

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

CWP No. 15128 of 2014

Date of decision : 13.06.2016

Parmod Kumar

....Petitioner

versus

Haryana Staff Selection Commission and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Yadav, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G. Haryana

Mr. Akashdeep Singh, Advocate
for respondent No. 3

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

RITU BAHRI, J.

The present petition is for issuance of writ in the nature of certiorari for setting aside result/appointment qua respondent No. 3 for Junior Coach, Table Tennis, Sports and Youth Department, Haryana.

Pursuant to advertisement No. 1/2013, category No. 15, petitioner as well as respondent No. 3 applied for the post of Junior Coach, Table Tennis. Out of 5 posts, 3 were reserved for SC candidates, 1 for B.C-B candidates and one post for SBC candidate. Petitioner belongs to BC-B category and was interviewed on 17.12.2013. The result was declared and the petitioner was placed in the waiting list at Sr. No. 1 and respondent No. 3 was shown selected for the above said post, vide result (P-5). Petitioner thereafter vide application dated 13.06.2014 and 03.07.2014 had sought some information under the RTI Act wherein one of the information was

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whether the person who has been appointed as Table Tennis Coach belongs to Caste Brahmin but married to a backward class candidate and can she take the benefit of the backward class. But till date no information was supplied to the petitioner.

On notice, a written statement has been filed by respondent Nos. 1 and 2 wherein also it has been stated that respondent No. 3-Bhavana was selected in the selection of B.CB category, as per her claim made in the application form and on the basis of BC-B certificate issued by Tehsildar, Rohtak and her name was recommended for appointment to the said post. Further it has been stated by the respondent-Commission that respondent-Commission is not aware that respondent No. 3 namely Bhavana belongs to Brahmin caste and married to a person belongs to backward class.

No reply has been filed on behalf of respondent No. 3 despite being served.

In the absence of any reply filed by respondent No. 3 with regard to status of respondent No. 3 whether she belongs to Brahmin caste and married to a person belongs to backward class, the writ petition deserves to be allowed.

Reference at this stage can be made to a judgment of this Court in a case of ***Rita K. Singh and another v. New India Insurance Company, 2012(3) PLR 265*** wherein petitioner was issued a scheduled caste certificate on the basis of her marriage with a person belonging to Scheduled caste and was appointed as Assistant against a reserved post in the year 1987. Subsequently, petitioner was dismissed from service as she could not produce a schedule caste certificate from parental side. This Court relied upon a judgment of Hon'ble the Supreme Court in cases of ***Mrs. Valsamma***

Paul vs. Cochin University and others, AIR 1996 Supreme Court 1011

and allowed the writ petition only on the ground that she had not secured benefit by any false certificate at that time. In para 4, it has been observed as under:-

4. The Hon'ble Supreme Court was, therefore, allowing for continuation in employment of the person whose certificate had been withdrawn and had only denied such a candidate the benefit of taking any future advantage of reservation in future. In the present context, I would hold that the denial of the caste status could be attached only to any further career prospects for promotion which are reserved for Schedule Caste candidates or any other benefit that she could take on such a status."

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Mrs. Valsamma Paul vs. Cochin University and others, AIR 1996 Supreme Court 1011*** wherein Hon'ble the Supreme Court was examining a case of a lady who had married in backward class. The question before Hon'ble the Supreme Court was whether a candidate by marriage, adoption or obtaining a false certificate of social status would be entitled to an identification as such member of the class for appointment to a post reserved under Article 16(4) or for an admission in an educational institute under Article 15(4). Hon'ble the Supreme Court dismissed the appeals and held that at the time when the petitioner was appointed the law permitted persons to be assimilated in scheduled caste category and consequently held that change in the statement of the law after so many years would not justify termination of her services. Similarly, in the case of ***Dattu (supra)*** the Hon'ble Supreme Court upheld

the order declaring the petitioner to be non-scheduled tribe, but granted limited relief to the petitioner and his sister since they had also got admission without making any concealment of fact and had appeared in the examination. It was in these circumstances the Hon'ble Supreme Court, even while dismissing their appeal, permitted the petitioner to get the benefit of admission under the scheduled caste category for the purposes of the exam which they had already given. In para 33, it has been observed as under

In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu, IT (1995) 3 SC 563 and R. Chandevaram v. State of Karnataka, IT (1995) 7 SC 93, this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs. he/she must of necessity also undergo have had same the handicaps, and must have been subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15 (4) or 16(4), as the case may be. Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional

policy under Articles 15(4) and 16(4) of the Constitution.”

In the present case, respondent No. 3 who was brahmin and was married to a backward class person was appointed in the B.Cb category, pursuant to advertisement No. 1/2013, category No. 15. The certificate has been issued to her, which as per judgment of Hon'ble the Supreme Court, could not have been issued to her and she could not get the benefit of being appointed against the post meant for reserve category.

Keeping in view the above fact, the writ petition is allowed and appointment of respondent No. 3 is quashed and direction is given to the respondents to appoint the petitioner under the BC-B category, being in the waiting list at Sr. No. 1. The exercise shall be completed within a period of one month from the date of receipt of certified copy of this order.

13.06.2016

G Arora

(RITU BAHRI)
JUDGE