

No. 22/132/2008-1GS-III

From

The Chief Secretary to Government Haryana.

To

1. All the Additional Chief Secretaries & Principal Secretaries to Government Haryana.
2. All Heads of Departments in the State.
3. The Commissioners, Ambala, Hisar, Gurgaon and Rohtak Divisions.
4. The Registrar,
Punjab & Haryana High Court, Chandigarh
5. All CAs/MDs of Boards/Corporations/Public Sector Undertakings.
6. All the Deputy Commissioners of the State.
7. The Registrar of all the Universities of the State of Haryana

Dated Chandigarh, the 20.02.2013

Subject:- Reservation of posts for Scheduled Castes / Backward Classes under the services of Haryana State.

Sir,

I am directed to refer to Haryana Govt. letter No. 22/10/2002-3GS-III dated 16.3.2006 on the subject noted above vide which it was decided that as a consequence of promotion under the reservation policy, Scheduled Castes employees will be entitled to 'accelerated seniority'. It is intimated that Hon'ble Punjab & Haryana High Court on 7.8.2012 in CWP No. 17280/2011 titled as Prem Kumar Verma & others Vs. Haryana State has quashed the instructions dated 16.03.2006 referred to above. A copy of the judgment dated 07.08.2012 may be downloaded from Government website i.e. www.csharyana.gov.in and www.haryana.gov.in for detailed information and necessary action.

Yours faithfully

Under Secretary General Administration
for Chief Secretary to Government Haryana.

Endst. No. 22/132/2008-3GS-III

Dated Chandigarh, the 20.02.2013

✓ A copy is forwarded to State Informatics Officer (NIC) Haryana Civil Secretariat, Chandigarh for hosting on the website of the State Government.

Subhash Singh
Under Secretary General Administration
for Chief Secretary to Government Haryana.

20/2/2013

CWP No. 17280 of 2011

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

CWP No. 17280 of 2011

Date of Decision: 07.08.2012

Prem Kumar Verma and others

VERSUS

.....PETITIONERS

State of Haryana

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**PRESENT: Mr. D.S.Rawat, Advocate,
for the petitioners.**

Ms. Shruti Jain, AAG, Haryana.

AUGUSTINE GEORGE MASIH, J.

Petitioners have approached this Court with a prayer for issuance of a writ of certiorari for quashing the instructions dated 16.03.2006 (Annexure P-8), vide which the State of Haryana has granted 'accelerated seniority' to the scheduled caste category employees in violation of Article 16 of the Constitution of India and the law as laid down by the Supreme Court in **M. Nagaraj vs. Union of India**, (2006) 8 SCC 212. Prayer has also been made for quashing the orders dated 16.09.2010 (Annexure P-5) and

17.09.2010 (Annexure P-6), vide which the claim of the petitioners for stepping up of their pay at par with their junior scheduled caste category employee Sh. Amar Singh stands rejected.

Petitioners are general category employees and were appointed, after clearing the departmental test, as Sub-Divisional Clerks before Sh. Amar Singh, a scheduled caste category employee. Since Sh. Amar Singh belongs to the scheduled caste, he was promoted as Accounts Clerk on 01.02.1982 as per the roster point granting him the benefit of reservation whereas the petitioners, who were senior to him in the feeder cadre of Sub-Divisional Clerk, were promoted as Accounts Clerk after 16.03.2006 on various dates.

It was settled by the Supreme Court in the case of **Ajit Singh Janjua and others vs. State of Punjab and others**, JT 1999 (7) S.C. 153 vide its judgment dated 16.09.1999 that though a reserved category employee can be promoted on a higher post on the basis of reservation (roster point) but whenever a senior general category employee will be promoted to the higher post to which the reserved category candidate stands promoted, the general category employee on such promotion shall be declared senior to the reserved category employee on that particular post and will be granted the benefit accordingly. On the basis of this judgment of the Supreme Court, Government of Haryana issued instructions dated 14.10.1999 explaining therein that no employee belonging to the reserved category of scheduled caste or backward class shall be allowed

the benefit of accelerated seniority over his/her senior belonging to the general category from the feeder service under the policy of reservation.

Effect of these instructions and the judgment of the Supreme Court in Janjua's case (supra) was that the general category employee, on his promotion to the higher post, regained seniority over the scheduled caste category employee. Although the benefit of seniority was granted to the general category employee on the principle of catching up at the higher post yet the benefit of equivalence of pay drawn by a junior scheduled caste employee and the senior general category employee was not given effect to meaning thereby that the general category employee despite becoming senior on his promotion was drawing less pay as compared to his junior scheduled caste category employee who stood promoted earlier because of the benefit of reservation.

Aggrieved with this discrimination, one Charan Dass (senior general category employee) filed CWP No. 5956 of 2008 titled as **Charan Dass vs. State of Haryana**, praying for stepping up of his pay at par with his junior backward class category employee in the light of the judgment of the Supreme Court in Janjua's case (supra). The writ petition was allowed by this Court vide judgment dated 18.11.2008 (Annexure P-2). This judgment was accepted by the Government of Haryana and instructions dated 05.03.2009 were issued directing all the departments to step up the pay of senior

general category employees at par with junior scheduled caste category employees, meaning thereby that the judgment in the case of Charan Dass (supra) was generalized.

Despite this, petitioners were not granted the benefit of the judgment and the instructions. They thus submitted their representations claiming the benefit of stepping up of their pay equivalent to that of Sh. Amar Singh, a junior scheduled caste category employee. This representation was rejected by the respondents vide order dated 17.09.2010 on the ground that their claim cannot be accepted for stepping up of their pay at par with junior scheduled caste category employee as they were promoted as Accounts Clerks after issuance of instructions dated 16.03.2006 (Annexure P-8) issued by the Government of Haryana giving effect to the notification dated 04.01.2002 issued by the Government of India amending Article 16 (4-A) i.e. the Constitution (Eighty Fifth) Amendment Act, 2001, according to which, a decision was taken by the State Government that the scheduled caste category employees will be entitled to accelerated seniority as a consequence of promotion under the reservation policy. Reference was also made to a letter dated 23.11.2009 (Annexure P-7), wherein it was decided that the stepping up of pay of senior general category employees at par with their junior counterparts of reserved category employees would be effective to promotions made on or before 15.03.2006, the date after which the instructions dated 16.03.2006 (Annexure P-8) have come into force.

With this situation, petitioners have approached this Court challenging the Government instructions dated 16.03.2006 (Annexure P-8) vide which the State of Haryana has granted accelerated seniority to the scheduled caste category employees. Challenge has also been posed to the orders dated 16.09.2010 (Annexure P-5) and 17.09.2010 (Annexure P-6), vide which the claim of the petitioners stands rejected in the wake of instructions dated 16.03.2006.

Counsel for the petitioners contends that the Constitution (Eighty Fifth) Amendment Act, 2001, amending Article 16 (4-A) has been upheld by the Supreme Court in its judgment reported as **M. Nagaraj vs. Union of India**, (2006) 8 SCC 212, wherein the Supreme Court, in para 123, has held that the impugned provision is an enabling provision and the State is not bound to make reservation for scheduled castes and scheduled tribes in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has been mandated to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335 of the Constitution of India. This exercise, as mandated by the Supreme Court, has not been undertaken by the Government of Haryana. No survey has been conducted, no data has been collected, which would determine as to whether adequate reservation of scheduled caste category

employees in public employment is there or not but has merely, in the light of the amendment of the Constitution, decided to grant accelerated seniority to the scheduled caste employees, who have been promoted as a consequence of reservation policy.

Hon'ble Supreme Court has considered similar decision, as in the present case, taken by the State of U.P. where benefit of accelerated seniority was granted in the cases of **U.P. Power Corporation Ltd. Vs. Rajesh and others**, JT 2012 (4) SC 459 and struck it down. In **Suraj Bhan Meena and another vs. State of Rajasthan and others**, 2011 (2) SCT 260, the decision of the State of Rajasthan for granting accelerated seniority to the reserved category employees, who have been promoted as a consequence of reservation policy, was struck down on the ground of non-compliance of the mandate of the Supreme Court in the case of **M. Nagaraj** (supra). He, on this basis, contends that the writ petition deserves to be allowed and the impugned orders/notifications deserve to be quashed.

Counsel for the respondents could not, on the basis of the written statement filed by the respondents, indicate as to any exercise taken out by the respondents which would fulfil the mandate of the Supreme Court with regard to the grant of accelerated seniority to the reserved category employees. Nothing has been mentioned in the reply which would show that any data was collected or any survey done which would show backwardness of the class and inadequacy

of representation in public employment in addition to compliance with Article 335 of the Constitution of India to justify the grant of benefit of accelerated seniority to the scheduled caste employees as enabled by the Constitution in Article 16 (4-A). A fervent effort was made by her to contend that once the principle of reservation was made applicable to the spectrum of promotion, no fresh exercise is necessary nor it is required as the benefit of reservation has been given by the respondents after taking that into consideration. The efficiency of the service will also not be jeopardized in any manner. She, accordingly, states that the decision of the Government, which is reflected in the instructions dated 16.03.2006 (Annexure P-8), is in consonance with the constitutional mandate and the consequential orders rejecting the claim of the petitioners deserve to be upheld.

I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

Article 16 (4-A) of the Constitution of India reads as follows:-

“ Nothing in this article shall prevent the State from making any provision for reservation in matter of promotion with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

Hon'ble Supreme Court in Nagaraj's case in paras 123 and 124 while upholding the Constitutional (Eighty Fifth) Amendment Act, 2001, has held as follows:

"37.7 In the conclusion portions, in paragraphs 123 and 124, it has been ruled thus:

123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matter of promotions. However, if they wish to exercise their discretion ad make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

124. Subject to the above we uphold the constitutional validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty First Amendment) Act, 2000; the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act 2001."

The Hon'ble Supreme Court has thus laid down the parameters, in compliance whereof the State Government can provide for accelerated seniority to the Supreme Court employees. Instructions dated 16.03.2006 (Annexure P-8) have to be tested on the touchstone of the law as laid down by the Supreme Court in M. Nagaraj's case (supra).

It has been stated by the petitioners that the State of Haryana did not undertake any survey and did not collect any quantified data regarding inadequacy of representation in public service, which fact has not been disputed by the respondents in their reply filed to the writ petition. It has merely been said that in the light of the amendment of the Constitution, a decision was taken by the Government to provide benefit of Article 16 (4-A) of the Constitution.

Paras 2, 3 and 4 of Instructions dated 16.03.2006 (Annexure P-8) read as follows:-

"2. The Government of India has notified the Constitution (Eighty Fifth) Amendment Act, 2001 on

4.1.2002 amending Article 16 (4-A), which now reads as under:-

“ Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

3. In the wake of the above enabling provision, after careful consideration of the matter, it has been decided by the State Government that the Scheduled Castes employees will be entitled to “accelerated seniority” as a consequence of promotions under the reservation policy.

4. This decision shall come into force with immediate effect and shall have prospective effect only.

These instructions should be brought to the notice of all concerned for being adhered to strictly.”

A perusal of these paras would indicate that the decision was taken by the State Government on consideration of the matter that there is an enabling provision provided now under the Constitution and, therefore, the scheduled caste employees will be entitled to accelerated seniority as a consequence of promotions under the reservation policy. This would not fulfil the mandate of law

as laid down by the Supreme Court in Nagaraj's case (supra) for a decision of the State to be valid. Similar situation had cropped up before the Supreme Court in the case of Suraj Bhan Meena (supra), where the Supreme Court had proceeded to quash the decision so taken by the Government of Rajasthan providing accelerated seniority to the promoted scheduled caste employees who had taken the benefit of reservation.

In a recent case in U.P. Power Corporation Ltd. (supra), the Hon'ble Supreme Court again while considering the validity of a decision taken by the State of U.P. for granting accelerated seniority, culled out the principles, which have been laid down by the Supreme Court in M. Nagaraj (supra) and in paras 39 to 41, has held as follows:

"39. At this stage, we think it appropriate to refer to the case of Suraj Bhan Meena and another (supra). In the said case, while interpreting the case in M.Nagaraj (supra), the two-Judge Bench has observed:

"10. In M.Nagaraj case, this Court while upholding the constitutional validity of the Constitution (77th Amendment) Act, 1995 and the Constitution (85th Amendment) Act, 2001, clarified the position that it would not be necessary for the State Government to frame rules in respect of reservation in promotion with consequential seniority, but in case the State Government wanted to frame such rules in this

regard, then it would have to satisfy itself by quantifiable data that there was backwardness, inadequacy of representation in public employment and overall administrative inefficiency and unless such an exercise was undertaken by the State Government, the rule relating to reservation in promotion with consequential seniority could not be introduced."

40. In the said case, the State Government had not undertaken any exercise as indicated in M. Nagaraj (supra). The two-Judge Bench has noted three conditions in the said judgment. It was canvassed before the Bench that exercise to be undertaken as per the direction in M. Nagaraj (supra) was mandatory and the State cannot, either directly or indirectly, circumvent or ignore or refuse to undertake the exercise by taking recourse to the Constitution (Eighty-Fifth Amendment) Act providing for reservation for promotion with consequential seniority. While dealing with the contentions, the two-Judge Bench opined that the State is required to place before the Court the requisite quantifiable data in each case and to satisfy the Court that the said reservation became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes candidates in a particular

class or classes of posts, without affecting the general efficiency of service. Eventually, the Bench opined as follows:-

"66. The position after the decision in M. Nagaraj case is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required.

67. The view of the High Court is based on the decision in M. Nagaraj case as no exercise was undertaken in the terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Caste and Scheduled Tribe communities in public services. The Rajasthan High Court has rightly quashed the notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Caste and Scheduled Tribe communities and the same does not call for any interference."

40.1. After so stating, the two- Judge Bench affirmed the view taken by the High Court of Rajasthan.

41. As has been indicated hereinbefore, it has been vehemently argued by the learned senior counsel for the State and the learned senior counsel for the Corporation that once the principle of reservation was made applicable to the spectrum of promotion, no fresh exercise is necessary. It is also urged that the efficiency in service is not jeopardized. Reference has been made to the Social Justice Committee Report and the chart. We need not produce the same as the said exercise was done regard being had to be the population and vacancies and not to the concepts that have been evolved in *M. Nagaraj* (supra). It is one thing to think that there are statutory rules or executive instructions to grant promotion but it cannot be forgotten that they were all subject to the pronouncement by this Court in *Vir Pal Singh Chauhan* (supra) and *Ajit Singh (II)* (supra). We are of the firm view that a fresh exercise in the light of the judgment of the Constitution Bench in *M. Nagaraj* (supra) is a categorical imperative. The stand that the constitutional amendments have facilitated the reservation in promotion with consequential seniority and have given the stamp of approval to the Act and the Rules cannot withstand close scrutiny inasmuch as the Constitution Bench has clearly opined that Articles 16(4A) and 16(4B) are enabling

provisions and the State can make provisions for the same on certain basis or foundation. The conditions precedent have not been satisfied. No exercise has been undertaken. What has been argued with vehemence is that it is not necessary as the concept of reservation in promotion was already in vogue. We are unable to accept the said submission, for when the provisions of the Constitution are treated valid with certain conditions or riders, it becomes incumbent on the part of the State to appreciate and apply the test so that its amendments can be tested and withstand the scrutiny on parameters laid down therein."

In LPA No. 1749 of 2011 titled as **State of Haryana and others vs. Kiran Bala and another**, decided on 26.09.2011, this Court while deciding the appeal preferred by the State of Haryana against the judgment dated 28.04.2011 passed by the learned Single Judge in CWP No. 8318 of 2010 wherein the orders denying the benefit of stepping up of their pay at par with the juniors belonging to the reserved category who were promoted earlier to them on account of accelerated promotion were set aside on the ground that the respondents were unable to justify their action of granting the benefit of 85th Amendment Act of 2009 vide instructions dated 16.03.2006 being contrary to the judgment of the Supreme Court in the cases of

Ajit Singh Janjua (supra) and M. Nagaraj (supra). The Division Bench of this Court has also observed in its order dated 26.09.2011 that in pursuance to the judgment passed by the Supreme Court in M. Nagaraj's case (supra), State of Haryana did not carry out any exercise for ascertaining the factors noticed by the Hon'ble Supreme Court for grant of accelerated seniority and promotion pursuant to the 85th Constitutional Amendment to the reserved categories.

In view of the above, this Court has no option and hesitation to hold that the decision of the Government of Haryana, as circulated through its instructions dated 16.03.2006 (Annexure P-8), granting accelerated seniority to the scheduled caste employees as a consequence of promotion under the reservation policy, is ultra vires as the same runs counter to the dictum in M. Nagaraj's case (supra) and, therefore, deserves to be quashed.

In view of the above, this writ petition is allowed. Instructions dated 16.03.2006 (Annexure P-8) are hereby quashed. Impugned orders dated 16.09.2010 (Annexure P-5) and 17.09.2010 (Annexure P-6) rejecting the claim of the petitioners for stepping up of their pay at par with their junior Sh. Amar Singh, Accounts Clerk, being based on and consequential to instructions dated 16.03.2006 also cannot sustain and are hereby quashed.

Petitioners are held entitled to stepping up of their pay at par with Sh. Amar Singh from the date of their promotion to the post of Accounts Clerk. The consequential benefits be released to the

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petitioners within a period of two months from the date of receipt of
certified copy of the order.

August 07, 2012
pj

(AUGUSTINE GEORGE MASIH)
JUDGE