

(2016) 02 P&H CK 0226

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 22198 of 2012, 3065 and 5685 of 2013

Charanjit Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 — Section 5(2)

Citation : (2016) 02 P&H CK 0226

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Alka Chatrath, Advocate, for the Appellant; Harkesh Manuja, Addl. AG, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—1. This order will dispose of above cases bearing CWP Nos. 22198 of 2012, 3065 of 2013 & 5685 of 2013, as common questions of law and facts are involved in them, which can conveniently be decided by a common order. The facts are taken from CWP No. 22198 of 2012 for the sake of convenience.

2. The petitioner has been ignored for appointment as a Science Mistress for failure to produce the requisite backward class certificate issued by the competent authority prior to the last date of submission of the applications in response to the advertisement dated 23rd September, 2009. The claim, inter alia, is based on discrimination when departmental authorities considered similarly situated persons eligible in the second counselling conducted when they were asked to produce the caste certificate and were permitted. She produced the certificate though issued subsequent to the cut-off date. A direction is prayed for to the respondents to appoint the petitioner against the post reserved for the backward class category candidates by taking into consideration the backward class certificate obtained after the last date.

3. The case of the petitioner is that she belongs to Khati Caste which is recognized as backward class in terms of the Punjab Government instructions containing the list of Backward Classes in the State of Punjab eligible for appointment to public posts on the basis of reservation. She produced her backward class certificate issued by the Tehsildar, Faridkot dated 14th September, 2007. The last date for applying online was 9th October, 2009. Large number of posts were advertized to be filled on contract basis. The reservation for Scheduled Castes and Backward Classes categories is governed by the provisions of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (for short "the Act"). The law provides that a certificate of Backward Class is to be within one year from the last date of submission of application and the certificate should be in terms of the Punjab Government, Department of Welfare, letters dated 17th January, 1994 and 17th August, 2005. It is common ground that the respondents issued various corrigenda on 27th September, 2009, 6th December, 2009 and 7th December, 2009 relating to the present recruitment process. These corrigenda gave fresh opportunity to the candidates to make corrections in their applications already submitted. The corrigendum dated 27th September, 2009 (Annex P-4/1) contains a note stipulating that "those candidates who had applied before the issuance of this corrigendum, such candidates can make correction online in their applications from 16.10.2009 to 23.10.2009 up to 5.00 PM". As per the corrigendum dated 6th December, 2009, the candidates possessing higher qualification were permitted to submit applications till 15.12.2009.

4. The candidates were called on 13th December, 2009 for scrutiny of original certificates/documents by the Screening Committee. Since the name of the petitioner appeared in the provisional merit list, she presented herself at the venue for scrutiny of documents, which she says were found in order. At the time of interview/counselling she carried with her latest backward class certificate along with the old backward class certificate for their production before the Committee. After scrutiny of documents, the respondents released category-wise merit list and in the said list, the name of the petitioner figured at Sr. No. 26 in the B.C. Category shown to have secured 64.666 marks. The successful candidates were promised appointment orders within a week. It transpires that a revised merit list of male and female candidates was prepared on 9th July, 2010 and a fresh result sheet was published on the website on 25th February, 2011, where here category was changed from B.C. to General by recording the words of denial: "not eligible and is considered in General category, but becomes overage". This takes us to the petitioner's date of birth which is 10th April, 1969. Scheduled Castes and Backward Classes candidates are entitled to relaxation of 5 years in age. The petitioner was 39 years, 8 months and 21 days as on 1st January, 2009 and as such she was within the prescribed age limit fixed for the Backward Class category, which is 42 years in case she is eligible reserved category candidate. If she is treated as general she is overage for employment. In the category of Backward Classes, condition of creamy-layer

stands introduced and therefore the need to show current status with respect to the cut off dates fixed in the advertisement.

5. Aggrieved by her merit lowered by changing of her category erroneously, the petitioner falls back to Punjab Government instructions dated 5th December, 1996 to rescue her, which lay down that in the first instance it will be sufficient for the candidates seeking admission or employment or other facility to indicate in the application form whether he/she belongs to the Scheduled Castes/ Backward Classes or not. These executive instructions require attested photocopy of the caste certificate to be obtained only from the selected/wait-listed candidates which she once was. It is argued that Section 5(2) of the Act requires a candidate claiming reservation under B.C. category to submit a certificate of caste identification only and the Act nowhere prescribes the time period of issuance of the relied on certificate and therefore in the said circumstances Clause 6 of the advertisement is not sustainable in law being contrary to instructions. To highlight her point she refers to decisions of this Court in CWP No. 19703 of 2006 titled "Gurdeep Kumar v. State of Punjab & others" rendered on 18th July, 2008 and in CWP No. 4242 of 2007 titled "Gyatri Jyoti v. State of Punjab & others" rendered on 30th September, 2008 to contend that the requirement of producing a revised Backward Class certificate by the last date for submission of application is misplaced and unreasonable to the object sought to be achieved. The Court held that a person acquires caste by birth and a caste certificate is only recognition of such status of the holder of that certificate.

6. When the case of the petitioner was not considered under the reserved Backward Class (Female) category, she approached this Court by filing CWP No. 4077 of 2011 for directions to the respondents to select and appoint her to the post of Science Mistress on her merit achieved in the B.C. Category. The case came up with connected cases and was disposed of by a common order dated 2nd November, 2011. The bunch of petitions was decided under lead case bearing CWP No. 5560 of 2011 titled "Jaspal Kaur & others v. State of Punjab & others". The writ petitions were dismissed. The terms of the advertisement were held to be sacrosanct to be uniformly applied to all the candidates and it was obligatory for the petitioners, who were seeking benefit of reservation to produce the certificates strictly in terms thereof. The matter would have ended there, but Court was informed by the petitioners that the departmental authorities themselves have considered similarly placed candidates eligible in the second counseling and they have been asked to produce their reservation certificate issued subsequently. Therefore, this Court while dismissing the petitions made an observation in the last paragraph after recording dismissal of the petitions that in case this was true, the petitioners shall also be at liberty to represent to the authorities to treat them at par with similarly placed candidates.

7. The petitioner along with some other candidates represented to the Government reciting the last paragraph of the order dated 2nd November, 2011.

Their cases were not considered, which brought the petitioner to invoke the contempt jurisdiction in COCP No. 1474 of 2012. The petition came up for hearing on 28th August, 2012. The State counsel filed an affidavit stating therein that the authorities have considered and rejected the claim of the petitioner vide order dated 25th August, 2012. The reason for declining the prayer is non-submission of Backward Class certificate prior to the last date of submission of application in response to the advertisement in question. The contempt petition was thus rendered infructuous with liberty to challenge the same before the Court. Anyhow the focus of the case shifted to rights coming through favourable orders allegedly passed in the case of similarly situated persons and resultantly parity of treatment was pressed into service. The petitioner obtained certificate of one Jaswinder Singh son of Shri Harjinder Singh, which indicated that the Backward Class certificate was dated 12th December, 2009 and a copy of his appointment letter was dated 4th November, 2011. It may be alluded to that the Punjab Government, Department of Welfare, issued instructions on the subject of criteria identification of the creamy layer from Other Backward Classes and from Backward Classes for their exclusion from the benefit of reservation by raising income limit from Rs. 1.00 lakh to Rs. 2.50 lakh per annum to be eligible. These instructions were issued on 17th August, 2005. The instructions were however superseded by the fresh instructions dated 24th February, 2009 on the same subject raising income limit from Rs. 2.50 lakh to Rs. 4.5 lakh for exclusion of persons belonging to the creamy layer among the Backward Classes.

8. As said before, the present advertisement under consideration was issued on 23rd September, 2009 and therefore the income criteria would be governed by the Punjab Government instructions dated 24th February, 2009. Due to the introduction of the concept of creamy-layer among Backward Classes following the ruling of the Constitution Bench of the Supreme Court in *Indra Sawhney v. Union of India & others*, , AIR 1993 SC 477, Backward Classes unlike Scheduled Castes to be eligible is a shifting boundary and therefore the insistence of prescribing time periods in direct recruitment advertisements for production of contemporary Backward Class certificates to demonstrate that a candidate validly falls in the category of reservation with passing time with eyes set within income limits and whether they are below the maximum prescribed. This is unlike members of the scheduled caste category, who are governed by the status at birth without any income criteria. It is common ground that the petitioner did not produce her Backward Class certificate on the date of application within the range of one year prior to last date of application. Instead, she relied on a certificate dated 14th September, 2007, which was stale and it could not be anybody's case that she was eligible on the date when she applied.

9. In the written statement filed by the State, the respondents stand steadfast on condition No. 4 of the advertisement, which mandates candidates to ensure they fulfill all the prescribed qualifications and conditions on or before the last date of submission of applications. Condition No. 6 stipulated that the certificate of Backward Class is to be valid within one year from the last date of submission

of applications and this certificate should be in terms of the letters dated 17th January, 1994 and 17th August, 2005 issued by the Department of Welfare, Punjab Government. The petitioner was fully aware of the prescribed qualifications and conditions and also the fact that these conditions have to be met by the candidate on or before the last date of submission of applications. Moreover, no prejudice can possibly be caused to any Backward Class category candidate by submitting the Backward Class certificate issued one year prior to 9th October, 2010.

10. It may be true that the Act does not debar the Government/appointing authority to seek a certificate as desired in the advertisement. The instructions dated 5th December, 1996 also do not debar the Government from seeking such certificate, which has been issued one year prior to cut-off date. These instructions are directory in nature and no applicant can insist that relaxation be accorded to avoid giving proof of eligibility when once the conditions of appointment have been duly notified and applied uniformly to all the candidates. The State relies on the decision rendered in CWP No. 5560 of 22011 titled "Jaspal Kaur & others v. State of Punjab & others" on 2nd November, 2011 on the issue involved, which has been decided against the petitioner. Conditions No. 4 & 5 were applied to non-suit the petitioner. It was not obligatory on the recruiting authority to consider the Backward Class certificate dated 10th November, 2009 (Annex P-2) produced before the Selection Committee. Indisputably, the certificate was obtained by the petitioner one month after the last date of submission of application on time. On both counts, in the considered view of this Court the petitioner has no case.

11. The revision of the merit list has been explained as resulting from the orders of the Division Bench passed in CWP No. 12275 of 22000 titled "Neelam Rani v. State of Punjab & others" on 8th February, 2010, which struck down separate seniority list of male and female teachers, as being violative of gender law. The two lists had to be merged to form one seniority list and therefore the necessity of revising merit arose in compliance of the Court orders, when the merit list (Annex P-5) was issued, it was titled "Category-wise Combined Provisional Merit List. This list contained only the names of male and female Backward Class candidates in order of their provisional merit and the name of the petitioner figured at Sr. No. 26 in the said merit list. This was a provisional arrangement which suffered change with the change of law. The State avers that when the Backward Class certificate is ruled out of consideration then the result of the petitioner could be declared only in the General category, in which list she does not make it on merit for selection as Science Mistress. The last selected candidate in the General category for the post of Science Mistress secured merit position 65.2255 as against 64.0666 secured by the petitioner. The recruiting authority caused neither injury nor prejudice to the petitioner in declaring her result in the general category when she had herself to blame by failing to stick to the law at her own peril. Ordinarily, in direct recruitment time and tide wait for no candidate when the rules of the game are not abided by.

12. Re: discrimination & parity of treatment- The last gamble.

The case of Gurdeep Singh has been distinguished in para. 15 of the written statement informing that Gurdeep Singh was an applicant for Hindi Master in the category of Backward Class under a previous advertisement dated 27th October, 2006. The terms and conditions of both the advertisements are materially different. There is no discrimination practiced. Gyatri Jyoti was also similarly situated as Gurdeep Singh and therefore her case is also of no help to the petitioner. To come to the moot issue of discrimination based on Mamta Rani and Jaswinder Singh it is revealed that their cases are distinguishable for good reasons. Mamta Rani had submitted her certificate dated 1st December, 2008 in respect of her belonging to the category of dependent of Ex-servicemen. Therefore, the Departmental Selection Committee made a report dated 17th May, 2012 in favour of Mamta Rani. The Committee also noted that Mamta Rani submitted her Scheduled Caste certificate issued to her on 30th June, 2005 by the competent authority, which was valid without there being element of creamy-layer. The certificate was good for all times. So far as Jaswinder Singh is concerned, his Backward Class certificate was issued by the competent authority on 5th October, 2009 and therefore it was permitted to be taken into consideration being obtained prior to the last date of submission of applications and would clearly fall within the rule laid down by a host of judgments of this Court as well as of Supreme Court that such a certificate deserves to be accepted even though produced subsequently but rooted in the permissible past. When the cases of Mamta Rani and Jaswinder Singh stand explained, the case of discrimination set up by the petitioner must fail on all counts.

13. It would not be out of place here to deal with the few judgments cited by Ms. Chatrath appearing for the petitioner. In *Jyoti Rani v. State of Punjab* (CWP No. 2831 of 2011 decided on 5th December, 2012), the Court dealt with an advertisement which stipulated that the original caste certificate issued by the competent authority in favour of the Ex-servicemen (Dependent) would be produced at the time of counting itself. Therefore, the said case is distinguishable on latitude given in the advertisement. In *Surinder Kumar v. Union of India & others* (CWP No. 15272 of 2012 decided on 6th November, 2013), I had the occasion to deal with a somewhat similar issue arising in a recruitment process of Constables in Central Industrial Security Forces (CISF) for the reserved categories of Other Backward Classes. In this case, amended Caste certificate issued on 9th May, 2012 was beyond the closing date on 4th March, 2011 but it was issued in place of original certificate by the competent authority himself, the Tehsildar Fazilka which would relate back to save candidature in the reserved category. The problem arose when the petitioner submitted his caste certificate in on Central Government format which was required in the Punjab format. This defect was cured retrospectively as the caste fell in both the lists. But such a thing has not happened in this case and therefore no reliance can be placed on *Surinder Kumar's* case.

14. In view of the factual position explained by the State to the satisfaction of the court, the decision of the Supreme Court in *Charles K. Skaria & others v. Dr. C. Mathew & others*, , AIR 1980 SC 1230 will be of no assistance to the petitioner. The last judgment relied upon was delivered by the learned Single Judge in CWP No. 14796 of 2011 titled "*Parminder Kaur v. State of Punjab & others*" on 15th February, 2013. In this case, the Court dealt with the same advertisement as is under consideration for the present. The Halqa Patwari, Fatehgarh Panjor, District Moga reported about the petitioner being a Backward Class on 1st October, 2009, which was a date much before the cut-off date for submitting application forms in pursuance to the advertisement dated 23rd September, 2009. Parminder Kaur belonged to Kamboj Sikh caste, which was recognized as Backward Class in Punjab. The certificate produced in the application was dated 29th October, 2008 and the last date of submission of application forms was 9th October, 2009. But the verification of caste by the competent authority had taken place within the time prescribed i.e. before the last date. It was in these circumstances the Court took the view that the certificate would relate back and the subsequent ministerial act of issuance of the physical document in the prescribed format was supplied. Therefore it could not be held against the petitioner when the certificate was signed and stamped by the Tehsildar and thus the direction was issued to consider the case of Parwinder Kaur for appointment. It is not the case of the petitioner that her caste stood verified before the last date by the Tehsildar/Revenue authorities.

15. In summary, the position is that the case of the petitioner is foreclosed with the passing of the orders in Jaspal Kaur's case to which she was a party in a connected writ petition decided by common order. The only window left open was of unfair discrimination dependent on verifiable facts, the petitioner claiming that similarly situated persons had been treated differently but this assertion stands belied. On facts discrimination stands ruled out in view of the explanation given by the State in its written statement. Therefore, no relief can be claimed by the petitioner and she remains bound by the terms of the advertisement. The certificate produced after the cut-off date will not come to her rescue. In any case, if such a prayer were to be allowed, it would result in opening of a Pandora's box seriously affecting 3rd party rights, which may have necessitated reopening the advertisement itself and ordering a fresh selection to accommodate those valuable rights of equal treatment in others similarly situated as the petitioner, which contention is the veritable storehouse of the petitioner armoury claiming relief. The argument is dangerous and quite apparently cuts both ways. The petitioner cannot have her cake and eat it too. Equally, equal opportunity would have to be given to all contenders to consider their cases where Backward Class certificates have been issued and obtained after the cut-off date. Those who read the advertisement and did not apply for lack of valid caste certificates effective on the material date would not have applied. Their rights of consideration would be revived complicating the whole thing beyond judicially manageable standards apart from causing administrative

chaos in the event of success of the petition on a fleeting moment. Equal treatment would be lost cause. In any case, no orders can be passed without hearing persons likely to be affected in case the prayer of the petitioner is accepted in arguendo.

16. As a consequence of the foregoing discussion, the present writ petition has more mass than merit and is ordered to stand dismissed.

17. With the dismissal of this petition, the accompanying petitions are also dismissed for the same reasons.