

(2016) 01 P&H CK 0408
In the Punjab And Haryana At Chandigarh
Case No : CWP Nos. 11269 and 17466 of 2011

Gurlabh Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 — Section 4

Citation : (2016) LIC 763 : (2016) 4 RSJ 248 : (2016) 3 SCT 178

Hon'ble Judges : Amol Rattan Singh, J.

Bench : Single Bench

Advocate : Akshay Bhan, Senior Advocate and Amandeep Singh, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

Amol Rattan Singh, J.—1. The 55 petitioners in these two petitions (44 in CWP No. 11269 of 2011 and 11 in CWP No. 17466 of 2011) have challenged the action of the respondents in adopting a criteria of 50% pass marks for the general category and 40% pass marks for the reserved category candidates, in the departmental examination for promotion/appointment of regular/technical employees to the posts of Junior Engineers-II (Electrical). The main ground of challenge is that (as contended), prior to the year 2010, the minimum pass marks were kept at 40% for the general category and 30% for the reserved category.

The petitioners in CWP No. 11269 of 2011 are stated to be belonging to the "general category", whereas those in CWP No. 17466 of 2011 are stated to be from the reserved category.

2. The facts are being taken essentially from CWP No. 11269 of 2011, as the contesting respondent, i.e. the Punjab State Power Corporation Limited (respondent No. 2) (hereinafter to be referred to as the Corporation), has filed a written statement only in this case, to which the petitioners have also filed a

replication.

If necessary, the facts from the other petition would also be referred to.

3. It is contended that on 27.01.2010, respondent No. 2 circulated a notice inviting applications from regular/technical employees working in the Punjab State Electricity Board, i.e. the predecessor of the Corporation, as had the necessary educational qualification and experience given in the circular, to appear in the departmental examination, to fill up 167 posts of Junior Engineers-II (Electrical).

The circular stated that applications from persons having the requisite qualification and experience, were being invited for filling up the aforesaid posts through a departmental examination "keeping in view the Technical Services Class-3 Regulations, 1996". The following were the eligibility qualifications/conditions given in the circular:--

"1. Having diploma in electrical engineers of 3/4 years and who has worked as SSA Lineman, Meter Reader, ALM/RTM, Test Mechanic, Telephone Mechanic, Telephone Attendant and any post under Technical Category for minimum period of three years;

ITI with matric and has working in the Board as Lineman for the last 8 years.

2. He must have studied Punjabi upto matric level. Note: Must have passed National Trade Certificate or National Apprenticeship Certificate course in the trade of ITI Lineman/Elect./Wireman."

It was further stated therein that:--

"You are requested that the enclosed circular may be pasted at the notice boards in all officers so that the eligible employees may send their applications from alongwith identity card/joining sheet (as per the enclosed proforma) on the full scale paper may be typed and dully filed in along with a fee of Rs. 200/- B.A. 16 (Examination Fee) for general candidates and Rs. 50/- B.A. 16 for reserve candidates to this office latest by 22.03.2010. The syllabus prescribed for this post is also enclosed which may also be pasted at the notice board."

(Though, in the writ petition, the said circular has been referred to as Annexure P-1 and the syllabus annexed thereto as Annexure P-2, it seems that, inadvertently, the syllabus has been annexed as Annexure P-1 and the notice itself as Annexure P-2).

4. The petitioners submitted their application forms alongwith the necessary documents. The examination is stated to have been scheduled for 09.01.2011 and the petitioners were issued roll numbers 3 days prior to the said date. It is contended that for the first time, at that stage, they were made aware that the criteria to qualify the examination had been raised to 50% for the general category and 40% for the reserved category and was not, as given alongwith the syllabus (Annexure P-1), 40% for the general and 30% for reserved categories.

5. The examination was conducted on 09.01.2011 and the result declared on 10.01.2011, with a merit list prepared on the basis of minimum pass marks of 50% and 40% respectively. Only 99 posts of Junior Engineers-II (Electrical) remained filled as per the said criteria, against the 167 posts proposed to be filled.

The petitioners are stated to have represented to the Managing Director of the Corporation on 23.05.2011, stating therein that despite the qualification given in the syllabus to be minimum passing marks of 40%/30%, they were informed only at the time of issuance of roll numbers, that the benchmark had been increased by 10%.

An issue with regard to there being a change in the break up of the questions contained in the test, between general knowledge and technical knowledge, was also raised in the said representation (Annexure P-3 with the petition).

6. It is contended in the petition, that for the past 20 years the Board had been adopting the same criteria of 40%/30% pass marks for general and reserved categories respectively, including in the year 2003 when 172 posts were filled up. To support the contention, a copy of the circular in respect of the examination conducted in 2003, giving therein reference of a decision dated 08.05.2001, showing that the minimum criteria, was, in fact, 40%/30% pass marks, has been annexed with the petition as Annexure P-4.

7. The petitioners have also relied upon circulars issued from the years 1983 to 2009, in respect of other posts, i.e. those of Assistant Engineers and the Ministerial cadre, wherein also the minimum pass percentage in departmental examinations has been shown to be 40% pass marks, though in the case of Ministerial cadres, wherein in addition to 40% to be obtained in each paper, a minimum aggregate of 45% passing marks in all papers has also been prescribed.

Reference has also been made in this regard, to the departmental examination conducted in the years 1992, 1996 and 2002 for promotion/appointment to the posts of Junior Engineers-II (Electrical), again with a lower criteria of pass marks.

8. In the written statement filed by the Corporation, it has been, firstly, stated in the preliminary objections, that the petitioners have not annexed the correct circular inviting applications and that the correct circular, in fact, is the one annexed as Annexure R-1 with the written statement. In the said circular, dated 19.01.2010, the following criteria has been shown:--

"The said written test will be objective type, with minus points with multi-answered questions and it is necessary to obtain at least 50% marks for general category and 40% marks for reserved category, but the candidate getting more than 50% marks does not get right to come on panel, because panel will be prepared on the basis of merit."

9. It has further been stated that the syllabus for the examination for the posts of Junior Engineers-II (Electrical), in the year 2010, was the same as the one in

2003 and the copy of the syllabus that was annexed, shows on the reverse of the syllabus, the minimum passing marks which were prescribed in 2003, and not in the years before or after. It is further stated that the said copy of the syllabus is not signed by any official.

10. As a matter of fact, it is contended that the recruitment policy was formulated by the Corporation in its meeting held on 04.08.2000, in which the following decisions were taken, as given in Annexure R-2:--

"i) That the minimum qualifying marks is raised to 50% for general category and 40% in the case of reserve category.

ii) For non-gazetted category only written test shall be conducted while making recruitments and for gazetted categories 10% of the total marks shall be taken for holding interviews and 90% marks shall be kept for written test.

2. It is, therefore, requested that necessary action may be taken accordingly under intimation to this office."

Further, it has been stated that in the "admit cards" issued to the petitioners (Annexure R-3), it is clearly stated that the minimum criteria to pass the test would be 50% for the general category candidates and 40% for the scheduled castes candidates.

Still further, it is stated that the exams held in the year 2001 were also based on the same criteria of 50%/40% minimum pass marks, in support of which a circular dated 10.01.2001, which is similar to the one dated 27.01.2010, has been annexed as Annexure R-4 with the reply. However, a perusal of the said copy does not show any kind of criteria of pass marks given in the same. A perusal of the copy of Annexure R-5 (an undated document) which otherwise is stated in paragraph 6 of the reply, to be the criteria for the examination held in the year 2009, shows that a minimum criteria of 50%/40% was laid down.

On merits, while largely reiterating what is contained in the preliminary objections of the written statement, it has been stated that after the year 2000, the only exception with regard to a lower percentage, was in the year 2003.

11. In the replication filed by the petitioners, to the aforesaid written statement of the Corporation, it is stated that the notice, Annexure R-1, is a "made up story" so as to create a defence against the writ petition. Factually, it is contended, that Annexure R-1 was never exhibited on the notice board when the selection process was initiated. It has further been submitted that the respondents themselves have admitted that the same syllabus as was followed in the year 2003, was displayed alongwith the notice dated 27.01.2010, which thus belies the entire stand of the Corporation and as such, at least for the year in question, the respondents cannot back out from the minimum marks prescribed in the syllabus that was actually displayed/circulated alongwith the notice.

12. The petitioners in CWP No. 17466 of 2011, have essentially taken the same

stand but have given some more details with regard to the applicable service Regulations and the criteria adopted in the meeting dated 20.04.2000, for filling up the posts of Junior Engineers-II (Electrical), by way of a departmental examination.

The detailed percentage of marks obtained by each petitioner, in the exam in question, have also been given, showing that the petitioners, all of whom are stated to be from scheduled castes, have obtained between 30 to 37.5% percentage of marks and as such, according to the petition, they are to be considered to have passed the examination, on the basis of a minimum 30% pass marks for the said category of candidates.

13. It has further been contended in that petition, that even in the years 1992, 1996 and 2002, the criteria adopted was 40%/30% minimum marks and as a matter of fact, in the case of one particular candidate of the reserved category, in the year 1992, namely Piara Singh, a percentage of even 11.5% marks obtained by him was considered sufficient for declaring him to have passed the examination.

14. Other than that, it has been stated that as regards the scheduled castes category, the posts that are to be filled in by direct recruitment, are to be reserved to the extent 25% for scheduled castes and as per Section 4 of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act 2006, the percentage of reservation for filling up the vacancies by promotion, in Group-C and D services, is 20%.

The contention is that if the 25% posts reserved for scheduled castes in Group-C and D cadres are not filled up by direct recruits, then they are to be filled up from amongst the departmental candidates, who have passed the qualifying examination, (even against the direct recruitment quota posts).

15. No reply has been filed by the respondent to this petition, but as in the other petition, a copy of the Punjab State Electricity Board (Technical Services) Class-III Regulations 1996, has been annexed as Annexure R-6 and a copy of the syllabus prescribed for the departmental test to be held in 2010, has been annexed as Annexure R-7 (placed on record by way of an application moved).

The copy of the rules annexed by the Corporation, also contains an amendment made in 01.07.1997 and as such, the relevant extract (of Regulation 9) is reproduced as follows (a copy of the regulations, in Gurmukhi, has been supplied by learned counsel):--

16. As per the petitioners of CWP No. 17466, a decision was taken thereafter on 24.01.2000, by which 60% posts were kept for direct recruitment and 30% of these posts were to be filled up by way of departmental examination. However, the respondent Corporation has annexed (alongwith Annexure R-6), a copy of the office order dated 21.08.2006, wherein it is shown that 25% posts were to be kept for direct recruitment, 5% for promotion amongst diploma holders, 30% by

promotion through a qualifying departmental exam of Board employees as had three years experience in their respective posts and possessed a Diploma in Electrical Engineering, or had 8 years experience as Linesmen and had a qualification of matriculation with an ITI certificate. 40% posts were to be filled up from amongst Linesmen on seniority-cum-merit basis, in terms of the existing provisions of the Regulations of 1996.

17. Mr. Akshay Bhan, learned Senior Counsel with Mr. Amandeep Singh, Advocate and Ms. Harmanpreet Kaur, learned counsel for the petitioners in CWPs No. 11269 of 2011 and 17466 of 2011 respectively, argued in terms of their pleadings.

18. Mr. Amandeep Singh submitted that the letter dated 19.01.2010 (Annexure R-1), containing a stipulation of 50%/40% minimum pass marks never having been circulated, the respondents would be bound to be held to the letter that they actually circulated on 27.01.2010, alongwith which the syllabus was also admittedly annexed, in which the minimum pass marks prescribed were given as 40%/30% for general/reserved category candidates respectively.

In this regard, he cited a judgment of the Supreme Court in *Gopal Krushna Rath v. M.A.A. Baig* (, AIR 1999 SC 2093), which was essentially on the issue that any subsequent change regarding qualifications, after the last date for inviting applications is over, would not affect the process of selection.

Learned counsel submitted that though in the present case, the circular dated 19.01.2010 is not subsequent to the last date for inviting applications, however, the fact remains that the said circular was not circulated at all and in fact, the one circulated did not lay down the eligibility of minimum 50%/40% marks.

Referring to the same judgment, he pointed to paragraph 7 thereof which reads as follows:--

"In the present case, therefore, the appellant possessed the necessary qualification as advertised on the last date of receiving applications. These qualifications were in accordance with the Rules/guidelines then in force. There is also no doubt that the appellant obtained higher marks than the original respondent No. 1 at the selection, there is no challenge to the process of selection, nor is there any allegation of mala fides in the process of selection."

19. Mr. Rakesh Sobti, learned counsel appearing for the respondent Corporation, submitted that the contentions of the petitioners are wholly unfounded, in view of the fact that the applications filled in by the petitioners, also contained the same criteria as is being stressed upon by the respondents, which is apparent from the "admit card" issued to petitioner Jatinderjit Singh (petitioner in CWP No. 17466 of 2011), a copy of which is annexed as Annexure R-3 with the reply.

20. Having considered the matter and having gone through the pleadings, it needs to be stated at the outset that the Regulations of 1996, did not at the relevant time at least, provide for any departmental examination for filling in

30% posts. The said change was brought about by various office orders, issued initially in the year 2000 (Annexure R-2 with the written statement) and subsequently by various decisions taken in the year 2001 (Annexure R-4) and 2006 (as referred to in the circular/demand notice, Annexure R-1).

Though the Regulations of 1996 are seen to have been framed under Section 79(c) of the Punjab State Electricity Board Act, 1948, and any change to be effected in the mode of appointment should normally be by way of an amendment in the said Regulations, and not by simply issuing office orders, however, since that aspect is not under challenge before this Court, and no stand has been taken by either side on it, nothing further is being said in that regard.

21. Having said the above, now in the light of the pleadings before this Court, in my opinion, these writ petitions deserve to be allowed, primarily on the ground that the respondents have not shown any record to support the fact that the circular dated 19.01.2010 (Annexure R-1), wherein the minimum passing marks are shown as 50% for the general category and 40% for the reserved category, was actually circulated. What was circulated, admittedly, is the demand notice dated 27.01.2010 (Annexure P-2 with CWP No. 11269 of 2011 and Annexure P-1 with CWP No. 17466 of 2011). Alongwith the said circular, was circulated the syllabus on the basis of which the departmental examination was to be conducted, a copy of which is annexed as Annexure P-1 with CWP No. 11269 of 2011 and Annexure P-2 with CWP No. 17466 of 2011.

The last part of the said Annexure, reads as under:--

"To qualify the written test, minimum pass marks have been prescribed as 40% marks for General Category and 30% marks for reserved category, but securing of minimum qualifying marks will not confer upon the candidate any right for employment which would be on merit."

The respondents have not denied the issuance of this syllabus containing the above minimum percentage of marks to be obtained, but have tried to justify it, by stating that the syllabus for the departmental examination held in the year 2003 was annexed alongwith the circular dated 27.01.2010, on the back of which the minimum pass marks have been shown as above. It has further been stated that the said syllabus is not signed by any official.

22. Whereas that seems to be a fact, it is not possible to accept that what the respondents proposed to do vide the document annexed as Annexure R-1, i.e. what is shown to be a copy of the demand notice/circular dated 19.01.2010, was actually circulated by them. This is obvious from the fact that the respondents themselves have not denied issuing the circular dated 27.01.2010, alongwith the syllabus attached to it. Hence, even if it is accepted that the Corporation had actually proposed to lay down a higher percentage of pass marks for clearing the departmental examination, as per the decision taken in the year 2000, they did not circulate the said proposal to the candidates who were to take the examination and instead circulated a demand notice containing a lower

percentage of pass marks.

23. Undoubtedly, that is against the decision taken by the respondents in their meeting dated 24.11.2000, as has been shown vide Annexure R-2, but again it is admitted by the Corporation itself, that the decision of the year 2000 was not always strictly followed. In the year 2003, the percentage of pass marks was lowered, as can be discerned from paragraph 2 of the preliminary objections of the written statement, in which it is admitted that the syllabus of the examination to be conducted in the year 2010 was the same as the one in 2003, with the minimum passing marks being as given in the syllabus now issued with the circular dated 27.01.2010.

24. It is also not denied that all 167 posts were not filled up on account of the fact that all the candidates did not achieve the target of 50% minimum pass marks for the general category candidates and 40% pass marks for the scheduled castes category candidates.

25. That apart, two more things to be noticed.

First, that if the respondents' contentions are accepted that at least at the time when the "admit cards" were issued to the petitioners, three days before the examination, they came to know of the higher percentage of pass marks required, it would amount to "changing the rules of the game after the game had started". The petitioners having been informed in terms of the syllabus accompanying the circular dated 27.01.2010, that a minimum 40%/30% pass marks is required, they were obviously looking at that target while preparing for the examination, alongwith their duties. No doubt, wanting to achieve a higher standard is the object of the Corporation and it is very much within its right to lay down such higher standards, provided it is done by proper procedure.

The issue of "changing the rules of the game after the game had started", has been adjudicated upon many a time. In *Maharashtra SRTC v. Rajendra Bhimrao Mandve*, (2001) 10 SCC 51, it was held by the Supreme Court that such a path cannot be adopted. The same principle was reiterated in *K.Manjusree v. State of Andhra Pradesh and another*, (2008) 3 SCC 512. No doubt, in *Tej Prakash Pathak and others v. Rajasthan High Court and others*, (2013) 4 SCC 540, the matter was referred to a larger Bench; however, the law as it stands today is that the criteria that was displayed, on the basis of which selection is to be made, cannot be changed after the process of selection/examination has been set in motion.

26. The matter would have been different if there was a violation of statutory Regulations in the circular issued, which the respondents then rectified at the time of issuance of the "admit cards". Possibly, in such a situation, the petitioners may not have been able to avail of the benefit of the principle that the "rules" cannot be changed after the process of the examination has been initiated. However, that is not the situation. As already noticed, the Regulations do not lay down any minimum percentage of pass marks and it is only by office

orders that the said percentage has been prescribed, which has not always been followed by the respondents themselves, as in the year 2003. Thus, obviously even that criteria laid down, has not been always followed and therefore, there is good reason to hold the respondents to the terms of the circular dated 27.01.2010, alongwith what is contained in the syllabus that was circulated alongwith it.

27. Consequently, these writ petitions are allowed and the respondent Corporation is directed to declare all such candidates of the general category as had obtained more than 50% marks in the departmental examination conducted on 09.01.2011, to have passed the said examination. The same would also hold good for those candidates who had appeared in the said examination from the scheduled caste category and had obtained 40% marks. Of course, the number of posts to be filled in on the basis of declaration of result of such candidates, would only be upto a maximum of 167 posts of Junior Engineers-II (Electrical). Those posts would also be filled in from amongst the now to be declared successful candidates, as per the reservation roster in respect of general and scheduled caste category candidates. Naturally, promotions would be made after considering all such candidates as have obtained 40%/30% marks from the general/reserved categories.

Appointments upto the extent of such 167 posts, in respect of which the circular/notice dated 27.01.2010 was issued, be made within a period of two months from the date of receipt of a certified copy of this order. The petitioners as are appointed as Junior Engineers on the basis of the above directions, would be deemed to have been appointed from the same date as the last candidate already appointed, on the basis of the examination conducted on 09.01.2011. They would also be entitled to consequential benefits, other than actual arrears of pay for the intervening period, not having worked on the higher post. However, they shall be treated to have actually received such higher pay, for all other purposes, including placements in higher scales, pensionary benefits (if applicable) etc.

It is also clarified that in case the posts as were left vacant on account of non-selection of candidates with less than 50%/40% marks as per category, pursuant to the departmental examination in question, have been filled up by candidates who cleared the departmental examination in subsequent years, those "subsequent candidates" would be deemed to have occupied vacant posts beyond the 167 posts that were to be filled up in 2010-11. The above clarification is being given, even though no such stand has been taken by even the respondents, only to rule out the possibility that selections in the subsequent years may have taken place, in which those posts may have been filled in, as remained vacant pursuant to the examination held on 09.01.2011. In such a situation, the said vacant posts would be deemed to have been filled in by the petitioners and other candidates who obtained 40%/30% marks, to the extent of 167 posts. Those selected on the basis of examinations held in subsequent years,

would fill in all subsequent vacant posts. If any "subsequent candidates" are still left out, for lack of number of vacant posts, such candidates would be adjusted on the first available vacant posts as fall to the 30% quota fixed for filling in posts of Junior Engineers-II (Electrical), on the basis of a departmental examination.

The writ petitions are accordingly allowed, with no order as to costs.