

GAGANDEEP SINGH

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v.

THE STATE OF PUNJAB & ORS.

(Civil Appeal No. 11365 of 2018)

NOVEMBER 27, 2018

[KURIAN JOSEPH AND S. ABDUL NAZEER, JJ.]

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Service Law – Appointment against reserved vacancy – Right to – Appellant belonging to the reserved category of Balmiki/Majbhi Sikh was at no.3 in the select list for appointment to the post of District Programme Officer – One ‘GS’ appointed against the reserved vacancy for Balmiki/Majbhi Sikh, resigned after a year – Writ petition filed by the appellant contending that in terms of the instructions issued by the Department, the vacancy created should be filled up by the next available person from the same community and the no.2 candidate not being interested, the appellant should be appointed – Department contended that once the appointment was made, the reserved point was consumed, hence the appellant cannot be considered – Writ petition dismissed – Held: No candidate has a vested right for appointment – But at the same time, the appointing authority cannot frustrate the whole purpose of preparation of a select list – If a vacancy had arisen before the expiry of the select list, going by the instructions, the next available candidate in the select list had a legitimate expectation for being considered for appointment – Vacancy had arisen in 2014 before the commencement of fresh selection in 2016 – Even for the subsequent selection, the post reserved for Balmiki/Majbhi Sikh was not notified – Therefore, the slot reserved for Balmiki/Majbhi Sikh was still available and as per the instructions, the State has to fill up that vacancy from the reserved community from the merit list – In case No. 2 is not interested, naturally it will go to the appellant – Respondents to make appointment in respect of Valmiki/Majbhi Sikh from the merit list published on 20.06.2012 – Doctrine/Maxims – Doctrine of Legitimate Expectation.

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Disposing of the appeal, the Court

HELD: 1.1 No candidate has a vested right for appointment. But at the same time, the appointing authority cannot frustrate the whole instruction behind and purpose of preparation of a select list. If a vacancy had arisen before the expiry of the list, going by

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- A the instruction, the next available candidate in the select list had a legitimate expectation and claim for being considered for appointment. The vacancy had arisen in 2014 before the commencement of fresh selection in 2016. Even for the subsequent selection, the post reserved for Balmiki/Majbhi Sikh was not notified. The reservation is for other Scheduled Castes.
- B The slot reserved for Balmiki/Majbhi Sikh is still available and as per the instruction, the same has to be filled up from the merit list. The State pointed out that appellant was not the next person for consideration. It is one 'MS' (No.2) and he had also given a representation. Since the slot is available, the State has to fill up that vacancy from the reserved community from the merit list. In case No. 2 is not interested, naturally it will go to the appellant. [Para 4][353-G-H; 354-A-C]

- 1.2 The respondents are directed to make appointment in respect of Valmiki/Majbhi Sikh from the merit list published on 20.06.2012. Needful be done within a period of two months. [Para 5][354-C-D]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11365 of 2018.

- E From the Judgment and Order dated 22.03.2017 of the High Court of Punjab and Haryana at Chandigarh in LPA No. 938 of 2016 (O&M).

R. K. Kapoor, Ms. Rekha Giri, Ms. Kheyali, Anis Ahmed Khan, Advs. for the Appellant.

- F Ms. Uttara Babbar, Ms. Bhavana Duhoon,, Advs. for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

- G 2. Appellant was No.3 in the select list for appointment to the post of District Programme Officer. He belongs to the reserved category of Balmiki/Majbhi Sikh. The selection commenced with the advertisement by the Punjab Public Service Commission on 21.12.2010. The written examination was conducted in the year 2012. One Gurpreet Singh was appointed against the reserved vacancy (Balmiki/Majbhi Sikh). After one year he resigned from the post on 25.04.2014. According to the appellant the vacancy thus created should be filled up by the next available
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person from the same community. It is also the case of the appellant that though the appellant is No. 3 in the select list, No.2 (Manjinder Singh) not being interested and not having pursued the litigation, the appellant should be appointed. The Department rejected the claim of the appellant stating that once an appointment is made, the reserved point was consumed and hence the appellant cannot be considered. Hence, he filed a writ petition before the High Court. The learned Single Judge dismissed the writ petition holding that the appellant did not have a legal right to claim appointment and that the vacancy had to be re-advertised.

3. In the intra court appeal, as per the impugned judgment, the Division Bench took note of the submission that the process for subsequent selection had been initiated and thus dismissed the appeal.

4. It is the contention of the appellant that as per the guidelines issued by the welfare Department dated 08.04.1980 read with subsequent instruction dated 10.01.1996, the point filled up by a candidate belonging to the reserved category and subsequently vacated on account of resignation or otherwise cannot be considered to be consumed. It is to be filled up out of the candidates available in the select list. To quote the relevant para from the instructions dated 10.01.1996:

“According to these instructions, the point filled up by a candidate belonging to reserved category and subsequently vacated on account of resignation or otherwise by one of the incumbents is not considered to be consumed. This point is available for the reserved categories and is required to be filled up out of the candidates available as a result of selection in order of their seniority.”

It is also stated in the instruction that “... there is no discretion with the Administrative Department in this regard”. However, the contention of the State is that the merit list having outlived its life on account of the appointment, nobody can claim appointment from such a list. We are afraid this contention cannot be appreciated. No doubt, no candidate has a vested right for appointment. But at the same time, the appointing authority cannot frustrate the whole instruction behind and purpose of preparation of a select list. If a vacancy had arisen before the expiry of the list, going by the instruction, the next available candidate in the select list had a legitimate expectation and claim for being considered for appointment. The vacancy had arisen in 2014 before the

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- A commencement of fresh selection in 2016. Even for the subsequent selection, the post reserved for Balmiki/Majbhi Sikh is not notified. The reservation is for other Scheduled Castes. Learned counsel for the State has stated that vacancy of Balmiki/Majbhi Sikh has not been filled up and it is still available. Therefore, the slot reserved for Balmiki/Majbhi Sikh is still available and as per the instruction which we have extracted above, the same has to be filled up from the merit list. In the additional affidavit filed by the State it is pointed out that appellant was not the next person for consideration. It is one Maninder Singh (No.2) and he had also given a representation. Since the slot is available, the State has to fill up that vacancy from the reserved community from the merit list. In case No. 2 is not interested, naturally it will go to the appellant.

5. The appeal is disposed of with the direction to the respondents to make appointment in respect of Valmiki/Majbhi Sikh from the merit list published on 20.06.2012. Needful be done within a period of two months. In order to avoid any dispute on seniority, it is made clear that the incumbent concerned will get seniority only from the date of appointment. No costs.

Divya Pandey

Appeal disposed of.