
(2010) 10 P&H CK 0177
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1355 of 2010 (O and M)

Harsimrandeep Singh Sandhu	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:

Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 — Section 4(5)

Citation : (2010) 10 P&H CK 0177

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant appeal filed under Clause X of the Letters Patent is directed against order dated 11.10.2010 rendered by the learned Single Judge, dismissing CWP No. 18464 of 2010 filed by the Petitioner-Appellant in terms of judgment dated 8.10.2010 passed in CWP No. 18325 of 2010 Gagandeep and Anr. v. State of Punjab and Ors. holding that provisions of Section 4(5) of the Punjab Scheduled Caste and Backward Class Reservation in Service Act, 2006 (for brevity, "the Act"), which was struck down by a Division Bench of this Court in the case of Devinder Singh v. State of Punjab and Anr. CWP No. 18290 of 2009 decided on 29.3.2010, have been revived by an interim order staying the operation of that Division Bench judgment, passed by Hon'ble the Supreme Court on 30.8.2010 in SLP (Civil) No. 23507 of 2010 (P-5).

2. The interlocutory order has been passed by Hon'ble the Supreme Court on a SLP preferred by the State of Punjab challenging the Division Bench judgment of this Court rendered in the case of Devinder Singh (supra) striking down Section 4(5) of the Act as ultra-vires of the Constitution. The basis of that judgment is that the provision of Section 4(5) of the Act create a microscopic classification. The Division Bench in Devinder Singh's case (supra) has placed reliance on a Constitution Bench judgment of Hon'ble the Supreme Court rendered in the case

of E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, and Anr. Division Bench judgment of this Court rendered in the case of Attar Singh Dhgoor and Ors. v. State of Punjab and Ors. CWP No. 15302 of 2005 decided on 25.7.2006. The learned Single Judge has taken the view that once the operation of the Division Bench judgment striking down the provisions of Section 4(5) of the Act has been stayed by Hon''ble the Supreme Court, the Respondent authorities were obliged to follow the same and re-draw the merit list accordingly. The Appellant appears to have suffered a set back on account of the fact that in the re-drawn merit list, his name in the list of qualified candidates has been deleted.

3. Mr. Parveen K. Garg, learned Counsel for the Appellant has argued that interlocutory stay order granted by Hon''ble the Supreme Court does not constitute a binding precedent for the Courts or the authorities to follow. According to the learned Counsel even if the operation of the Division Bench judgment in Devinder Singh's case (supra) has been stayed, the precedential value of the judgment can still be followed. He has further placed reliance on another judgment of Hon''ble the Supreme Court rendered in the case of A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, and argued that in other categories of Balmiki/Mazbhi Sikhs, candidates having far lower marks have been considered qualified and whereas in the "Other Scheduled Caste" category, like the Petitioner, who has secured 216 marks, has not been considered qualified.

4. Having heard learned Counsel we are of the considered view that once the reserved categories have been permitted to be classified as per Section 4(5) of the Act, which has flung into operation after the stay order passed by Hon''ble the Supreme Court then the view taken by the learned Single Judge would be sustainable and it would not suffer from any legal infirmity warranting admission of the appeal. Accordingly, the appeal is dismissed and the order passed by the learned Single Judge is upheld.