

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

CWP No.5797 of 2016 (O&M)

Date of decision:02.09.2016

Surender Kumar

... Petitioner

Vs.

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Jai Vir Yadav, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. H.N. Mehtani, Advocate for HPSC.

...

TEJINDER SINGH DHINDSA, J.

Petitioner seeks issuance of a writ of mandamus directing the respondent/Haryana Public Service Commission (hereinafter to be referred to as 'the Commission') to consider his candidature in the selection process pertaining to the Haryana Civil Services (Executive Branch) and other Allied Services Examination, 2014 against GC (Economically Backward Persons) category.

Vide Notification dated 23.01.2013 issued by the Haryana Government, Welfare of Scheduled Castes and Backward Classes Department (Annexure P-3), a decision was taken to declare certain classes of people residing in the State as Special Backward Classes with immediate effect. These were Bishnoi, Jat, Jat Sikh, Ror and Tyagi. A 10% reservation in jobs under Government/Government Undertakings and Local Bodies as well as in Educational Institutions for these Special Backward Classes was provided. Vide Notification of even date i.e. 23.01.2014 (Annexure P-4), a

10% reservation in jobs under Government/Government Undertakings and Local Bodies as well as in Educational Institutions was also provided for Economically Backward Persons in the General Caste Category of the State. The criteria for determining Economically Backwardness was provided in the Notification itself. It was clarified that any person who claims benefit of reservation under other categories shall not be entitled to claim reservation in this category i.e. Economically Backward Persons.

The Commission issued advertisement No.8 dated 20.02.2014 (Annexure P-1) inviting online applications for recruitment of 55 posts of HCS (Executive Branch) and other Allied Services. The scheme of examination comprised of three stages i.e. Preliminary Examination, Main Examination and Personality Test (viva voce). In the advertisement, one post was reserved for Special Backward Classes category and two posts were reserved for Economically Backward Persons (General) of Haryana Domicile.

Pleaded case of the petitioner is that he had applied in response to advertisement dated 20.02.2014 issued by the Commission under the category of Special Backward Classes. Petitioner appeared in the preliminary examination but in the result that was declared, he did not qualify for the main examination.

The prayer raised in the instant petition seeking revision of result of the preliminary examination and for consideration of his candidature against the Economically Backward Persons (General) category stems on account of certain developments that took place after the issuance of the advertisement dated 20.02.2014 issued by the Commission. Such developments may briefly be noticed.

The reservation provided for against SBC category came to be challenged before this Court by way of filing of a number of writ petitions. In terms of order dated 27.07.2015 passed by a Division Bench of this Court in **CWP No.9132 of 2015 (Ved Prakash & another Versus State of Haryana & others)** Annexure P-6, the writ petition was admitted but a restraint order was passed to the effect that the State of Haryana shall not give any employment in government service as also admission in educational institutions on the basis of Notification provided for reservation in favour of SBC. In deference to the interim directions issued by this Court, an announcement dated 27.01.2016 was published by the Commission at Annexure P-5 clarifying the status of the SBC Category candidate for conduct of main examination of H.C.S. (Executive Branch) and other Allied Service, 2014. The clarification issued was in the following terms:

“(i) The SBC category candidates will be issued provisional Admit Cards with the condition that their result will be declared after final outcome of the aforesaid pending writ petitions.

(ii) The SBC category candidates who have not availed the benefit of age relaxation shall be considered against the vacancies of General Category.

(iii) the result of SBC category candidates against the post reserved for SBC category shall be withheld till the final outcome of the aforesaid writ petitions and will be decided accordingly.”

It would be apposite to notice that subsequently a Notification has been issued by the State of Haryana dated 01.04.2016 in terms of which the earlier Notification dated 24.01.2013 providing reservation to Special Backward Classes stands withdrawn.

The entire case set up on behalf of the petitioner is that since

candidates belonging to SBC category are now to be considered as General Category candidates, the petitioner who also happens to fulfill the criteria to claim reservation under the category of Economically Backward Persons in the general category is now vested with a right to be considered under the EBP (G.C.) category. It has been vehemently contended by the counsel appearing for the petitioner that at the stage of submission of applications in response to the advertisement issued by the Commission, the petitioner had applied against the SBC category, as such reservation was alive and valid at that point of time. It is submitted that circumstances have since changed and which were not within the control of the petitioner. At the time of submission of application form, the petitioner could not have claimed reservation under the category of Economically Backward Persons (GC) as he had chosen to apply under the SBC Category but now since the Commission has itself made an announcement for consideration of candidates belonging to SBC category as General Category candidate, there would be no impediment in considering the candidature of the petitioner in the EBP (General Category) category. Counsel has also referred to the certificate appended and placed on record at Annexure P-9 issued by the Competent/Appropriate Authority under the Haryana Government certifying the petitioner to be Economically Backward Person (G.C.) category.

Having heard counsel for the parties at length, this Court is of the considered view that the prayer made in the instant petition cannot be accepted.

Alongwith the advertisement dated 20.02.2014 issued by the Commission, detailed instructions were also issued and which would construed as part and parcel of the advertisement itself. It has gone

uncontroverted that in such instructions, there was a categoric stipulation to the effect that ***'No request regarding any change in any category in the online application form will be entertained by the Commission.'*** Still further, in the advertisement dated 20.02.2014, the closing date for submission of applications was stipulated as 18.03.2014.

It is by now well settled that the conditions and terms contained in an advertisement by which a process of recruitment is initiated would be sacrosanct and cannot be deviated from. The petitioner had applied under the SCB category. It is true that such reservation on account of circumstances and developments already noticed has ceased to operate. The Commission, accordingly, issued a clarification that the candidates, who had claimed reservation under the SCB category would now be considered under the General Category and that too, with a rider that they have not availed any age relaxation. Such change of circumstances would not vest in the petitioner a right for change in category now and to claim consideration of candidature against the Economically Backward Persons (GC) category. Acceptance of such a prayer would virtually amount to negating a specific condition imposed by the Commission while inviting applications that no request regarding any change in any category would be entertained. The rules of the game pertaining to a selection process cannot be changed midway.

That apart, the closing date for submission of applications online was stipulated as 18.03.2014. This would be the crucial date as regards determining eligibility of any candidate, be it educational qualifications or the claim towards seeking reservation. The certificate at Annexure P-9 on which reliance has been placed by the petitioner as regards

Economically Backward Persons (G.C.) category is dated 23.11.2015 i.e. a date subsequent to the closing date for submission of applications. No claim for reservation on the basis on such certificate can be entertained.

For the reasons recorded above, the writ petition is dismissed.

02.09.2016

harjeet

(TEJINDER SINGH DHINDSA)

JUDGE

- | | | |
|-----|----------------------------|-----|
| i) | Whether reasoned/speaking? | Yes |
| ii) | Whether reportable? | Yes |