

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

**C.W.P. No. 5098 of 2013 (O&M)
Date of Decision : 12.03.2015**

Ajay Saini

..... Petitioner

versus

Union of India & others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr.Pawan Kumar Sharma, Advocate
for the petitioner.

Mr.Sanjay Joshi, Advocate
for respondents No.1 & 2.

Mr.Vikram Bajaj, Senior Panel Counsel
for respondents No.3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition, the petitioner has challenged the action of the respondents in not giving him an appointment by treating him an un-reserved candidate instead of OBC candidate.

The respondents had advertised many posts of Constables (General Duty). As per the advertisement, at the time of submission of forms no testimonials with regard to relaxation/reservations were to be annexed and all the candidates who applied would be treated as having been

provisionally accepted. It was further stipulated that after the selection process, the selected candidates would be called upon to submit their certificates either at the time of medical examination or as per the direction of the Commission. It is not disputed that the petitioner cleared the written examination and was called for medical examination. On that date he produced a certificate showing him as a member of OBC but admittedly that was not as per the format prescribed. As per the allegations in the petition, the petitioner was given a Hobson's choice at that stage that either he would be excluded from consideration altogether or he would have to submit to being treated as an un-reserved candidate and at that stage the petitioner took the second option. Thereafter the petitioner obtained fresh certificate as per the requirement and submitted it. Still getting no positive response he issued a legal notice (Annexure-P-8) and thereafter has filed the present writ petition. The stand of the respondents is that once on the date of medical examination the petitioner did not get the certificate as required, he was rightly considered as an un-reserved candidate and, having being not made the cut off as un-reserved candidate should not be offered the appointment.

Learned counsel for the petitioners has relied upon the decision of the Delhi High Court in W.P.(C) No.11928 of 2009 titled as “*Hari Singh Vs. Staff Selection Commission and another*” decided on 06.04.2010. In that case also the petitioner therein did not submit the requisite certificate as per the prescribed format at the relevant time and was similarly treated as an un-reserved candidate. However, as per the learned counsel the Delhi High

Court allowed the writ petition and that the present case is covered by that judgment.

In my opinion this argument would not be entirely correct. That was a case where the petitioner was already in the service of the CRPF as an OBC candidate and at the time of the application for filling up the post his parent department had issued the necessary certificate. It was in these circumstances that the Delhi High Court held that failure to submit the certificate in the prescribed format was not mandatory. In the present case, the petitioner had accepted that he should be treated as an un-reserved candidate. The fact that he subsequently submitted the certificate would not hold him entitled to be again treated as a reserved candidate. In the circumstances, no fault can be found that the action of the respondents in treating the petitioner to be an un-reserved category candidate and therefore having not met the cut off in that category he could not be appointed.

Petition is dismissed.

March 12, 2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**