

(1998) 04 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9107 of 1991

Man Singh and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Constitution of India, 1950 — Article 16(4A), 226
Punjab Police Rules, 1934 — Rule 13.10, 13.9

Citation : (1998) 2 ILR (P&H) 242 : (1998) 120 PLR 20

Hon'ble Judges : Sat Pal, J; S.S. Sudhalkar, J; R.S. Mongia, J

Bench : Full Bench

Advocate : Balram K. Gupta, for the Appellant; K.S. Ahluwalia, Addl. A.G. and S.K. Sharma, D.A.G. for Respondent Nos. 1 to 4 and Rameshwar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—Under the Punjab Police Rules, 1934, as amended from time to time for promotion from the rank of Constables to the rank of Head Constables, from Head Constable to Assistant Sub-Inspector and from the rank of Assistant Sub Inspector to the rank of Sub-Inspector, there is a pre-requisite that the Constable, Head Constable or the Assistant Sub Inspector, as the case may be, should pass the lower School Course, Intermediate School Course, Upper School Course, respectively. These courses are held at the police training college, Phillaur, run by the Government in the Police Department. From time to time Punjab Government has been issuing instructions making certain reservations in favour of scheduled caste/backward classes for purpose of promotion to the next higher ranks. Vide instructions dated January 1, 1971, the State Government had reserved 22% posts for Scheduled Castes and 2% for Backward Classes. To achieve the object of reservation in promotion to the ranks of Head Constable, Assistant Sub-Inspector, and Sub-Inspector (for which under the Punjab Police Rules, passing of lower School Course, Intermediate School Course and Upper School Course is necessary), the State Government issued instructions on March

30, 1979 (copy Annexure P-1.) reserving the same percentage of seats in the Police Training College, Phillaur, in favour of Scheduled Caste/Backward Classes as were reserved for them for purpose of promotion. The aforesaid instructions read as under :-

"Subject:- Reservation in promotion courses for the persons Scheduled Castes and Backward Classes.

In the Home (Police) Department, there are three promotion courses, namely the lower school course, the intermediate course and the upper school course, only after passing which Constable, Head Constable, and Assistant Sub-Inspector are considered eligible for further promotion to the rank of Head Constable, Assistant Sub-Inspector and Sub Inspector respectively. While reservation has already been made in favour of pre-member of scheduled castes and the backward classes in the promotions, adequate representations of these castes and classes has not been achieved in the absence of reservation in their favour in the promotion course. The Governor of Punjab, has, therefore, been pleased to order that with immediate effect, reservation shall be made in favour of the members of Scheduled Castes and Backward Classes, in the promotion courses of the Home (Police) Department, the percentage of the reservation being the same as in the case of corresponding promotion posts. The extant instructions regarding maintenance of roster, reservation etc. shall also apply mutatis mutandis to such reservation in the promotion courses, as they apply to the Corresponding Promotion posts".

The vires of the aforesaid instructions have been challenged in the present writ petition.

2. The petitioners at the time of filing the writ petition were working as Assistant Sub-Inspector in the Punjab Police. Private respondents (respondent No. 5 to 10) who belong to Scheduled Caste Category, though junior to the petitioners, were deputed for the Upper School Course by virtue of the reservation effectuated by the instructions dated March 30, 1979, reproduced above. According to the petitioner, there cannot be any reservation at the stage of deputing Constables, Head Constables or Assistant Sub-Inspector for different course and the instructions are violative of Article 16(4) of the Constitution of India.

3. It may be observed here that in the year 1970, much prior to the issuance of the impugned instructions, the State Government relying on the earlier instructions whereby certain percentage of posts were reserved for Scheduled caste and Backward classes for different courses started deputing scheduled castes/backward classes Head Constables/Assistant Sub-Inspectors to the Intermediate School Course/Upper School Course in the same percentage as was meant for promotion. This action was challenged by many Head Constables belonging to the general category and Assistant Sub-Inspector that the instructions regarding reservation in promotion cannot be made applicable for deputing reserved category Head Constables to the intermediate School Course.

The matter was considered by a Full Bench of this Court and the judgment is reported as *Sardul Singh v. I.G.P.* 1970 S.L.R. 505. The Full Bench held that while deputing a Head Constable to pass Intermediate School Course, the process of promotion does not start. The process of promotion only starts after a Head Constable passing the intermediate School Course becomes eligible for consideration for promotion. Consequently, the Full Bench was of the view that the instructions which provide for reservation for Scheduled Caste and Backward Classes for purpose for promotion cannot be made applicable at the stage of deputing a Head Constable for passing the lower School Course as that is the stage only for acquiring eligibility.

4. It may be observed here that under the Punjab Police Rules, a Head Constable who is otherwise eligible for being deputed to the Intermediate School Course is brought on list D-1 under Rule 13.9. Those Head Constables who have already passed the Lower School Course and the Intermediate School Course are brought on list D-II under Rule 13.9 of the Rules and similarly an Assistant Sub-Inspector who has passed the Upper School Course is brought on list-E under Rule 13.10 of the Rules. The Full Bench while dealing with the case of Assistant Sub-Inspectors held that so far as Assistant Sub-Inspectors are concerned, while deputing them to the Upper School Course for making them eligible for consideration for promotion to the rank of Sub Inspector, the process of selection for promotion does not start. It is only after an A.S.I, qualifies the Upper School Course that the process of promotion would start. Consequently, the instructions regarding reservation in promotion for Scheduled Caste and Backward Classes could not be made applicable for deputing Assistant Sub-Inspector belonging to reserved categories for the Upper School Course.

5. Later on an analogous point arose in the year 1991 before another Full Bench in the case reported as *Constable Sarbjit Singh and Ors. v. State of Punjab and Ors.* 1991(5) S.L.R. 279 where the challenge was made by constables that for deputing constables to the Lower School Course, the instructions of the State Government regarding reservation for Scheduled Caste, Backward Classes for promotion could not be applicable for deputing constables, belonging to the reserved categories, for the Lower School Course. Reliance was primarily on the earlier Full Bench judgment in *Sardul Singh's* case (supra), the argument being that while deputing the Constable for the Lower School Course, the process of promotion does not start at that stage and consequently the instructions which were meant for reserving posts for the Scheduled caste, Backward classes in the promotional cadres could not be made applicable at the stage of deputing Constables for the Lower School Course. The impugned instructions in the present case do not seem to have been brought specifically to the notice of the Full Bench though reference has been made to the roster but it seems that the roster to which reference has been made was the roster prepared for carrying out the appointments by promotion of the reserved categories. The latter Full Bench in *Sardul Singh's* case and was of the view that *Sardul Singh's* case pertained to Head Constable/Assistant Sub-Inspectors for being deputed to the

Intermediate School Course/Upper School Course and did not in turn lay down anything pertaining to the Constables to be deputed for Lower School Course. The Full Bench came to the conclusion that initially a test is held under Rule 13.7 of the Punjab Police Rules and the standing order and those Constables who qualify in terms of the rules and the standing order are entitled to be put on list "B" for being sent to the Lower School Course. It is after passing the Lower School Course that a seniority list of Constables is framed under Rule 13.8 and are put on list "C, where in addition to other factors the merit obtained in the course is kept in view. Prescription of the test at the stage of preparation of list-B in terms- of Rule 13.7 is essentially a step in the process of promotion of Constables to Head Constables and consequently, it would be mandatory on the authorities to make reservation as provided in the roster for selecting candidates for being put on list "B". This step, according to the Full Bench, was missing in Rules 13.9 and 13.10 for Head Constable/Assistant Sub-Inspectors to be deputed for Intermediate Upper School Course.

6. When this case had come up before the Division Bench after noticing both the aforesaid Full Benches it observed as under :-

"Admittedly, Rule 13.9 and Rule 13.10 of the Police Rules, 1934, are silent qua the reservation of the posts for Scheduled Castes and Scheduled tribes at the time of sending the Head Constables or Assistant Sub-Inspector for Intermediate School Course or Upper School Course respectively and thus the instructions (Annexure P-1) making such reservations at this level having been issued by the State Government being not inconsistent with the rules apparently shall be treated as supplementary in nature. Thus, there is considerable force or logic in the argument of Mr. Kang, the learned Deputy Advocate General that the entire purpose of reservation of some posts for the Scheduled Castes and Scheduled Tribes at the time of promotion shall be rendered nugatory if no qualified persons in the service qua promotion for Sub-Inspectors are available. Under these circumstances this petition is required to be answered by a larger bench comprising of five Judges in order to decide whether the impugned instructions are only supplemental or inconsistent to Rule 13.10 of the Rules".

7. Hon"ble the Chief Justice placed the matter again before the Division Bench whether under the circumstances of the case it was essential to constitute a Full Bench of five judges or of three judges. The Division Bench was of the view that the matter may be referred to three Judges and if the Full Bench of three Judges is of the view that there was any conflict in the earlier two Full Benches, which might have to be resolved, then the matter can be referred to still larger bench. That is how we are seized of the matter.

8. As noticed above we are of the view that there is no conflict between the two Full Bench judgments in Sardul Singh's case and Sarbjit Singh's case. On interpretation of Rule 13.7 latter Full Bench in Sarbjit Singh's case after considering the Full Bench judgment in Sardul Singh's case came to the conclusion that the observations made in Sardul Singh's case which pertained to

Rule 13.9 and 13.10 dealing with Head Constables and Assistant Sub-Inspectors were not applicable to constables who were to be deputed for the Lower School Course. Otherwise also, we are of the view that the point before the earlier two Full Benches was entirely different than before this Full Bench. As observed in the earlier part of the judgment, the impugned instructions in the present case were not the subject matter of challenge before the earlier Full Benches. The impugned instructions were issued much after the decision in Sardul Singh's case and in Sarbjit Singh's case, the impugned instructions were not under challenge as such.

9. The question then arises is that if there are instructions of the State Government for reserving certain percentage of posts in the promotional cadre in favour of Scheduled Caste/Backward Classes then to achieve that object of reservation in promotion, can the State Government issue instructions reserving same percentage of seats for deputing constable/Head Constables/Assistant Sub-Inspectors belonging to the reserved categories for Lower School Course/Intermediate School Course/Upper School Course? Do they violate any provision of the Constitution of India or the Punjab Police Rules.

10. Learned counsel for the petitioner argued that through reservation is possible to be Laid down by the State Government for admitting students belonging to reserve categories to various Government Colleges including professional Colleges but in case of a Government employee who might be required to pass a certain course from a College/School run by the Government itself, before he can become eligible for consideration for promotion, no reservation is permissible as there is a distinction between a person who is already in Government service and a student who is seeking admission in a Government college. In other words the Government may make reservations for students who are yet to be employed in the Government service but no reservation is possible for being admitted to a Government School/College for Government employees who may be belonging to reserve categories. According to the counsel as per Sardul Singh's case (supra) in view of the Punjab Police Rules, Head Constables/Assistant Sub Inspectors have to be deputed for the Intermediate School Course/Upper School Course strictly as per the seniority of the confirmed Head Constable/Assistant Sub Inspector and if reservation is made possible by the impugned instructions, then the rules would be violated inasmuch as a Head Constable belonging to reserve category would steal a march over his seniors belonging to General Category in acquiring eligibility and would be considered for promotion earlier than the Head Constables/Assistant Sub Inspector belonging to the general category?

11. The specific stand of the respondents is that to achieve the object of reservation in promotion, it was necessary to have reservation for deputing the reserve categories to the various courses under the Punjab Police Rules inasmuch as the passing of the Course was a pre-requisite for consideration for promotion to the next higher rank and unless an opportunity was given to the reserved categories to become eligible in the same ratio as for reservation in promotion,

the instructions regarding reservation in promotional posts would become nugatory. Since in *Indra Sawhney etc. etc Vs. Union of India and others, etc.*, it had been Laid down that there cannot be any reservation in promotion, the instructions regarding reservation in promotional posts but the reservation policy in promotional posts may continue for a period of five years of the date of the judgment and the five years came to an end on November 15, 1997, we had specifically asked the State Counsel whether pursuant to Article 16(4-A) of the Constitution of India which was introduced by the 77th amendment of the Constitution after *Indra Sawhney's* case, any notification/order had been issued to continue the reservation? Learned counsel for the State produced a copy of letter from the Government dated November 13, 1997, whereby it was Laid down that in pursuance of Article 16(4-A) it had been decided to extend benefit of reservation in promotion only for Scheduled Caste beyond November 15, 1997.

12. After hearing the learned counsel for the parties we are of the view that no fault can be found with the impugned instructions of State Government making reservation for the Scheduled Caste/Backward Classes for deputing them to the various school courses. As per the rules, it is necessary that a person should have passed the Lower School Course/Intermediate School Course/Upper School Course for being considered for promotion to Head Constable/Assistant Sub Inspector/Sub-Inspector. Passing of the course makes a person eligible or a better person as compared to others and there is only one institution run by the State Government itself where such a qualification can be acquired. We see no reason why the State Government under these circumstances, to achieve the object of reservation in promotion for the reserve categories, make a similar provision of reservation to enable persons belonging to reserved categories to acquire qualifications. Supposing such instructions are not there, then the instructions regarding reservation in promotion would become otiose inasmuch as person belonging to reserved category may not be able to get promotion by virtue of reservation since he may not get qualified as his turn, as per his seniority, may not come for being deputed to the various courses. Different considerations may arise if there are some other colleges/schools wherein independently a person can acquire the requisite qualifications for being considered for a particular promotion. In that eventuality, a person belonging to reserve category may himself, after getting requisite permission, acquire the requisite qualification from another institution and then be considered for promotion in accordance with the instructions regarding reservation in promotion. However, that is not the case in hand. The learned Judges while referring the matter to larger Bench had also observed as under :

"Thus, there is considerable force or logic in the argument of Mr. Kang, the learned Deputy Advocate General that the entire purpose of reservation of some posts for the Scheduled Castes and Scheduled Tribes at the time of promotion shall be rendered nugatory if no qualified persons in the service qua promotion for Sub-Inspectors are available."

13. It is by now well settled that the Government can provide certain percentage of reservation in admission to the educational institutions run by it. The reservation can be for Scheduled Caste, Backward Classes, Sportsmen etc. etc. We do not find any substance in the argument of the learned counsel for the petitioner that though such a reservation in the educational institutions run by the State is possible, but the same is not permissible for a person who is already in the employment of the Government. There is no distinction between the two categories so far as their admission to a Government institution is concerned. The impugned instructions in the present case are rather on a better footing. Here there is only one institution run by the Government from where the requisite qualifications for eligibility can be acquired, and naturally for acquisition of qualifications for becoming eligible for promotion, a person necessarily has to be already in Government service. Further it cannot be lost sight of that there are very limited seats in different courses which are normally run twice a year. If such instructions are held to be invalid, the object of instructions regarding reservation in promotional posts would become nugatory can be illustrated thus. Supposing in the seniority, list of Head Constables in a cadre of 100, Scheduled Castes are at Sr. No. 90, onwards. For being deputed to the course, though they are otherwise eligible, their turn may not come as per their seniority for more than five years. The end result would be that in the promotional posts, the Scheduled Castes cannot get promoted against the reserved vacancies because they have not qualified the course. Till 90 Head Constables who may belong to other categories are promoted Scheduled Caste would never get a chance to be promoted against reserved post as he would not be qualified for consideration. The impugned instructions cannot be held to be ultra vires of Articles 16(4) of the Constitution of India or of the Punjab Police Rules.

For the foregoing reasons, we find no merit in this writ petition, which is hereby dismissed.

14. Before parting with the judgment, we may observe here that since vide order of the Government dated November 13, 1997, the reservation in promotion is only for the Scheduled Castes w.e.f. November 15, 1997, necessarily the instructions regarding reservation for deputing persons to the various courses would also be confined to Scheduled Caste only w.e.f. November 15, 1997. We have been told that the vires of Articles 16(4-A) of the Constitution of India have been challenged before the apex Court. If that is so and ultimately the apex Court strikes down 16(4-A) of the Constitution of India, necessary consequences thereof would be that there cannot be any reservation in promotional posts after five years of the judgment of Indira Sawhney's case (supra) and in that eventuality there would be no need for the instructions regarding deputing the reserved categories for the various courses.