

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.13296 of 2013**  
**Decided on : 19.02.2016**

Parveen Kumar

... Petitioner

Versus

State of Punjab & others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present : Mr.Sandeep Kotla, Advocate, for the petitioner.

Mr.L.S.Virk, Addl.A.G., Punjab.

**G.S. Sandhawalia , J. (Oral)**

Petitioner seeks consideration for the post of Junior Engineer (Civil) in the Department of Irrigation, Punjab against the online advertisement dated 16.08.2012 (Annexure P1) in the General Category.

The respondents vide the said advertisement, sought applications for 120 posts of Junior Engineers (Civil) out of which, 51 seats were for General Category, 30 seats were for the Scheduled Castes/Scheduled Tribes candidates, 14 seats were for the Backward Class, 04 seats were for the Sports person quota, 16 seats were for the Ex-serviceman quota etc. Petitioner, being the resident of Haryana, applied under the reserved category, on the strength of the Scheduled Caste certificate, issued by the Tehsildar of Tehsil Rania, District Sirsa. In the joint merit list drawn up, petitioner figured at Sr.No.68 having secured 91.25 marks (Annexure P5). However, the petitioner was not considered for appointment on the ground that as per Clause 13(2) of the

advertisement, only the reserved category candidates who belonged to Punjab, had to be considered and they had to possess the domicile certificate for getting the benefit of relaxation.

Relevant portion of the advertisement reads as under:

“2. For SC, ST & OBC category the candidate who belongs to Punjab only the maximum age limit will be considered as 42 years. The candidate possesses the domicile of Punjab only will have the benefit of this relaxation.”

State has defended the consideration of the petitioner in the General Category on the ground that as per Clause 12(c), the applicant cannot be allowed to change the category already applied for. As per Clause 12(a) to 12(d) also, the certificates had to be issued by the persons authorized by the Department, according to the rules laid down by it, vide letter dated 18.08.2004. Thus, it is apparent that the petitioner's request for consideration in the Reserved Category was rejected on account of his ineligibility of not belonging to the Reserved Category of the State of Punjab. The certificate, as such, was never in the form prescribed and therefore, the petitioner could not have been successful for consideration against the Reserved Category vacancy.

A perusal of Clause 12 would go on to show that the candidates had to be selected on account of merit, obtained by them in the written examination. The case of the petitioner is that even if the certificate is to be discarded, he is entitled for

consideration in the General Category, at least, on the strength of his merit. The fact remains that the petitioner is within the zone of consideration for the General Category also and vide interim order dated 04.07.2013, appointment to the post of Junior Engineer (Civil) was to be subject to the final outcome of the present writ petition.

The law is settled on this issue that a Reserved Category candidate, if being higher in merit, will firstly be adjusted against a general post, on the strength of his own merit and thereafter, the posts will be filled up. In such circumstances, this Court is of the opinion that even if, by mistake, the petitioner had applied wrongly, on the strength of a certificate not issued by the competent authority and not being a resident of the State of Punjab, there was no bar, as such, to apply for in the General Category. Once he is within the zone of consideration and candidates of lower merit are to be given appointment, then the petitioner should not be denied his due. Reliance can be placed upon the judgment of the Apex Court in **Dolly Chhanda Vs. Chairman, JEE 2005 (9) SCC 779**. In the said case, the candidate belonging to a reserved category, did not have the certificate issued by the competent authority. She produced the correct certificate at a subsequent stage of second counselling but was denied the benefit on the ground that there was a cut-off date.

It was noticed that those candidates who had secured lower rank than the appellant have already been admitted and therefore, denying the benefit to the said appellant would be unjust and illegal. Relevant portion of the judgment reads as under:

“9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.”

Keeping in view the principle that the petitioner has fared well in the merit list, it would be unfair, as such, to deny him consideration on the strength of his merit in the General Category.

Accordingly, the present writ petition is allowed. Respondents are directed to consider the case of the petitioner on the strength of his merit, in the General Category. Needful be done within a period of 2 months from today.

**FEBRUARY 19, 2016**  
*sailesh*

**(G.S. SANDHAWALIA)**  
**JUDGE**