

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

**CWP No. 20483 of 2015
Date of decision : 21.01.2016**

Sonia

...Petitioner

versus

Chandigarh Administration and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Lalli, Advocate
for the petitioner.

Mr. Vivek Chauhan, Advocate
for the respondents.

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

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus for issuance of direction to respondent Nos. 1 to 3 to appoint the petitioner as JBT Teacher under the OBC Category (vide recruitment notice/advertisement-Annexure P-4) as the petitioner belongs to 'Swarnkar' community, which has been declared as OBC by Chandigarh Administration.

Petitioner who is permanent resident of Chandigarh (P-1)

GAURAV ARORA
2016.02.16 15:44
I attest to the accuracy and
integrity of this document

belongs to 'Swarnkar' community, which is recognised as Other Backward Class by the Government of India, Ministry of Social Justice and Empowerment as well as by the Chandigarh Administration (P-3). Respondent No. 2 vide recruitment notice invited applications from eligible candidates for filling up various sanctioned posts of JBT and Nursery Teachers in Chd. Admn. In the pay scale of 10300-34800+4200-Grade Pay with initial start of Rs.16290/- on contract basis at a fixed remuneration of Rs.16000/- per month and out of total JBT teachers of 489, 177 were kept reserved for OBC category (P-4). The petitioner appeared in the examination and secured 114 marks and was shown at Sr. No. 342 in the list (P-5). In the fourth merit list, the candidates who had secured 113 marks were found eligible for appointment. However, the respondents while preparing the merit list has not shown the petitioner in the list of eligible candidates under OBC category and was shifted to General Category on the ground that the 'Swarnkar' community does not exist in the Central List and U.T List (P-7). The petitioner thereafter, approached respondent No 3 who had issued OBC certificate to the petitioner for clarification as to whether 'Swarnkar' community is valid OBC or not and vide letter dated 23.04.2015, the petitioner was informed that as per UT notification dated 26.03.2015, the castes at Sr. No. 62 include

Sunar/Swarnkar/Swarnakar (P-8 and P-9). Apart from this vide letter dated 03.08.2015 Department of Personnel, Chandigarh Administration had issued directions to all the Administratives Secretaries/Head of Departments/Office/Institutions/Boards/Corporations of Chandigarh Administration that a person would be eligible for benefit of reservation of Other Backward Class whose caste is notified in the State List of Other Backward Classes of U.T. Chandigarh. In spite of the above clarification, the petitioner is not been appointed under the OBC category and has been put under the status of Eligibility under consideration (P-11). Further vide notification dated 17.02.2014 of Ministry of Social Justice and Empowerment, Government of India, Swarnkar community has been notified as valid OBC caste for U.T (P-12)

The short point for consideration before this Court is that whether the petitioner who belongs to Swarnkar community will fall under the OBC category and if yes, whether she was eligible to be appointed as she got 114 marks, when candidates who had secured 113 marks were found eligible for appointment.

Learned counsel for the respondent while referring to written statement filed by respondent No. 3 contends that the name of the petitioner was shifted from OBC to General as the certificate relied upon by the petitioner (P-3) was issued to the petitioner after shifting

her to General Category. The petitioner had applied to Sub Divisional Magistrate (Central) U.T Chandigarh in the year 2012 for the issuance of certificate of OBC

Learned counsel for the petitioner further contends that the petitioner filed application dated 16.04.2015 to (R-2) respondent No. 3 for correcting the spelling of her caste as 'Swarnkar Community' after issuance of certificate and thus, she was granted certificate after her applying for the post of JBT teacher.

Heard learned counsel for the parties.

The contentions raised by learned counsel for the respondents is liable to be rejected, in view of the judgments passed by this Court in ***Aarti Rani vs. Chd Admn and others***, passed in CWP No. 23089 of 2013, decided on 30.03.2015 whereby the claim of the petitioner for appointment to the post of JBT Teacher in the category of OBC on contract basis was declined, despite the fact that she belongs to 'Gadderia' caste, which comes in the category of Other Backward Class. Her claim was rejected on the ground that 'Gadderia' and 'Gaddaria' are two different castes and the petitioner cannot claim benefit. This Court allowed the writ petition by holding that the caste of petitioner 'Gadderai' and word 'Gaddaria' are reflected at Sr. No. 24 of the Central list of OBC.

Further this Court in a case of '**Rajbir Singh and others vs. Chd Admn and others**', passed in CWP No. 26092 of 2012 and connected case, decided on 25.10.2013 held that once the name of the petitioner is reflected in the Central list of OBC for U.T Chandigarh, thereafter merely on the ground that he had written wrong spellings of his caste, will not debar him to get appointment to the post of teacher. Accordingly, the writ petition was allowed.

The above mentioned two judgments are directly applicable to the facts of the present case where the petitioner was issued OBC certificate by Sub Divisional Magistrate (Central) U.T Chandigarh on 01.08.2012, as the petitioner belongs to Swarnkar community. This community comes under the OBC category, as per the clarification given by respondent No. 3 vide letter dated 23.04.2015. A notification in this regard has also been issued dated 26.03.2015 whereby at Sr. No. 62, the castes i.e Sunar/Swarnkar/Swarnakar were considered under OBC category (P-9). Apart from this general directions were also issued by the Department of Personnel, Chandigarh Administration had issued directions to all the Administratives Secretaries/Head of Departments/ Office/Institutions/Boards/Corporations of Chandigarh Admn that a person would be eligible for benefit of reservation of Other Backward Class whose caste is notified in the State List of Other Backward Classes

of U.T. Chandigarh. Further vide notification dated 17.02.2014 of Ministry of Social Justice and Empowerment, Government of India, Swarnkar community has been notified as valid OBC caste for U.T (P-12)

Despite the above said letters and clarifications, the respondents while preparing the merit list has not shown the petitioner in the list of eligible candidates under OBC category and she was shifted to General Category from OBC category.

Applying the ratio of the above said judgment, the present writ petition is allowed and a direction is issued to the respondents to consider the case of the petitioner for appointment on the post of JBT teacher on contract basis, pursuant to advertisement (P-4) by treating her under the OBC category. The said exercise be done within a period of two months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

21.01.2016

G Arora