

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

Date of decision: 19.08.2016

CWP No.1744 of 2014

Rohtas

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Shalender Mohan, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

Advertisement No.3/2010 notified inter alia vacancies occurring on the post of Steno-Typist (Hindi) under reserved category of Scheduled Castes as well as Physically Handicapped category (PHC). The result was declared in August, 2013 and the petitioner has approached this Court for a direction to the respondents to offer him appointment against two posts in the Physically Handicapped category which are said to be still lying vacant. His disability is certified to the extent of 70% being polio sticking since childhood. During the selection process, two corrigenda were issued in October, 2010, while the third in February, 2011. By the corrigendum of February, 2011, three posts were earmarked for the first time from the Physically Handicapped Category (Ortho). There was a Note in the corrigendum that eligible candidates for the posts as mentioned in subject matter Category No.26 stood increased from 102 to total 183, who could not

apply earlier, may apply under the new corrigendum till 10.03.2011. However, such candidates who had already applied against the original advertisement need not apply again against respective categories as their old application will be considered. The other terms and conditions will remain the same. The selection process was in the hands of Haryana Staff Selection Commission, Panchkula, Haryana.

It is the case of the petitioner that since he had applied within time allowed under the original advertisement and there was a column in the application form of Physically Handicapped Category, he had tick marked the column under that category as well, other than applying under the Scheduled Castes category. The petitioner is a member of the Scheduled Castes and is also a disabled person and asserts has a right of consideration under both categories under the original advertisement and application form. But while he advances this submission, he fails to take stock of the crucial fact that there was no reservation for the category of Physically Handicapped and the reservation was introduced for the first time by way of corrigendum dated 23.02.2011 earmarking three vacancies for PHC (Ortho). Merely because there was a column in the application form relating to PHC that would give no right of consideration till such time as the corrigendum dated 23.02.2011 was issued creating reservation for the moot category. Therefore, the petitioner ought to have applied afresh under the corrigendum dated 23.02.2011, which carved out reservation for the Physically Handicapped Category (Ortho) by adding posts to the number already advertised.

On notice, the respondent – Commission has filed a reply wherein it has been stated in the preliminary submission as follows:

“In this connection, it is submitted that as per condition of the advertisement while applying for the post the candidates were required to attach the PHC certificate along with the application form issued by the competent authority to claim his candidature in the said category. However, while making application for the said post, the petitioner neither claimed PHC category in the application form nor attached the PHC certificate with the application. In the application form he simply claimed SC category keeping in view more number of posts in SC category (34 posts) instead of 3 posts of PHC (Ortho) category. Therefore, as per claim made in the application form the petitioner was considered in SC category and on the basis of overall performance he secured 34.45 marks as against 40.80 marks of last selected candidate in SC category. Hence, due to lesser marks he could not make grade in the selection list. After the declaration of the result the petitioner became wiser and represented the Commission to consider his candidature against 2 vacant posts of PHC (Ortho) category shown in the result dated 21.08.2013 (Annexure P-6) which cannot acceded to in view of the fact he neither claimed PHC (Ortho) category in the application form nor appended the PHC (Ortho) certificate with the application form. Thus, no cause of action subsists to the petitioner in the present writ petition and the same deserves to be dismissed having no force and merit therein.”

The categorical stand is that the petitioner neither claimed PHC (Ortho) category in the application form nor appended the PHC (Ortho) certificate with the application form. He contested the selection in the category of Scheduled Castes alone and took his chance. As per his claim in the category of Scheduled Castes, he could not make it on merit since he

secured 34.45 marks as against 40.80 marks secured by the last selected candidate in the category of Scheduled Castes.

The petitioner has filed a replication and has tried to answer the positive assertion of the State, reproduced above, rebutting the averments in a vague manner. The reply is not even seriatim to the paragraphs in written statement corresponding to the petition and is a clever device to avoid a direct admission or denial, or explanation of the pleaded facts as against the preliminary submission of the State. Para.2 of the replication is found to be the only response to the dispute, which reads as follows:

“2. That it is totally concealed by the answering respondent that the petitioner has only been considered in SC category however he has also applied in PHC category and he has tick mark on the column of PHC category and it is not possible to anyone who are claiming the benefit of physical handicapped and not attaching the certificate which shows that the answering respondent is trying to mislead the Hon’ble Court, however, the petitioner has attached the all document along with his physical handicapped certificate issued much prior from advertisement.”

It is well settled that what is not denied stands admitted. I have no reason to question the stand in the written statement. The information supplied to the petitioner by the State Public Information Officer, Haryana Staff Selection Commission, Panchkula under the Right to Information Act, 2005 would also not help the petitioner when it informs him that the application forms of unselected candidates for the post of Steno-Typist (Hindi) against Advertisement No.3/2010 have not been preserved by the Commission. It would not mean that an adverse inference should necessarily be drawn and appointment offered to the petitioner by a Court

direction. The present petition was filed in January, 2014 and, therefore, the petitioner may have waited for destruction of record to work to his undue advantage. I have no reason to interfere in the matter. By the very nature of the corrigendum reserving 3 vacancies for PHC for direct recruitment and the Note thereto the petitioner should have also applied for the additional category and could not have legitimately expected the Commission to treat the old application as one for PHC and SC category. There was no such promise held out. Even a copy of the application form submitted in response to Advertisement No.3/2010 or its blank proforma has not been produced on record or shown to the Court at the oral hearing.

The petition is accordingly dismissed being devoid of merit.

[RAJIV NARAIN RAINA]
JUDGE

19.08.2016
Vimal

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*