste category. Since respondent No. 4, when treated as a Scheduled caste candidate alongwith others, was found to be securing merit No. 1 in the said category, the advertisement dated 29.5.2010 qua the filling up the post of Scheduled Caste (Sportsperson) category in district Sri Muktsar Sahib was cancelled and respondent No. 4 was appointed as a Assistant District Attorney. Since petitioner did not apply in pursuance to the advertisement dated 17.10.2009 and there was no other Vimukat Jati and Bazigar category candidate, the instructions dated 20.12.2001 (Annexure-P-6) could not be pressed into service and thus, the petitioner has no right to claim the post left unfilled in the quota meant for the Scheduled Caste (Sportsperson).

7. Counsel for the parties have addressed their arguments on the basis of the pleadings, which have been referred to above and on consideration of the same, this Court is of the view that the challenge to the selection and appointment of respondent No. 4 cannot sustain.

8. The reason for not accepting the challenge of the petitioner is that the petitioner has no locus standi as having not applied in pursuance to the advertisement dated 17.10.2009 (Annexure-P-1), he cannot challenge the selection and appointment of respondent No. 4. That apart although, respondent No. 4 has been found to be ineligible for appointment to the post of Scheduled Caste (Sportsperson) category, but in the light of the Punjab Government instructions dated 22.10.2009 (Annexure-R-4/T), respondent No. 4 has rightly been appointed against a scheduled caste post. Paras 2 and 3 of these instructions read as follows :-

"2. It has also come to the notice of the Government that as per above instructions mentioned in para-1 of the annexure enclosed with the above referred letter, out of prescribed 25% reservation for Scheduled Castes, if the candidates for Scheduled Castes Ex-servicemen and Scheduled Castes Sportsmen are not available, these posts are filled up from amongst the general category candidates which is clear violation of reservation policy.

3. The Government has again considered this matter seriously and decided that out of prescribed 25% reserved posts of Scheduled Castes, the posts of Scheduled Castes Ex-servicemen and Scheduled Castes Sportsmen 4% and 1% respectively approved for these categories should not be filled up from the general category Ex-servicemen and general category Sportsmen in any circumstances. It is also made clear that if eligible candidates

for filling up the reserved posts meant for Scheduled Castes Ex-Servicemen and Scheduled Caste Sportsmen are not available then these posts shall stand reverted to the general category of Scheduled Castes and will be filled from the eligible candidates of Scheduled Castes.”

9. In the light of the above instructions wherein it is clearly specified that if eligible candidates for filling up the reserved posts meant for Scheduled Caste (Ex-serviceman) and Scheduled Caste (Sportsmen) are not available then these posts shall stand reverted to the general category of Scheduled Caste and will be filled up from the eligible candidates of Scheduled Caste, the action of the official respondents is in accordance with law.

10. Admittedly, respondent No. 4 belongs to scheduled caste category and with the operation and implementation of instructions dated 20.10.2009, was eligible for consideration for appointment to the post of Assistant District Attorney under the Scheduled Caste category although, he has been found to be ineligible under the Scheduled Caste (Sportsperson) category. Further, it has been stated by the official respondents that when the candidature of respondent No. 4 was considered under the scheduled caste general category, he obtained first position in the merit list and has thus, been rightly appointed.

11. The action of the respondents in cancelling the advertisement dated 29.5.2010, which was for unfilled post of Scheduled Caste (Sportsperson) category of Sri Muktsar Sahib district, vide advertisement dated 15.6.2010 (Annexure-P-3) is in accordance with law.

12. In view of the above, the selection and appointment of respondent No. 4 is upheld and the present writ petition stands dismissed being devoid of any merit.