

Jagjit Singh

Vs

State of Punjab

Civil Appeal No. 2962 of 1977

(V. D. Tulzapurkar, Jaswant Singh, V. R. Krishna Iyer JJ)

28.03.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave is directed against the judgment and order dated September 3, 1976 of the Punjab and Haryana High Court dismissing the writ petition No. 2504 of 1975 filed by the appellant under Articles 226 and 227 of the Constitution.

2. The circumstances leading to this appeal are : Six vacancies in the Punjab Civil Service (Executive Branch) having occurred in the year 1971, the State Government requested the Punjab Public Service Commission (hereinafter referred to as 'the Commission') to select and recommend six candidates to fill up the said vacancies. According to Rule 6 read with Rule 11 of the Punjab Civil Service (Executive Branch) Rules, 1930, recruitment to the Punjab Civil Service (Executive Branch) has to be made from amongst the persons whose names are borne on the register known as 'Register B' on the basis of the result of the competitive examination held by the Commission in conformity with the rules and regulations framed in that behalf. As longer time than anticipated was taken in holding the examination and completing the selection and in the meanwhile six more vacancies in the Punjab Civil Service (Executive Branch) occurred in 1972, the State Government requested the Commission to recommend the names of six more candidates on the basis of the result of the competitive examination for filling up the additional six vacancies. Accordingly after completion of the requisite formalities, the Commission held the competitive examination called the Punjab Civil Service and Allied Services Examination in December, 1972/January, 1973 to select eligible candidates for the aforesaid 12 vacancies in the Punjab Civil Service and other vacancies in the Allied Services. In the said examination, the appellant who was a member of the Scheduled Castes secured third position in the order of merit amongst the candidates belonging to the Scheduled Castes, the other two candidates above him being Harinder Singh Khalsa and Hans Raj Megh. The Commission recommended 12 persons including the aforesaid three persons who belonged to the Scheduled Castes for recruitment to the Punjab Civil Service (Executive Branch). As the appellant had been placed at serial No. 3 in the order of merit amongst the candidates belonging to the Scheduled Castes in the aforesaid examination and only two posts, one each for the years 1971 and 1972, in the Punjab Civil Service (Executive Branch) were available for members of the Scheduled Castes on the basis of 20% quota reserved for them against which Harinder Singh Khalsa and Hans Raj Megh were appointed, the appellant could not be recruited to the Punjab Civil Service (Executive Branch). He was, however, appointed as 'A' Class Tehsildar in one of the Allied Service as per the second preference indicated by him in his application seeking admission to the Punjab Civil Service and Allied Services Examination. Consequent upon his selection for appointment in the Indian Administrative Service, Harinder Singh Khalsa, who had joined the post

of Extra Assistant Commissioner in the Punjab Civil Service (Executive Branch) on or about June 21, 1974 regained his office and was relieved therefrom on August 11, 1974. Being the next candidate in order of merit amongst the Scheduled Castes candidates in the select list of the Punjab Civil Service (Executive Branch), the appellant made a representation to the State Government claiming on ad hoc basis the vacancy caused by the resignation of Harinder Singh Khalsa in accordance with the State Government's instructions contained in Circular letter No. WG-II-13(29)-61/5598 dated March 6, 1961, the validity whereof had been upheld by a Division Bench of the Punjab and Haryana High Court vide judgment dated May 26, 1966 in C.W. No. 3063 of 1965 entitled Harbhajan Lal Mudgil v. State of Punjab. The said Circular letter reads as follows :

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No. WG II-13(29)-61/5598

From

Shri

E. N. Mangat Rai, I.C.S.,

Chief Secretary to Government,

Punjab

To

All Heads of Departments,

Commissioners of Divisions,

Deputy Commissioners and the District and Sessions Judges in the Punjab and the Register,

High Court, Punjab.

Dated : Chandigarh, March 6, 1961.

Subject :- Representation of members of Scheduled Castes/Tribes and Backward Classes in service in Punjab.

Sir,

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I am directed to refer to Punjab Government letter No. 28400-WG-S-56/8090, dated November 9, 1956, wherein it is stated that with a view to ensuring due representation to members of Scheduled Castes/Tribes and Backward Classes in Government service recruitment on a Block System based on a formula of rotation is to be made and that the first vacancy is to be reserved for a member belonging to these Castes/Classes irrespective of his position interse the other candidates and the remaining four vacancies for others. The instructions further enjoin that in case it is

not possible to fill the first reserved vacancy by appointment of a candidate belonging to Scheduled Caste/Tribe or Backward Classes, this vacancy may be filled by a candidate other than the one belonging to Scheduled Caste/Tribe and Backward Classes and the reservation be carried on from vacancy to vacancy in the same block until a suitable candidate for the vacancy in the block has been found. According to the existing practice if the services of a Government servant belonging to Scheduled Caste/Tribe and Backward Classes are terminated the resultant vacancy is included in the normal pool of vacancies and is filled up in accordance with the Block System. It has been observed that in this way the underlying idea of giving due representation to members of Scheduled Caste/Tribe and Backward Classes is not achieved. With a view to safeguard the interests of the members of the Scheduled Castes/Tribes and Backward Classes, it has been decided that if the services of a Government Servant belonging to Scheduled Castes/Tribes or Backward Classes are terminated, the resultant vacancy should not be included in the normal pool of vacancies to be filled in accordance with the Block System but should be filled up on ad hoc basis from the candidates belonging to these castes and classes. In other words the intention is that the posts vacated by members of Scheduled Castes/ Tribes and Backward Classes should remain earmarked and be filled up by members belonging to these Classes.

2. There will not be any practical difficulty in finding suitable candidates belonging to Scheduled Castes/Tribes and Backward Classes in so far as non-technical posts are concerned. However, for the technical posts and those requiring specialised training or qualifications suitable personnel possessing requisite experience and qualification may not be available. Therefore, in order to avoid any administrative inconvenience by keeping these posts in abeyance for an indefinite period, such posts may be filled up by candidates other than those belonging to Scheduled Castes/Tribes and Backward Classes on the condition that whenever suitable persons belonging to such Castes/Classes are available and there need for filling up a new vacancy, the members of the Scheduled Castes/Tribes and Backward Classes should be given their earlier quota for making up their deficiency arisen out of non-availability of their technical persons of that time.

3. The receipt of this communication may please be acknowledged.

# Yours faithfully,

(Sd)

Deputy Secretary,

General Administration for Chief Secretary to Government, Punjab.

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3. The Government rejected the aforesaid claim of the appellant whereupon he approached the Punjab and Haryana High Court by means of the aforesaid petition which, as already stated, was dismissed by the High Court vide its judgment and order dated September 3, 1976.

4. While repelling the contention advanced on behalf of the State that if the vacancy caused by the resignation of Harinder Singh Khalsa was offered to the Scheduled Castes candidate, though on ad

hoc basis, the number of vacancies to be filled up by the Scheduled Castes and Scheduled Tribes candidates would go beyond 50% and thereby exceed the limit of reserved vacancies fixed by the statutory rules relating to reservation of vacancies in the Punjab Civil Service (Executive Branch) and holding that if the vacancy caused by the resignation of Harinder Singh Khalsa was filled up on ad hoc basis by appointing a member of Scheduled Castes, the number of vacancies filled by the Scheduled Castes candidates would still remain the same and if a non-Scheduled Castes candidate was appointed against that vacancy, the very purpose of the Government's instructions contained in the aforesaid circular No. WG II-13-(29)-61/5598 dated March 6, 1961 would be defeated, the High Court still dismissed the aforesaid petition of the appellant on the ground that as the State Government did not choose to fill up the vacancy on ad hoc basis and a fresh competitive examination was held to fill up the vacancies available for the years 1973 and 1974 in which the appellant never appeared and the aforesaid vacancy caused by the resignation of Harinder Singh Khalsa was filled up along with the other vacancies in accordance with the Block System keeping in view the reserved quota, and the merit list prepared by the commission stood exhausted by the appointment of 12 persons against the 12 vacancies available with respect to the years 1971 and 1972, the persons borne on that list had no right to be appointed against a vacancy which occurred thereafter. The High Court further held that the appellant had no locus standi to challenge the non-inclusion of the vacancy caused by the resignation of Harinder Singh Khalsa in the reserved quota.

5. We frankly confess we are unable to understand the rationale or approach of the High Court which manifestly runs counter to the aforesaid instructions of the Government contained in Circular no. WG II-13(29)-61/5598 dated March 6, 1961. The instructions not only deprecate the then existing practice according to which in case of termination of the service of a Government servant belonging to Scheduled Castes/Tribes and Backward Classes, the resultant vacancy was included in the normal pool of vacancies to be filled up in accordance with the Block System and characterise it as repugnant to the dominant idea of giving due representation to the members of Scheduled Castes/Tribes or Backward Classes are terminated, the resultant vacancy should not be included in the normal pool of vacancies to be filled up in accordance with the block system but should be filled up on ad hoc basis from the candidates belonging to these castes and classes. The instructions put the matter beyond the pale of controversy by emphatically declaring that the intention of the Government was that the posts vacated by members of Scheduled Castes/Tribes and Backward Classes should remain earmarked and be filled up by the members belonging to the Scheduled Castes/Tribes and Backward Classes.

6. In face of these clear and categorical instructions, the contention advanced on behalf of the State that the vacancy meant for Scheduled Castes having been once utilised by Harinder Singh Khalsa ceased to be a reserved vacancy and the appellant had no right to be appointed against it cannot be countenanced and consequently the claim of the appellant cannot but be upheld. We have no doubt in our mind that the resultant vacancy caused by the resignation of Harinder Singh Khalsa should have gone to the appellant who belonged to the Scheduled Caste and was entitled to it both on the basis of the merit and the policy statement contained in the aforesaid Circular letter of the Government as well as the fact that no competitive examination had been held by the Commission between 1972 and the end of 1974 in which the appellant could have or should have appeared. We may also state that the statutory rules relating to reservation of vacancies cannot operate as an impediment in the way of the appointment of the appellant as it would by no means increase the number of the two posts reserved by the Government itself for the members of the castes to which the appellant belonged, during the relevant years.

7. For the foregoing reasons, we are unable to sustain the judgment and order of the High Court. In

the result, the appeal succeeds and is hereby allowed with costs quantified at Rs. 2000.

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