

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

Civil Writ Petition No.10101 of 2014

Reserved on: 19.09.2017

Decided on : 04.10.2017

Pinky

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

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

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. R.K. Malik, Senior Advocate with
Mr. Bhupinder Malik, Advocate for respondents No.4 to 7, 9,
10, 12, 14 to 17, 19, 20, 22 and 23.

Mr. S.K. Yadav, Advocate
for respondent No.24.

G.S. Sandhawalia, J.

The petitioner under Article 226 of the Constitution of India seeks quashing of the appointment/selection of the 21 posts of Female Supervisor reserved for BC-B Category, which were advertised by Advertisement No.1/2011 dated 18.03.2011 (Annexure P-1).

The said relief is sought on the ground that the petitioner has to be given the benefit of the preferential qualification over and above the basic qualification prescribed, since she is a graduate having done B.Sc. in Home Science (Annexures P-3 to P-5).

The defence of the State to the preferential qualification is to be seen when all things are equally placed and the petitioner having lesser

merit could not thus be granted the said benefit qua the private respondents. The advertisement vide which the respondent-Commission advertised the 278 posts of Female Supervisor. The petitioner was an applicant of BC-B Category, wherein 21 posts were to be filled up. The essential qualifications, which were required as under:-

“E.Q i) Graduate from a recognized University preferably in Home Science or Child Development or Nutrition.

ii) Hindi/Sanskrit up to Matric standard.

Age : 20 to 40 years”

The petitioner was called for interview on the basis of short listing done, whereby 62% was the cut-off applied for the said category as she had 67.1% marks. Eventually merit list was prepared on 24.10.2013 which including the private respondents who had the qualification of Bachelor of Arts and some of them were having qualification of Bachelor of Science and were having subject of Mathematics, Physics and Chemistry, but none had the subject of Home Science. Accordingly, the writ petition was filed claiming that preference should be given for the right of appointment.

The defence of the respondent-Commission was that the short listing procedure dated 01.08.2012 (Annexure P-6) had remained subject matter of challenge in **CWP No.24037 of 2012 Naresh Kumari Vs. State of Haryana and others** which had been upheld vide judgment dated 05.12.2012. Thereafter, the Commission had interviewed the short listed candidates and finalized the selection, as per the criteria (Annexure R-3/1). The petitioner had been given 29.97 marks + 14

marks totalling 43.97 marks out of 75 marks as against the 48.27 marks as of the last selected candidate in her category. She had not made the cut in the selection list and therefore could not turn around and challenge the procedure prescribed. Reliance was placed upon the judgment passed in **Secretary Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasula and others 2003 (5) SCC 341**. It was, accordingly, pleaded that preference was to be given only when the claim of the candidates was equally positioned by using additional qualification as a tilting factor.

Similarly, the private respondents took the plea that Apex Court in **Prem Singh and others Vs. Haryana State Electricity Board and others 1996 (4) SCC 319** has also held to the same effect by holding that preference for higher qualification did not imply or convey that the selection was to be made in two stages, firstly the candidate having higher qualification being considered and thereafter candidates having minimum qualification were to be considered in case of non availability of the former.

Counsel for the petitioner on the other hand has relied upon the judgment of the Apex Court passed in **Surinder Singh Vs. Union of India 2007 (11) SCC 599** to submit that the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity to shoulder the responsibility against a particular post.

The Division Bench judgment of this Court in **Ved Parkash and others Vs. Punjab and Haryana High Court and others 2008 (2) RSJ 738** while considering the issue of promotion to Superintendent Grade-I rejected the argument of the Law Graduates that they had to be given en bloc preference irrespective of *inter se* merit, while placing reliance upon the judgment passed in the case of Y.V.V.R. Srinivasula (supra). Similarly, reliance was placed upon the judgment of the Apex Court in **State of U.P and another Vs. Om Parkash and others 2006 (6) SCC 474** to held that preference did not mean en bloc preference irrespective of *inter se* merit and suitability.

Similarly, in **Parshotam Lal Vs. State of Haryana and others 2011 (1) RSJ 464** where through preference clause of experience of additional qualifications in Social and Correctional Works, Social Science, Penology, Psychology or Criminology provided in the advertisement notice, preference was sought. The Court by placing reliance upon the judgment of the Apex Court in **Secretary Health Department of Health & F.W. and another Vs. Dr. Anita Puri and others, 1996 (6) SCC 282** rebutted the argument by holding that the petitioner was lower in the merit and could not have been given preference against the meritorious candidate when all other factors were equal and the rule of preference would not come into play.

The Apex Court in Om Parkash's case (supra) has held that preference would mean that claim of all eligible candidates who were

eligible and possessed the requisite educational qualification, then there is a tilting factor in favour of the said candidates. Accordingly, the appeals were allowed and the judgments of the High Court were set aside, whereby the preference had been given to the degree holders, who had preferred the writ petition on the ground that they have given preference over and above the diploma holders. The relevant part of the said judgment reads as under:-

“15. The interpretation of the preference clause given by the High Court runs into the teeth of the decisions rendered by this Court in a catena of cases.

16. This Court has consistently held that when selection is made on the basis of merit assessed through the competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

19. In the instant case, the requisite academic qualification for the post of homeopathy as prescribed in the advertisement was a recognised degree in Homeopathy or a recognised diploma in Homeopathy. A proviso has been added that preference will be given to degree holders. This would mean that a recognised diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word preference would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement

are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-a-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability.”

The judgment relied upon in Surinder Singh's case (supra) would be of no help to the petitioner, since instructions had been issued in the said case that the merit of the candidates for selection to the post of Departmental Delivery Agent should be on the basis of marks obtained in the preferential qualification, matriculation and if such candidates are available. Otherwise on the basis of essential qualification of 8th standard recruitment was to be made. The challenge had been raised to the appellants appointment in the said case before the Central Administrative Tribunal which had held that the minimum qualification was 8th standard and as the said person had secured more marks in the 8th standard, the appellant could not have been selected on the basis of preferential qualification for the post in question. Resultantly, the Apex Court had reversed the said finding recorded by the Tribunal upheld by the High Court by noticing that marks obtained in the preferential qualification to the candidates available were to be seen, as per the instructions. Accordingly it was held that the Tribunal was not competent to lay down the criteria for the selection process and thus the said judgment would be of no help to the petitioner.

Accordingly, keeping in view the above principle, the

petitioner cannot seek any such benefit of preferential qualification, in view of the settled law.

Resultantly, there is no merit in the present writ petition and the same is dismissed.

OCTOBER 04, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>