

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

**CWP No.12959 of 2015(O&M)
Date of Decision: 28.01.2016**

Vironika

... Petitioner

Versus

State of Punjab & Ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. PPS Duggall, Advocate,
for the petitioner.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner applied for the post of Medical Laboratory Technician G-II advertised on July 26, 2011 by way of direct recruitment. Out of the 390 posts advertised 194 of them were earmarked for the General category candidates, 40 posts to SC(M&B), 39 to SC(R&O) and 39 towards reservation meant for Backward Classes. The petitioner is originally a member of the Scheduled Caste category by birth. Either she or her forefathers freely converted to Christianity forsaking their roots by embracing the Christian religion. By this act, they lost their status as Scheduled Caste but were saved to still fall within the reservation concessions accorded by the State under Article 16 (4) of the Constitution by special inclusion in the list of Backward Classes/Other Backward Classes falling in the reserved class category declared by the Government of Punjab vide notification dated August 16, 1972. This has been pointed out by Mr. Duggall, learned counsel appearing for the petitioner from

document Annexure P-13 to the petition. Meaning thereby that a scheduled caste candidate converting to Christianity ceases to be a member of the Scheduled Caste for all times if the new faith is practiced but instead falls in the Backward class category as declared under Article 341 of the Constitution.

2. Indisputably, the petitioner applied for direct recruitment under the category of Scheduled Caste and competed in that category without disclosing her status as a Christian. So I asked Mr. Duggall to show me the public notice advertising the post in the year 2011 to know more about the argument raised in the context of relief. On perusal, the terms and conditions have been laid down at the foot of the public notice with instructions on how to apply online. Provision No.9 reads as follows:-

“(9) If by mistake the candidate had filed any wrong data in application form, he/she can correct the data from 27/07/2011 to 19/8/2011 upto 5.00 p.m. by entering his/her registration number and password. Henceforth no editing will be done and thereafter data will be locked and no change will be acceptable/allowed.”

3. The impugned order rejecting the candidature of the petitioner adverts to this condition and holds that since the petitioner did not apply for change/correction of data punched; as presently canvassed as an innocuous mistake, within the time allowed online till August 19, 2011 then no one can do anything or be of any help since the data fed was locked in the selection programme and no change was acceptable or would be allowed thereafter. The petitioner now wants to change her

track of reservation after the result of the selection has been declared, as far as she is concerned, in the Scheduled Caste category. She implores the Court that she should be allowed by a direction to the respondents to compete in the Backward Class category. She submits that her marks determined as per the criteria laid down are higher than last Backward Class candidate selected and offered appointment. The further argument is that still some posts of Backward Class category are lying vacant and therefore, a direction should go to the State commanding them to consider appointing the petitioner against one of the vacant posts as per her merit.

4. It may be mentioned that the petitioner approached this Court once earlier in CWP No.4134 of 2015, which petition was disposed of by this Court with a direction to the department to consider and decide her representation dated November 27, 2014 addressed to the competent authority and thus a period of two months was allowed as per the directions to pass a fresh order after hearing the petitioner. It is in pursuance to that order that the impugned order dated June 5, 2015 has been passed rejecting the request, the reasoning of which order has been noticed above based on bar of limitation prescribed for correction of wrong entry in the application form since the time to do so had elapsed.

5. In the online system, the sanctity of the terms and conditions for submitting applications are pre-determined and they have to be strictly adhered to. A candidate who does not adhere to the established commands in the online system programme would denude discretion to be exercised by resort to the manual process. This may be subject to

Court intervention but when one sees this from the equitable view point then even if the petitioner is assumed to have a right to be considered as a Backward Class candidate she has by her own act excluded herself from the chase of a government job by not adhering to condition 9 of the public notice advertising the posts in question laying down the pre-ordained rules of competitive selection. If she has anyone to blame for her mistake, if it can be called one, it is only herself and that too in a cut throat and razor sharp world of competition in India with candidates jostling among reservation quotas to secure Government jobs, which is perhaps the most sensitive issue in service law of public employment. The passing hour is irreversible except to the extent indicated in the public notice beforehand.

6. One man's mistake becomes another person's right. As is said the law abhors a vacuum and is never seen on hold while buying tickets for the show. The queue of job seekers whilst it builds up online accepts no intrusions as they are all third parties qua claimant in the backward class category queue whose rights online stand accrued by a software programme designed not to be lightly unsettled.

7. If posts remain unfilled in the claimed category they will not be lost to backward classes and would be put in carry forward mode and in this respect no direction can be issued by the Writ Court to fill vacancies except under due authority of law or for breach of fundamental rights, which is not the case urged or set up in the petition. The petitioner cannot be seen profiting from a fatal mistake she made. If she failed to apply in the BC category (Christian) she took her chances till her result

was declared. She cannot cry over spilled milk. Moreover, ignorance of the law is no excuse. I would therefore find no cogent or valid reason to intervene in the matter and grant relief to the petitioner as claimed by her while she is at fault in not meeting a procedural deadline set before the game started. The procedural rule in condition 9 confers substantive rights in third parties competing for the advertised posts in their respective quotas of reservation.

8. Leaving aside the above, it appears too late to revisit a selection process initiated in mid 2011 to grant any effective relief. The approach to this Court in 2015 does not create a fresh cause of action. Accordingly, the petition suffers from delay and laches and deserves to be rejected on this count as well.

9. For the foregoing reasons, the petition is found lacking in merit and maintainability and is thus liable to be dismissed in limine and it is accordingly so ordered. File is closed to be sent to the record room.

(RAJIV NARAIN RAINA)
JUDGE

28.1.2016
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