

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CWP-16556 of 2022 (O&M)
Date of decision: 12.01.2023

Kalpna Komal Bhati

..Petitioner

Versus

State of Punjab and others

..Respondents

(2) CWP-18374 of 2022 (O&M)

Simran Kaur Saini & Ors.

..Petitioners

Versus

State of Punjab and another

..Respondents

(3) CWP-16664 of 2022 (O&M)

Bhawna Yadav and another

..Petitioners

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Chander Sharma, Advocate
for the petitioner (in CWP-16556 of 2022)

Mr. Rupinder Khosla, Sr. Advocate, with
Mr. Aman Sharma, Advocate
for the applicant (in CM-34 and 49-CWP-2023 in CWP-16556-
2022)

Mr. Mohit Garg, Advocate, and
Mr. PKS Phoolka, Advocate
for the petitioners (in CWP-18374 and 16664 of 2022)

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Vikas Chatrath, Advocate and
Mr. B.P.S. Thakur, Advocate,
for respondent no.8 to 14 (in CWP-16556 of 2022)

Mr. Rajesh Narang, Advocate and
Mr. Abhinav Narang, Advocate
for respondent no.15 to 21 (in CWP-16556 of 2022)

Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Shiv Kumar Sharma, Advocate and
Mr. Ravinder Sampla, Advocate
for respondent no.22 to 54.

ANIL KSHETARPAL, J(Oral)

1. The three identical writ petitions have come up for final disposal.
2. The petitioners pray for issuance of a writ in the nature of mandamus to direct the respondent-authorities to allocate their names to the concerned department for appointing them on the posts of Junior Engineers (Civil).
3. The relevant facts, in brief, are required to be noticed.
4. There were as many as 9 recruitment notices issued for the recruitment of Junior Engineer (Civil) in the various departments of the State of Punjab. The Punjab Public Service Commission held a joint competitive examination on 06.03.2022. The result of the written examination was declared on 06.05.2022. The petitioners claim that they cleared the written examination and after the scrutiny of the documents, the merit list was prepared which included the petitioners' names, however, the Government failed to appoint them, whereas efforts were being made to appoint certain other selected candidates. Hence, the writ petitions were filed by the

petitioners.

5. Pursuant to the notice in the writ petitions, reply on behalf of the respondents has been filed. It has been pointed out that the petitioners are not entitled to appointment under reservation of 33% which is only reserved for the women belonging to the State of Punjab. The Court has been informed that the candidatures of the petitioners have not been considered against the reserved posts as they are the non-domicile candidates.

6. The State of Punjab in exercise of powers conferred by the proviso to Article 309 read with Clause (3) of Article 15 of the Constitution of India has notified the Punjab Civil Services(Reservation of Posts for Women) Rules, 2020 (hereinafter referred to as 'the 2020 Rules). Rule 4 of the 2020 Rules provides for 33% reservation in favour of women in all posts in Group 'A', Group 'B', Group 'C' and Group 'D' services under all the establishments at the stage of direct recruitment and this reservation shall be horizontal and shall not be compartmentalised.

7. The question which arises for adjudication is “Whether the reservation is confined to the women of the State of Punjab or is it applicable to all the women that belong to the other States also?”

8. The learned counsels representing the petitioners contend that the rules do not make any distinction between the domicile women of Punjab and the non-domicile women candidates. It is contended that the rules provide for the universal 33% reservation for women irrespective of their place of residence, which were applicable on the date of the issuance of the recruitment notice and therefore, a clarification, if any, shall not be applicable retrospectively. They further contend that the clarification, if any,

is required to be issued as per Rule 6 of the 2020 Rules by the Department of Personnel.

9. Rule 4 of the 2020 Rules is extracted as under:-

“4. Percentage and manner of reservation of posts. -

(1) Notwithstanding anything contained in any Service rules, there shall be a thirty-three percent reservation, as per Annexure 'A', in favour of women, in all posts in Group 'A', Group 'B', Group 'C' and Group 'D' services under all the establishments at the stage of direct recruitment and this reservation shall be horizontal and compartmentalized].

(2) Where a vacancy is filled by direct recruitment by a woman on the basis of merit, then such woman candidate shall be appointed against the horizontal reservation for women within their respective vertical reservation in any category.

Explanation. -

(i) "Vertical reservation" means reservation in favour of the Scheduled Castes, Backward Classes, Other Backward Classes and Economically Weaker Sections under clauses (4) and (6) of Article 16 of the Constitution of India.

(ii) For the purposes of this rule, "horizontal and compartmentalised reservation" means reservation within each watertight category, namely, Scheduled Castes, Backward Classes, Other Backward Classes, Economically Weaker Sections and Open Category.

10. This Court has considered the submissions of the learned counsels representing the parties.

11. The learned counsel representing the respondents have drawn the attention of the Court to the decision of the Cabinet dated 18.03.2017 as reproduced in communication dated 29.01.2021 sent by the Department of Personnel. The operative part of the said communication thereof reads as under:-

“On the subject cited above, I am directed to brought to your attention towards instructions issued vide letter

no.8/30/96-3 PP1/17240-17244 dated 21.08.1997, and letter no. 8/2/2019-3PP1/1548834/1-2 and also directed to write that it has been decided by the Cabinet in its meeting held on 18.03.2017 to give 33% reservation to the women of State of Punjab in direct recruitment of Group-A, B, C and D posts. In this regard Department of Social Security & Women and Child Development in order to implement, vide letter no.11/5/2017-1SS(3SS)/3269 dated 13.12.2020 has notified the rules and after considering the letter no.1/1/2017-3DC/1588894/1, dated 3.10.2019 written by Department of Social Security & Women and Child Development to enhance reservation from 3% to 4% to Physically Handicapped in direct recruitment, the roaster points are here by re-determined, the detail of which is enclosed herewith. As such, all the Head of Departments are requested to do direct recruitment as per these roaster points.”

12. It is evident that the Cabinet in its meeting held on 18.03.2017 had taken a conscious decision to give 33% reservation “to the women belonging to the State of Punjab.” No doubt, while notifying the rules, there was ambiguity on the particular aspect of reservation. However, the rules nowhere provide that the non-domicile women of State of Punjab shall also be entitled to the said reservation. In any case, this ambivalence was removed in the communication issued by the Department of Personnel on 29.01.2021 as well as in February, 2022. In these circumstances, the

question that arises for adjudication is “Whether such clarification made by the department concerned, results in the amendment of the aforesaid rules or not?”

13. It is a well settled rule that in case of any difficulty, the State Government can issue a clarification in order to fill up the gaps/lacunae. If the rules are silent on any particular point, the Government is entitled to issue instructions to clarify the position. In para 7 of the 5 Judge Bench judgment in *Sant Ram Sharma vs. State of Rajasthan, AIR 1967 Supreme Court, 1910*, it was held as under:-

“We proceed to consider the next contention of Mr. N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

14. From the reading of the Cabinet's decision dated 18.03.2017, it is evident that the intention of the State Government was to grant 33% reservation in direct recruitment to the women of the State of Punjab.

15. As already noticed, while printing the rules, inadvertently the aforesaid fact was not incorporated. However, Rule 6 of the 2020 Rules, which enables the State Government to remove difficulties is extracted as under:-

*“6. **Power to remove difficulties:-** If any difficulty arises in giving effect to the provisions of these rules, it shall be referred to the State Government in the Department of Personnel, whose decision thereon shall be final.”*

16. On careful reading of Rule 6 of the 2020 Rules, it is evident that the State Government has the enabling power to remove difficulties if any arise while applying the rules. To recapitulate the facts, before the issuance of recruitment notices the communication dated 29.01.2021 was issued by the State Government through the Department of Personnel. In such circumstances, there is no substance in the argument of the learned counsel that once the process of recruitment has already been initiated the subsequent clarification vide communication in February, 2022 shall not be applicable. It is evident that the intention of the State Government is clear like a crystal in the meeting of the Cabinet held on 18.03.2017.

17. The next argument of the learned counsels representing the petitioners to the effect that the clarification, if any, could be issued only by the Department of Personnel and not by the Department of Social Justice, shall not become the reason for the Court to not decide the case in a particular manner, particularly when the decision of the cabinet suffers from no apparent ambiguity. The clarification shall relate back to the date of issuance of the rules because effort is made by the concerned department to implement the decision of the Cabinet.

18. In view of the aforesaid discussion, the petitioners have failed to make out a case for the issuance of a writ.

19. Hence, all the writ petitions are dismissed.

19. All the pending miscellaneous applications, if any, are also disposed of.

January 12, 2023

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

