

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

C.W.P. No. 14140 of 2013

Date of Decision: 08.09.2016

Jagdish Kaur

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.K. Chopra, Sr. Advocate with
Mr. Pawan Kumar, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

DAYA CHAUDHARY, J. (ORAL)

The prayer in the present petition is for issuance of a writ in the nature of mandamus directing respondents No.1 and 2 to include the name of the petitioner in the merit list of the candidates belonging to Backward Class category and appoint her as Staff Nurse as the candidates lower in merit have been appointed.

Briefly, the facts of the case, as made out in the present petition, are that total 602 posts of Staff Nurses were advertised on 3.8.2011 in the Department of Health and Family Welfare, Punjab. In response to said advertisement, petitioner applied in the Backward Class category. Selection to the said posts was to be made on the basis of marks of written test as well as the marks for higher qualification and experience. Petitioner appeared in the written

test and obtained 47.20 marks. Thereafter, counseling was held on different dates

from 18.1.2012 to 28.03.2012. After counseling, the merit list was published wherein the petitioner was shown to have obtained 53.2 marks. Final merit list of candidates belonging to Backward Class category was displayed on the web site of respondents no. 1 and 2, wherein the name of the petitioner was not mentioned.

As per case of the petitioner, she obtained 53.2 marks, whereas, names of the candidates, who got upto 51.2 marks, were mentioned in the merit list. Petitioner made a representation and met the respondent-Authorities for inclusion of her name but no satisfactory response was given in writing. Simply, it was informed that her name is mentioned in the Backward Category certificate as wife of Sukhjinder Singh instead of daughter of Sawinder Singh and for that reason, her name was not mentioned in the merit list.

Learned counsel for the petitioner submits that claim of the petitioner has not been considered for invalid reason as petitioner belongs to Backward Class category by birth and certificate in this regard was also submitted wherein she was mentioned as wife of Sukhjinder Singh instead of daughter of Sawinder Singh. Petitioner married to Sukhjinder Singh in the State of Punjab, who belongs to Backward Class category, still, her request was not accepted. Learned counsel also submits that it is not the case of the respondents that petitioner does not belong to Backward Class category or she was married to a person who does not belong to Backward Class category. At the end, learned counsel for the petitioner submits that case of the petitioner is squarely covered by decisions of this Court rendered in CWP No. 2998 of 2013 titled as **Baljeet Singh vs. State of Punjab and others**, decided on 22.5.2013 and CWP No. 13800 of 2008 titled as **Komal vs. State of Punjab and another**, decided on 23.4.2009.

Learned State counsel opposes the submissions made by learned counsel for the petitioner and also submits that the certificate of Backward Class

category produced by the petitioner was not found in accordance with the Instructions dated 5.12.1996 issued by Department of Welfare (Reservation Cell) Government of Punjab. It was specifically mentioned in the advertisement that the SC/BC category certificate should be in accordance with the Instructions issued by the Department of Welfare wherein the candidate is required to mention the name of his/her father. But in the case of the petitioner, her husband's name was mentioned instead of her father and, therefore, her name was not considered in the list of successful candidates.

Heard learned counsel for the petitioner as well as learned counsel for the respondents-State and have also perused the documents available on the file.

Admittedly, petitioner applied for the post of Staff Nurse as she was fulfilling the conditions for appointment to the said post. It is also not disputed that the petitioner belongs to Backward Class category by birth and she has also married to a person who belongs to Backward Class category. The claim of the petitioner has not been considered only on the ground that she has produced a Backward Class certificate in which she was mentioned as wife of S. Sukhjinder Singh whereas she should have been mentioned as daughter of S. Sawinder Singh. It is also not disputed that selection was to be made on the basis of written test as well as the marks for higher qualification and experience. In the written test, she obtained 47.20 marks and thereafter she appeared in the counseling conducted by respondent-Authorities. It is also not disputed that the petitioner had submitted both the certificates by mentioning the name of her father as well as name of her husband. But, still she was not considered for appointment.

As per stand taken in the written statement, the Backward Class certificate of the petitioner was not found in accordance with the Instructions and, therefore, her claim was not considered. It is also not disputed that the Backward

category certificate of the petitioner was issued by the Competent Authority but name of her husband was mentioned instead of her father who also belongs to Backward Class. Moreover, non-production of certificate along with application is not a ground to reject candidature of any candidate as it was held in **Komal's case** (supra). In said case, the petitioner applied for the post of Mistress in Music in the category of Backward Class. Petitioner in the said petition appeared for screening test and got more marks than the last selected candidate in the reserved category but she was not selected. She made representation but the same was also not considered. The objection was raised by respondent-Department that she did not fulfil the eligibility criteria as she was to furnish all certificates as per the condition mentioned in the advertisement. It was held in that case that non-production of certificate along with application form was not fatal. Same controversy was there in **CWP No. 4242 of 2007** which was allowed by a Division Bench of this Court on 30.9.2008 and impugned order of rejection was quashed with a direction to the respondents to give appointment to the petitioner being higher in merit than the last selected candidates. The relevant portion of said judgment is reproduced as under:-

“It is not the case of respondents that the petitioner did not possess the Backward Class Certificate or she was not a Backward Class or she had not submitted her certificate along with application form. The only reason given is that the certificate was an old one and not in terms of 2005 Instructions. The respondents have, however, not been able to show either from the written statement or at the time of arguments that any condition exists either in 2005 Instructions or in the Advertisement, which informs the candidates that they must produce the revised B.C. Certificate in terms of 2005

Instructions along with their application forms. It is, therefore, inconceivable as to how the candidates like the petitioners could have anticipated the aforesaid requirement.”

Similarly, in **Baljeet Singh's case** (supra), the petitioner applied for the post of Science Master under Backward Class category. The petitioner was not appointed as he did not fulfil the requisite qualification for the post of Science Master as per advertisement. Petitioner in that case participated in the Teachers Eligibility Test as a General category candidate and secured 84 marks whereas minimum marks required for passing the test were 90 for General Category candidates and, therefore, he was not found entitled to the benefit as he appeared as a General category candidate. It was held by this Court in that case that petitioner belongs to a Backward Class category and relaxation was granted to the extent of 5%, as there was a provision of granting relaxation to Backward Class category. Petitioner secured 84 marks and for all intents and purposes, was treated as having passed TET under Backward Class category by considering 5% relaxation. A direction was issued to respondents to allow the petitioner to join duty and he was held entitled for all consequential benefits from the date of issuance of appointment letter notionally.

In the present case also, the petitioner belongs to Backward Class category as she was born in a Backward Class family and also married to a person, who is also of Backward Class Category. A person cannot acquire a category by choice as the category is decided on the basis of caste, which is acquired by birth. Non-production of certificate at the time of application is not fatal in any manner. Both the certificates, wherein name of the father as well as name of the husband were mentioned, were produced before the Authorities but still her case was not considered. This action of respondents is violative of Articles 14 and 16 of the Constitution of India as admittedly, she was having more

merit vis.-a-vis. last selected candidate in the Backward Class Category.

Accordingly, in view of facts and law position, as discussed above, the present petition is allowed and the respondents are directed to give appointment to the petitioner on the post of Staff Nurse in Backward Class category as she obtained more marks than respondent No.3. Respondent No.3 is to make place for the petitioner, however, the respondents are at liberty to accommodate displaced candidates against other vacancies, if available. The petitioner shall also be entitled for notional service benefits with effect from the date the candidates lower in merit have been appointed. The necessary exercise be done within a period of two months from the date of receipt of copy of the order.

Writ petition stands disposed of accordingly.

September 08, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes