
(1982) 05 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3882 of 1981

Joginder Singh Sethi and Others

APPELLANT

Vs

Punjab Government and Others

RESPONDENT

Date of Decision : 25-05-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 330

Citation : (1983) 1 ILR (P&H) 300

Hon'ble Judges : S.S. Sandhawalia, C.J.; I.S. Tiwana, J

Bench : Division Bench

Advocate : J.K. Sibal and Sukhdev Khanna, for the Appellant; M.J.S. Sethi, Additional A.G., Ujagar Singh and Nirmal Singh for State, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—The short, but significant controversy raised in this petition under Article 226 of the Constitution of India relates to the interpretation of Government instructions, dated July 30, 1970 (printed at page 178) of the Government publication known as (Compendium of Punjab Government Instructions, 1977 edition), (hereinafter a reference to the pages of this book would only be made whenever necessary) and their clarification,—vide Government instructions No. 4/2/79-SW. 1/7649, dated January 7, 1980. The controversy between the parties is decided with reference to the facts which relate to the point of time when it was filed on August 25, 1981. The following undisputed facts give rise to the various contentions raised.

2. The Petitioners and Respondents Nos. 3 to 6, who are employed as Clerks and Junior Scale Stenographers in the office of the Chief Engineer, Irrigation Department, Punjab, Chandigarh, and undisputably have a common seniority, are entitled to be promoted to the posts of Assistants in the said department. Petitioners are senior to Respondents Nos. 3 to 6 as per the seniority list, Annexure P. 2. These Respondents who belong to Scheduled Castes/Tribes and Backward Classes, were likely to be promoted when this petition was filed. On

the basis of the above noted instructions relating to reservation in the services of the State for such members of the society. As the anticipated promotions of these Respondents were not stayed at the time of the motion hearing of the petition, they have admittedly been so promoted during the pendency of this petition. Obviously these promotions and a few other similar promotions on the same basis during the pendency of this petition are subject to the result of this petition.

3. The State Government,--vide its instructions, dated August 23, 1966 (at 106) provided for 20 percent reservation in promotion for members of the Scheduled Castes/Tribes and 2 per cent for members of Backward Classes in Class HI and IV Services. On the relevant date out of a cadre strength of 202 posts of Assistants in the Punjab Irrigation Department under the. control of. the Chief Engineer, the Scheduled Castes and Backward Classes people were holding 47, posts. The Respondent authorities were contemplating to fill in eight more posts of Assistants in this Department through promotion from amongst the Clerks and Junior Scale Stenographers when this petition was filed. As the Petitioners were apprehensive that Respondents Nos. 3 to 6 were going to be promoted on the basis of the above noted instructions relating to reservation of posts for members of Scheduled Castes/Tribes and Backward Classes they filed the present-petition, to thwart those promotions.

4. The primary contention raised in this petition is that out of the cadre strength of 202 posts of Assistants, the members of Scheduled Castes/Tribes and Backward Classes are entitled to only 42 posts and there being already 47 members of this category in that cadre, they were already in excess of the percentage of 22 per cent reserved for such categories of people. Though this factual position is not disputed by the Respondents--official as well as non-official the explanation on their side is that out of the 47 persons holding the posts of Assistants in this department on the date when thin petition was filed, 10 incumbents belonging to the Scheduled Castes had been promoted in their own right in the general list on the basis of their seniority-cum-merit and had not availed of the above-noted instructions relating to the reservation of posts and--thus according to these Respondents there being only 38 persons who had been promoted against the reserved paints as per the roster prescribed hi the instructions at page 107, the representation of this class of people is still less than the prescribed norm.

5. As per the factual position, as stated in the petition and the return of the Respondents, which as already indicated is not in dispute, the whole controversy bails down to this as to whether these incumbents who have been promoted to the posts of Assistants on the, basis of their seniority-cum-merit and independently of the above-noted instructions dealing, with the reservaltion o? posts for those classes of people, have to be counted while determining the percentage of posts held by them, Mr. J.K. Sibal, learned Counsel for the Petitioners urges with some amount of vehemence that not only the primary

rationale or basis for introducing reservations in Government services for members of the Scheduled. Castes/Tribes and Backward Classes is to provide them adequate representation in the services of the State on the basis of their population, but the clarification, made by the Government,--vide its instructions, dated January 7, 1980 also clearly lay down that the various reserve points made for the members, of the Scheduled Castes/Tribes and Backward Classes be not filled by persons not belonging to these classes till the representation of the members of the Scheduled Castes/Tribes and Backward Classes is completed. In and nutshell Mr. Sibal submits that the members of the Scheduled Castes/Tribes and backward Classes can take advantage of the above-noted, instruction of the Government till their percentage in the services (20 per cent for the Scheduled Castes/Tribes and 2 per cent for the Backward Classes) comes up to the prescribed limit whether on the basis of these instructions or independently of the same. The case of the Respondents, as already pointed out, is that the members of the Scheduled Castes/Tribes and Backward Classes who get promotion in their own turn in the general category, cannot be taken notice of for determining the percentage of the posts held by those classes of people in the Government service. In order to appreciate the contention raised by Mr. Sibal, a detailed reference to the instructions, dated January 7, 1980, which do not form part of the above noted Compendium of Instructions, is necessary and the same are reproduced hereunder:

I am to invite your attention to the Punjab Government letter No. 12444-SD(W)-2-70/19996, dated 30th July, 1970 in which it had been made clear that the members of the Scheduled Castes/Tribes appointed or promoted in direct recruitment on the basis of qualifications and in promotion on the basis of seniority-cum-fitness are not to be counted for purpose of reservation. It is necessary to explain in this regard that on enquiry it has been observed that in some departments members of the Scheduled Castes and Backward Classes going on the basis of qualifications and seniority-cum-fitness are counted for the purpose of reservation. It is not proper. Representation of Scheduled Castes/Backward Classes is still much less than the fixed percentage. Keeping in view this it is clear that the members of the Scheduled Castes/Backward Classes appointed or promoted on the basis of their qualifications and seniority-cum-fitness are not to be counted for the purpose of belonging to the Scheduled Castes/Backward Classes so that their representation may be completed.

6. Mr. Sibal urges that as in the case of reservation of seats for Scheduled Castes/Tribes and Backward Classes in the various legislative bodies (Article 330 of the Constitution of India)--Parliament as well as State Assemblies on the "basis of population, the reservation in Government services too has to be provided for primarily on the basis of population of such Castes/Tribes and Classes. In this regard he also makes a reference to the instructions of the Government printed at 92/93 relating to the grant of protection of Scheduled Castes/Tribes and other Backward Classes employees against reduction/retranchment in Government services, wherein it has been stated:

The protection in the matter of retrenchment can be given to the extent of prescribed reservation only, viz. 20 per cent scheduled castes/tribes and 2 per cent for backward classes to each category respectively, irrespective of the fact that these castes/classes gained at the costs of each other at the time of recruitment earlier.

Besides this he also makes a reference to the instructions, dated September 7, 1963, printed at page 51 wherein it is mentioned that on the basis of the latest figures of population as enumerated in the last census operation, the Government has decided to increase the reservation in favour of members of Scheduled Castes/Tribes and Backward Classes in case of new appointments from 19 per cent to 20 per cent. Independently of this, Mr. Sibal further points out that the last lines of January 7, 1980 instructions--which "though have been styled as "a clarification of the earlier instructions" yet have the, same, legal status or enforceability?s earlier instructions for haying, emanated from the same authority Which had issued the earlier instructions--when these talk of that the members of the Scheduled Castes/Tribes and Backward Glasses appointed or promoted on the basis of their qualifications and seniority-cum-fitness are, not to be counted for the purpose of reservation and the reserved points be filled up by some other persons belonging to the Scheduled Castes/Tribes and Backward Glasses; till their representation, may, be completed are also indicative and acceptance of the same criteria, i.e. reservation on the basis of population. According to, the, learned Counsel, the only implication of these instruction is that till the members of the Scheduled Castes/Tribes and, Backward Classes achieve the prescribed percentage of 20 per cent and 2 per cent respectively, the posts meant for them at reserved points cannot be thrown open to the persons of the general category and in case the prescribed percentage is attained by the members of the Scheduled Castes/Tribes and Backward Classes, then the members of these classes cannot avail of the said instructions of the Government. After giving our thoughtful consideration to the entire matter, we find a lot of merit in this contention of the learned Counsel.

7. The learned Counsel for the Respondents urged with equal amount of vehemence on the basis of certain judgments of the Supreme Court and various High Courts that Government can in a given situation reserve posts for members of the Scheduled Castes/Backward Classes up to 50 per cent of such posts or even beyond that in order to give representation to the interest of the members of the Scheduled Castes and Backward Classes and that type of instructions of the Government cannot be held to be either invalid or contrary to the provisions of the Constitution of India. We think it is wholly unnecessary to go into the details of this question for the short reason that before us it is not the validity or legality of any instructions which is impugned, but the only case of the Petitioners is that in the light of the latest instructions styled as clarification--January 7, 1980--Scheduled Castes/Backward Classes employees are entitled to avail of the above noted instructions of the Government till their representation in the services is completed or comes up to the prescribed limit and not beyond

that. It is not a matter of dispute before us that the sole purpose of making a special provision of reservation in favour of members of Scheduled Castes/ Backward Classes in Government services is intended to promote the development of the society as a whole and to give adequate representation to backward communities. Thus a reasonable balance has to be struck between the claims of the Backward Classes and those of the other employees. This policy of reservation cannot be used for creating monopolies or for unduly disturbing the legitimate interests of other employees. Unlimited reservation or even reservation beyond the reasonable limit is bound to entrench upon the principle of equality -before law or equal opportunity in joining the Government service embodied in the Constitution of India. It appears that it is in the light of these principles that the instructions, dated January 7, 1980, have been issued and the solitary implication of these instructions is that the members of the Scheduled Castes/Backward Classes appointed or promoted on the basis of their qualifications and seniority-cum-fitness are not to be counted for the purpose of reservation and the reserved points cannot be filled by some other persons not belonging to Scheduled Castes/Backward Classes till the representation of the latter class of people is completed. As already pointed out, this representation is in proportion to the population of the Scheduled Castes and Backward Classes people.

8. Mr. Sethi, the learned Additional Advocate-General, appearing for the Respondent authorities, however, submits that to find out the adequacy of representation given to the members of the Scheduled Castes and Backward Classes, an overall picture of the employees of this class of people in the services of the State has to be taken notice of and not their strength in a particular cadre. We do not find any logic or rationale in this submission of Mr. Sethi. It may be that while fixing the percentage in favour of the Scheduled Castes and Backward Classes people, on the basis of their population, the Government may take notice of their strength in the various services of the Government, yet it does not mean that on the basis of these instructions particular cadre in a department can be made to be manned by the members of the Scheduled Castes/Backward Classes to the extent of 100 per cent or an abnormal extent. It cannot plausibly be argued that the total strength of the Scheduled Castes and Backward Classes people being less than 20 per cent and 2 per cent respectively in the various departments of the Government, they can be allowed to grab all the posts of Assistants in the Irrigation Department on the ground that even then the total strength of such employees or incumbents may not reach up to the prescribed limit. This position is made more than clear by" the following extract from the instructions of the Government itself, dated August 5, 1967, printed at page 114 which purport to have been issued by way "of clarification of the earlier instructions, dated August 23, 1966 providing for reservation in favour of the Scheduled Castes and Backward Classes:

* * *

(ii) Under the existing instructions there is reservation at 22 per cent (20 per cent for Scheduled Castes/Scheduled Tribes and 2 per cent for the Backward Classes), in direct recruitment, to all classes of State services whereas the same percentage of reservation is applicable in promotional posts in Classes III and IV services only. The intention of these instructions is that there will be a reservation to this extent in all cadres irrespective of the fact whether the posts are filled exclusively by direct recruitment or by promotion or partly by promotion and partly by direct recruitment. To make it more clear if in a cadre of 100 posts, 25 per cent posts are filled by direct recruitment and 75 per cent posts are filled by promotion, the members of Scheduled Castes/Scheduled Tribes should get 5 posts out of the 25 posts to be filled by direct recruitment and 15 posts out of the 75 posts to be filled by promotion. This will give them 20 posts which are reserved for them.

(iii) The instructions contained in para 2(4)(b) of Punjab Government letter, dated 23rd August, 1966, are applicable in those cases only where the cadre strength is less than five and not to the cadres having a strength of five or more. In the latter case the usual procedure will be observed, i.e. the very first vacancy will be reserved for the members of Scheduled Castes, etc. notwithstanding the number of vacancies available at a particular time.

(Emphasis supplied).

Thus we find no force in the submission of Mr. Sethi that while working out the percentage or the extent to which the posts of Assistants in the Irrigation Department are to be filled up, we have to look to the overall strength of the Scheduled Castes and Backward Classes employees in the various departments of the Government.

9. In the light of the above discussion it is patent that the Scheduled Castes/Backward Classes people can take advantage of the reservation made in their favour on July 30, 1970 till their representation in the cadre of Assistants in the Irrigation Department of the Punjab Government is reached or completed and not beyond that. For working out this percentage the promotees, appointees in this cadre--whether on the basis of reservation or otherwise, have to be taken notice of. In the light of this conclusion of ours we hold that any promotions of the members of Scheduled Castes and Backward Classes made beyond the prescribed limit on the basis of the above noted instructions of the Government are void and non est. We, therefore, direct the Respondent authorities to consider the case of the Petitioners for promotion in the light of the observations made above and the rules applicable to them. We, however, pass no order as to costs.

S.S. Sandhawalia, C.J.

10. I agree.