

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

**CWP No.216 of 2015
Date of Decision:05.02.2016**

Saleem Rani Petitioner

Versus

State of Punjab & ors. Respondents

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

Present: Mr. Brijender Kaushik, Advocate
for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

Mr. Surjit Singh Swaich, Advocate
for respondent No.5

Mr. Gagandeep Singh, Advocate for
Mr. Amandeep Singh Manaise, Advocate
for respondent No.12.

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

RAJIV NARAIN RAINA, J.(Oral)

Undisputedly the petitioner is a backward class by birth while she applied for the post of English Teacher by way of direct recruitment against vacancies advertised in 2012. She submitted her backward class certificate as wife of Talib Husain. A doubt arose in the mind of the recruiting authority whether she was a backward class by birth, for which the best evidence would be the cast status of the father. The petitioner obtained the Backward Class Certificate

with reference to the status of her father, namely, Sh. Amrik Khan @ Mika Khan [Page- 63] and submitted it to the department. However, this certificate issued by the Tehsildar, Bathinda was issued on 31st October 2006 (Annexure P-6). It may be mentioned that last date of submitting applications Online was 8th October 2012. There can be no doubt that the petitioner is Backward Class; married in Backward Class and the daughter of a Backward Class. Her case for consideration for appointment to the post of English Mistress cannot be left to hang discarding her caste certificate issued in 2006 and especially when there were no specific terms and conditions in the advertisement advising candidates on the subject. Therefore, the petitioner may have had a bona fide belief that her certificate in the name of her husband will serve the purpose. If the defect has cured would it relate back to the last date of receipt of application by applying the law in *Charles K. Skaria and Ors. Vs. Dr. C. Mathew and Ors.* 1980(2) SCC 752

Resultantly the actual reason of the respondents in declining the candidature of the petitioner on account of ineligibility is that the caste certificate was not disclosed/produced on 08.10.2012 was an erroneous view taken. The petitioner has right of consideration as a backward candidate to compete for the post of English Mistress as per merit determined by the recruiting agency. The "Special Backward Class" has been defined in **Section 2(b) The Punjab Scheduled Castes and Backward Classes Act 2006** to mean a Backward Class, declared as such by the State by Notification in the Official Gazette from time to time. Indisputably the

petitioner was a member of the Backward Class by birth and therefore, submitting of the caste certificate in the name of a father was sufficient for the respondents to have proceeded to process the case of the petitioner for appointment, in case selected on merit.

For the foregoing reasons the petition is allowed. The remarks in the last column of Annexure P-5 are declared in consequential to the rights of the petitioner as a Backward Class candidate. The reasoning adopted by the respondents in declining the candidature of the petitioner is declared non-est by issuing of certiorari in case such records subsist on the Government files. It follows as a corollary that a mandamus deserves to be issued to the respondents to consider the case of the petitioner as a Backward Class candidate and in case she falls in the zone of merit then she may be offered appointment as English Mistress in School cadre, Punjab after completion of formalities. The petitioner would take her seniority from her merit position. She would not be entitled to monetary benefits prior to the date of filing of the petition. All consequential benefits will flow from the date of the petition including full salary and allowances. This order will not result in displacing anyone who has been appointed so far. Since one post had been reserved for the petitioner by an interim order, the interim order is made absolute.

(RAJIV NARAIN RAINA)
JUDGE

05.02.2016
M.Negi