
(2013) 03 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2648 of 2013

Chandigarh Administration

APPELLANT

Vs

Sunil Kumar

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2014) 2 SCT 398

Hon'ble Judges : Surya Kant, J;R.P. Nagrath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surya Kant, J.—The Chandigarh Administration is aggrieved by the order dated 17.8.2012 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in O.A. No. 380/PB/2012 dated 7.8.2012, whereby the petitioner-Administration has been directed to offer appointment to the first respondent as "Cook" under the Indian Reserve Battalion, Class-IV post in Police Department, Union Territory, Chandigarh. The short question that arises for consideration is whether or not the first respondent belongs to reserved category of "Other Backward Classes" (OBC)?

2. The petitioner-Administration advertised some Class-TV posts including that of Cook against which respondent No. 1 also applied in the reserved category of "Other Backward Classes" (OBCs) and he produced the certificate dated 29.5.2006 issued in his favour by the Competent Authority of District Sangrur certifying that he belongs to "Lohar" caste which is recorded as backward class under the Punjab Government Notification dated 2.2.1994. The first respondent was selected on merits but the petitioner-Administration refused to appoint him on the ground that "Lohar" caste is not included amongst OBCs in the Central List, instead, it is "Bhuhalia-Lohar" and "Bhubalia-Lohar" which are notified as "Other Backward Classes" and since respondent No. 1 does not belong to the above-stated castes, he is not entitled to the benefit meant for OBCs.

3. The Tribunal has turned down the above-stated objection observing that neither there is any distinction between "Lohar" caste or its other nomenclatures such as "Bhuhalia-Lohar" and "Bhubalia-Lohar" nor such a distinction could be pointed out by the petitioner-Administration. Consequently, a direction for appointment of respondent No. 1 has been issued.

4. The Chandigarh Administration feeling aggrieved has preferred this writ petition.

5. On the previous date of hearing, we heard learned counsel for the petitioner at some length and directed him to produce the original records.

6. Mr. Raman Kumar Sharma, Research Assistant in the office of Social Welfare Department, Chandigarh Administration, who is present in Court, has produced the original records and has very ably assisted us.

7. We find from the record that the objection raised against respondent No. 1's eligibility as OBC is on the basis of a letter dated 6.9.2005 sent by the National Commission for Backward Classes to the Chandigarh Administration, which reads as follows:-

.....This is with reference to my earlier D.O. Letter of even number dated 7th June, 2005, regarding inclusion of castes/communities, which appear in the State List, but not in the Central List of OBCs. The UT Administration had been requested to advise the concerned caste/community organizations to send requests for inclusion and in case of any difficulty in contacting them, the UT Administration could as an interim measure send the requests.

2. The Commission has since received information/proposals from some States/UTs and these are now under active consideration of the Commission. No request/proposal, however, has been received from your UT so far. I wish to reiterate that non-inclusion of castes/communities in the Central List of OBCs would deprive them the benefit of reservation in Central Services....

(emphasis by us)

8. The Administration sent its reply on 25.10.2005 and it would be profitable to reproduce its following contents:-

....I am to refer to your letter No. 11/1/2005/NCBC/RW dated 6.9.2005 addressed to Secretary Social Welfare, Chandigarh Administration on the subject cited above and to inform that there is no proposal for inclusion of any caste in the central list of OBCs meant for U.T. Chandigarh from any Association/Organization or any individual. The requisite information in respect of U.T. Chandigarh may therefore, be treated as NIL. However, a copy of notification issued by the Chandigarh Administration for declaring castes as OBC "in the Union Territory, Chandigarh....." (incomplete sentence)

(emphasis applied)

9. As may be seen from the above reproduced reply, the Chandigarh Administration sent a copy of its notification declaring certain castes as OBCs in the Union Territory, Chandigarh and did not propose to add any other caste in the OBC category.

10. The notification which was attached with the above reproduced letter is dated 27.6.1995, the relevant extract whereof reads as follows:-

..... No. F-III-SW-127/SW/OBC/95/1245 ? In pursuance of Government of India, Ministry of Personnel, Public Grievances, Pensions (Department of Personnel & Training) bearing letter No. 36012/22/93-Estt. (SCT) dated the 8th September, 1993 read with Chandigarh Administration, Finance Department Notification bearing No. 139-UTFII(14)-93/4864 dated the 31st May 1993. The Administrator, Union Territory Chandigarh is pleased to declare the following castes as "Other Backward Classes (OBCs)", in the Union Territory, Chandigarh for the purpose of reservation of vacancies in Civil posts and services in the Chandigarh Administration, namely:-

1. Aheria; Aheri, Heri, Naik, Thori or Turi

2. Berrer/Barra

xx xx xx xx

49. Lohar

xx xx xx xx

This supersedes the Chandigarh Administration, Social Welfare Department, notification bearing No. SW1-79/14556 dated the 6th October, 1979.....

(emphasis applied)

11. Thereafter, two supplementary notifications dated 3.9.2001 and 5.2.2004 were issued whereby some more castes were added in the existing list of OBCs. We do not find any notification on record superseding the previous notification dated 27.6.1995 or any other notification deleting "Lohar" caste out of the list of OBCs of U.T. Chandigarh.

12. That being so, in our considered view, respondent No. 1 is amongst the notified OBCs of Chandigarh Administration and is entitled to seek the benefit of reservation meant for OBCs in respect of the posts under the Chandigarh Administration. For the reasons afore-stated, we uphold the impugned order passed by the Tribunal and accept the claim of respondent No. 1 though on different reasons.

Dismissed.