

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

**Regular Second Appeal No.2291 of 2014 (O&M)
Date of Decision: September 07, 2015.**

Ashok Kumar

.....APPELLANT(s).

VERSUS

State of Haryana through Collector, District Mohindergarh at Narnaul and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bharat Bhushan Sharma, Advocate
for the appellant (s).

SURINDER GUPTA, J.

CM-5560-C-2014

Heard. There is delay of 44 days in re-filing the appeal.

It is submitted that registry raised some objections on 23.10.2013 but the paper book could not be collected from the registry in time and the same was collected only on 18.12.2013. Thereafter, another objection was raised by the registry and after removing the same, the appeal was filed. In this process, delay of 44 days occurred.

In view of the facts mentioned in the application and submission of learned counsel for the applicant-appellant, the application is allowed and delay of 44 days in re-filing the appeal is, hereby, condoned.

RSA-2291-2014

This regular second appeal has been filed against the concurrent finding of the Courts below, whereby the suit of the plaintiff seeking declaration that the order dated 24.08.2005 passed by Secretary, Haryana Staff Selection Commission, Chandigarh is illegal and further that he is entitled for the post of S.S. Master under backward class category i.e. BC (B) from the date the persons similarly situated were selected and appointed with all consequential benefits thereof, was dismissed.

The facts as emanate from the pleadings of the case are that appellant-plaintiff applied for the post of S.S. Master in response to advertisement No.2/99 issued by the Government of Haryana in newspaper on 14.11.1999. In the application form, the column as to whether he was applying against any reserved category, he left it blank and also did not append any backward class certificate. He was allowed to sit in the examination as general category candidate which he could not qualify.

The contention of the plaintiff is that he belongs to backward class and in support of his contention, it is argued that (i) plaintiff deposited fee of ₹60/-, which is prescribed for the backward class candidate; (ii) in the answer sheet, the plaintiff had mentioned himself as belonging to backward class.

Respondent No.4 i.e. Haryana Staff Selection Commission contested the claim of plaintiff with the averment that the plaintiff never applied as a candidate of reserve category and in the absence of any mention in this regard in the application form and the caste certificate, he was

considered under the general category.

While rejecting the plea raised by the appellant-plaintiff, learned Civil Judge (Senior Division), Narnaul observed in para 16 of the judgment dated 04.05.2012, which is reproduced as follows:-

“I have given due consideration to the arguments advanced by learned counsel for the parties. Admittedly the plaintiff applied for the post of S.S. Master against Advt. No.2/99 Edu. Published in the newspaper dated 14.11.1999. He was required to submit complete and true particulars of his candidature in the application form. He neither appended the Backward Class Certificate along with the application form nor claimed himself in the application form that he be considered under BC-B category. Mere deposit of the fee prescribed for SC/BC category candidates by itself would not give the plaintiff a vested right to be considered against BC-B category. PW-1 Subhash Chand, Assistant, Office of Haryana Staff Selection Commission produced the record pertaining to the answer sheet of the plaintiff and the application form submitted by him. The column no.10 of the application form of the plaintiff was left blank. No Backward Class Certificate was appended by the plaintiff along with the application form. He also stated that the plaintiff did not claim himself to be considered under BC-B category. When the plaintiff applied for the post of S.S. Master under general category and not under BC-B category, the act of the Commission considering the candidature of the plaintiff under general category cannot be held to be illegal, perverse, arbitrary or discriminatory in any manner.”

The appeal against the judgment of the lower Court was dismissed by the first Appellate Court with the observations in para 15 of the judgment, which reads as follows:-

“Unless so claimed in the application form or at the later stage, mere deposit of the fee prescribed for SC/BC category candidates by itself would not give the plaintiff a vested right to be considered against BC-B category. Now, mere mention in the answer sheet that the plaintiff belongs to BC-B category does not mean that the plaintiff wanted himself to be considered under BC-B category unless so claimed in the application form. There is nothing on the file that Haryana Staff Selection Commission ever asked the plaintiff as to whether he wanted himself to be treated under BC-B category or had at any stage treated the claim of the plaintiff under BC-B category.”

Learned counsel for the appellant has argued that non-mentioning of his reserved category in the application form was a mere omission on the part of appellant-plaintiff but the Selection Commission was aware that the appellant-plaintiff has deposited the fee prescribed for backward class candidate. The Selection Commission has also come to know that in the answer-sheet, the plaintiff has mentioned his caste as backward class-B. As such, for mere omission on the part of appellant-plaintiff, he could not be denied the post of S.S. Master despite the fact that the candidate of backward class who got lesser marks than him were selected. The plaintiff had got 141 marks while the last candidate in backward class with 129 marks was selected.

This fact is not disputed that the plaintiff had neither mentioned against the relevant column that he was applying as backward class candidate nor he had attached backward class certificate with the application form. The first appellate Court has also observed that he had also nowhere

mentioned in the application form that he belonged to Ahir caste, thus to backward class-B. All this depicts that the appellant-plaintiff had applied under the general category. There is no bar for a candidate belonging to reserved category to apply against a general category post. In case, the Selection Commission by going against the option exercised by the appellant-plaintiff had treated him as a candidate belonging to backward class in the absence of his caste/backward class certificate, it would have committed illegality and irregularity. The Selection Commission could not convert the application for the post of general category to a post for reserve category merely on the ground that proper fee prescribed for the post of general category has not been paid. The appellant-plaintiff has deposited ₹60/- instead of fee required for the post of general category and this could be a reason for the Selection Commission to reject his application but not to convert the same from general category to backward class category.

The other argument put forth by learned counsel for the appellant-plaintiff is that the appellant-plaintiff had mentioned the backward class-B category in his answer-sheet.

Even if, a candidate belonging to reserved caste has opted to apply against the post belonging to general category, he has to mention his category in the application form. The mere mention that he applied under the backward class-B in the answer sheet is no reason to convert his application form for a candidate of general category to candidate of reserve category.

On perusal of the paper book and the judgments of the Courts

below, I do not find any legal or factual infirmity therein calling for any

interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

September 07, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE