

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.18290 of 2009 (O&M)
Date of decision: 29.3.2010

Devinder Singh

-----Petitioner

Vs.

State of Punjab and another

-----Respondents

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE ALOK SINGH**

Present:- Ms. Alka Chatrath, Advocate for the petitioner.

Mr. Jaswinder Singh, DAG, Punjab for the State.

Adarsh Kumar Goel,J.

1. This petition seeks quashing of order dated 19.11.2009, Annexure P.10 terminating the services of the petitioner from the post of Lecturer Punjabi. Prayer has also been made for declaring section 4(5) of the Punjab Scheduled Caste and Backward Class Reservation in Service Act, 2006 (for short, 'the 2006 Act') requiring 50% vacancies to be filled up out of the Balmiki caste and 50% from the Mazhbi caste.

2. Case of the petitioner is that he belongs to *Shikriband* caste which is Scheduled Caste. He applied for

the post of Lecturer in pursuance of advertisement dated 21.10.2006 and after selection, he was given appointment letter. He joined service on 14.12.2006 and he completed the probation period. His services were terminated on 19.11.2009. on the ground that his appointment was in excess of prescribed quota in the individual sub caste in the Scheduled castes. The view of the State was clearly hit by judgment of this Court in CWP No.15302 of 2005, **Attar Singh Dhgoor and others v. State of Punjab and others** and CWP No.5815 of 2006, **Dr. Kishan Pal and others v. State of Punjab and others**, decided on 25.7.2006 following the judgment of the Hon'ble Supreme Court in **E.V.Chinnaiah v. State of Andhra Pradesh**, (2005) 1 SCC 394.

3. In the reply filed on behalf of the State, stand taken is that under the 2006 Act, further classification as per sub classes in the Scheduled Castes was permissible and that judgment of this Court was pending consideration before the Hon'ble Supreme Court in SLP (C) 7044 of 2009 wherein stay of judgment of this Court has been granted.

4. We have heard learned counsel for the parties and perused the record.

5. Considering an identical Andhra Act, the Hon'ble Supreme Court in *E.V.Chinnaiah* observed that all the castes in the Presidential Order under Article 341(1) of the Constitution formed one class of homogenous group and the same could not be further sub divided. Any such legislation with reference to Entry 41 of List II or Entry 25 of List III of the Seventh Schedule to the Constitution would be violative of Article 14 of the Constitution.

Relevant observations are:-

“41. The conglomeration of castes given in the Presidential Order, in our opinion, should be considered as representing a class as a whole. The contrary approach of the High Court, in our opinion, was not correct. The very fact that a legal fiction has been created is itself suggestive of the fact that the Legislature of a State cannot take any action which would be contrary to or inconsistent therewith. The very idea of placing different castes or tribes or group or part thereof in a State as a conglomeration by way of a deeming definition clearly suggests that they are not to be sub-

divided or sub-classified further. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the List. Such sub-classification would be violative of Article 14 of the Constitution of India. It may be true, as has been observed by the High Court, that the caste system has got stuck up in the Society but with a view to do away with the evil effect thereof, a legislation which does not answer the constitutional scheme cannot be upheld. It is also difficult to agree with the High Court that for the purpose of identifying backwardness, a further inquiry can be made by appointing a commission as to who amongst the members of the Scheduled Castes is more backward. If benefits of reservation are not percolating to them equitably, measures should be taken to see that they are given such adequate or additional training so as to enable them to compete with the others but the same would not mean that in the process of rationalizing the reservation to the Scheduled Castes the constitutional mandate of Articles 14, 15 and 16 could be violated.

42. Reservation must be considered from the social objective angle, having regard to the constitutional scheme, and not as a political

issue and, thus, adequate representation must be given to the members of the Scheduled Castes as a group and not to two or more groups of persons or members of castes.

43. The very fact that the members of the Scheduled Castes are most backward amongst the backward classes and the impugned legislation having already proceeded on the basis that they are not adequately represented both in terms of Clause (4) of Article 15 and Clause (4) of Article 16 of the Constitution of India, a further classification by way of micro classification is not permissible. Such classification of the members of different classes of people based on their respective castes would also be violative of the doctrine of reasonableness. Article 341 provides that exclusion even of a part or a group of castes from the Presidential List can be done only by the Parliament. The logical corollary thereof would be that the State Legislatures are forbidden from doing that. A uniform yardstick must be adopted for giving benefits to the members of the Scheduled Castes for the purpose of Constitution. The impugned legislation being contrary to the above constitutional scheme cannot, therefore, be sustained.

44. For the reasons stated above, we are of the considered opinion that the impugned legislation apart from being beyond the legislative competence of the State is also violative of Article 14 of the Constitution and hence is liable to be declared as ultra vires the Constitution.”

6. Learned counsel for the State has not been able to distinguish the applicability of judgment of the Hon’ble Supreme Court in *E.V.Chinnaiah* to the present case.

7. Accordingly, provisions of section 4(5) of the 2006 Act are declared unconstitutional. The State Government may take a decision on the claim of the petitioner within one month from the date of receipt of a copy of this order.

8. The petition is disposed of.

(Adarsh Kumar Goel)
Judge

March 29, 2010
'gs'

(Alok Singh)
Judge