

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

**C.W.P No. 8165 of 2014
Date of decision : 29.02.2016**

Sohan Lal

...Petitioner

versus

Pt. B.D.S Uni. Of Health and Sciences & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Lalit Rishi, Advocate
for the petitioner.

Mr. Ramesh Hooda, Advocate
for respondent No. 1

Mr. J.S. Cooner, Advocate
for respondent Nos. 2 to 6 and 8 to 14.

Mr. Anurag Jain, Advocate
for respondent No. 7

Mr. Rajesh Gaur, Addl.A.G. Haryana

RITU BAHRI , J.

By way of present writ petition, petitioner is seeking quashing of selection/appointment of respondent Nos. 2 to 14 and selection criteria (P-5) prepared by respondent No. 1.

Respondent No. 1 advertised various posts in PGIMS Rohtak, vide advertisement No. 3/2012 and the last date for submitting the application was mentioned as 25.01.2013 and 20 posts of Laboratory

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I attest to the accuracy and
integrity of this document

Technician was published at Sr. No. 1. Petitioner, being eligible applied for the said post under BC-A category, as per Annexure P-2. This application was duly accepted by respondent No. 1 and admit card was issued to the petitioner for appearing in the Screening Committee (P-3) and subsequently, petitioner appeared in the Screening Test on 09.06.2013 and was topper by securing 78 marks (P-4). The interview of the petitioner was conducted on 19.07.2013 and result was declared by respondent No. 1 and petitioner was placed at Sr. No. 1 in the waiting list of BC-A category (P-5).

Thereafter, petitioner sought information under Right to Information Act regarding detail of marks obtained by him as well as marks obtained by other selected candidates. The respondents replied to the RTI application vide Annexure P-6. Petitioner then came to know that he has secured total 47.78 marks out of 100 in BC-A category and Padam Singh and Raj Kumar have obtained 49.76 and 49.33.

Learned counsel for the petitioner submits that respondent Nos. 2 and 3 have secured more marks than the marks secured by the last general category candidate i.e Pooja-respondent No. 4 who has secured 49.14 and thus respondent No. 1 was required to place Padam Singh and Raj Kumar in General Category and adjust the petitioner.

Reference has been made to instructions/policy of the Haryana Government dated 25.06.1997 which provides that the

candidates who have applied for any post in reserve category but they secured marks more than general category then those candidates, shall be considered in General Category. Thus the action of respondent No. 1 is against the instructions/policy dated 25.06.1997 (P-7).

Further the petitioner was not given any mark for his experience and education qualification and if the petitioner's marks is also added under the head of experience and Higher Education, then the total mark of the petitioner will be more than respondent Nos. 4 to 6.

Learned counsel has referred to copy of result dated 19.05.2011 (Annexure P-8) and stated that earlier also the petitioner applied for the same post in the same department and petitioner was given 3 marks by considering the degree of M.Sc in Clinical Microbiology.

Reference has been made to judgment of this Court in a case of ***Jaskaran Singh v. State of Punjab 1995(2) SCT 65*** whereby this Court has followed the judgment of Hon'ble the Supreme Court in a case of ***Indra Sawhney v. Union of India 1993(1) SCT 448***. it has been held that candidate belonging to reserve category are entitled to the seats from General Category if they get higher merit as entitling him to the seat in general category-reserved categories cannot be restricted to only the reserve seats-instructions imposing restrictions are violative

of Article 14 and go against the interest of the reserved categories.”

Similar view was taken by this Court in a case of ***Harpreet Kaur vs. Baba Farid University of Health Science and others, 2007***

(6) SLR 2011 and held that reserve category candidate securing higher mark than general category, he/she is entitled to be considered against general category seat.

Learned counsel for respondent No. 1 has not disputed the marks obtained by the petitioner as well as information given under the RTI Act. Thus, the necessary conclusion would be that two candidates i.e Padam Singh and Raj Kumar who have been appointed against two posts reserved for BC-A category, have higher marks than the last general category candidate, which is in violation of the above mentioned judgments and the notification/instruction dated 25.06.1997. The merit list thus requires to be revised, in view of the judgment passed by this Court in a case of ***Devi Chand and others vs. Haryana State Electricity Board passed in CWP No. 15558 of 1997 and connected matters, decided on 03.12.2008*** whereby reserve category candidates who had obtained higher marks than the general category candidates, were directed to be considered in the general category.

In view of the judgments referred to above, the writ petition is allowed and respondent No. 1 is directed to consider the claim of the petitioner for appointment in BC-A category by revising

the merit list by adjusting respondent Nos. 2 and 3 in general category.

However, it would not be in the interest of justice to displace those general category candidates who may have been given appointments because of illegal ousters of reserve category candidates, as no fault can be found with them. The entire exercise shall be done within a period of 2 months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

29.02.2016

G Arora