

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13713 of 2014

Date of Decision:-20.01.2017.

Dheeraj Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Kuldeep Singh Yadav, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has sought for a writ of *mandamus* directing the respondents to consider his name for DESM BCB category to the post of Steno Typist.

2.) Respondents have advertised posts of Steno Typists on 15.9.2010 while reserving 8 posts for the DESM BCB category. The petitioner had applied for the aforesaid post while enclosing certificate of DESM BCB category dated July, 2007. The petitioner was permitted to participate in the process of selection like written examination in which he was successful. Consequently, for the purpose of interview, his candidature has been restricted to only BCB category instead of DESM-BCB category on the score that the petitioner had not enclosed the fresh eligibility certificate in respect of DESM category as per instructions given to the candidates.

3.) Learned counsel for the petitioner submitted that on 7.11.2012,

petitioner has obtained fresh DESM certificate and produced at the time of interview held on 10.11.2012. However, the respondents have rejected the same and considered the petitioner's candidature only under BCB category instead of DESM and BCB category. Learned counsel for the petitioner pointed out from the advertisement in particularly Note 2 under which reservation posts heading reads as under:-

“ESM/DESM candidates of Haryana claiming benefit will have to produce the fresh Eligibility Certificate from the concerned Zila Sainik Board at the time of interview. Mere dependent certificate will not be entertained. ESM candidates should also produce at the time of interview attested photo copy of Identity Card issued by concerned Zila Sainik Board.”

4.) It was submitted that having regard to the above instructions, the petitioner's case is required to be considered under DESM-BCB category with reference to DESM certificate dated 7.11.2012. In not considering the petitioner's candidature under DESM category is highly arbitrary and illegal and contrary to the clause imposed in the reservation of post in the advertisement.

5.) Learned counsel for the petitioner further pointed out from the result vide Annexure P-5 that 8 posts of ESM-BCB have not been filled up for want of eligible candidates among other categories. Note reads as under:-

“NOTE: ESM-GEN=14, ESM-SC=05, ESM-BCB=08 and PHC (ORTHO)=02 posts remained vacant due to non-availability of candidates in these categories.”

6.) On the other hand, learned counsel for the respondents

submitted that candidates are required to enclose fresh eligibility certificate

in case of DESM candidates duly issued by the respective Zila Sainik Board as is evident from the advertisement with reference to heading *“DOCUMENTS TO BE ATTACHED WITH THE APPLICATION FORM”*. Since the petitioner has not enclosed fresh eligibility certificate in respect of DESM category duly issued by the respective Zila Sainik Board along with the application form at the time of making application for the post of Steno Typist, the petitioner is not entitled to be considered. Thus, rightly, the respondents have considered the petitioner's candidature under BCB category only in which he was not eligible.

7.) Heard learned counsel for the parties.

8.) Question for consideration in the present petition is whether petitioner who is a candidate for recruitment to the post of Steno Typist and who claims his candidature is required to be considered under DESM-BCB category or not? and to produce fresh eligible certificate along with application form or not? No doubt the advertisement which prescribes that the candidates are required to enclose fresh eligibility certificate in case of DESM and other category. At the time of interview, ESM/DESM candidates of Haryana claiming benefit will have to produce the fresh eligibility certificate duly issued from the concerned Sainik Board *“at the time of interview”*. Therefore, perusal of the records, it is evident for the purpose of interview held on 10.11.2012, the petitioner had produced fresh DESM certificate dated 7.11.2012. Thus, the petitioner has complied the instructions for the purpose of attending interview. Further it is noticed that under DESM-BCB category, 8 posts have not been filled up for want of eligible candidates. Therefore, the petitioner's name is required to be re-considered by the respondents. That apart, recent decision of the Apex

Court held in **Ram Kumar Gijroya Vs. Delhi Subordinate Service Selection Board and another (2016) 4 SCC 754** that a candidate who has not produced relevant certificate and if he produces the same at the time of interview for the purpose of eligibility in a particular category, the same shall be taken into consideration for the purpose of selection. Para 14 and 15 of the aforesaid judgment reads as under:-

14. *The Division Bench of the High Court erred in not considering the decision rendered in the case of Pushpa³. In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of Indra Sawhney v. Union of India⁷ as well as Valsamma Paul v. Cochin University & Ors.⁸ The learned single Judge in the case of Pushpa³ also considered another judgment of Delhi High Court, in the case of Tej Pal Singh⁴, wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.*

15. *The relevant paragraph from the judgment of this Court in the case of Indra Sawhney⁷ has been extracted in the case of Pushpa³ along with the speech delivered by Dr. Ambedkar in the constituent assembly and reads thus : (Pushpa case³, SCC OnLine Del para 9)*

"9..... 251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to 'a minority of seats', lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

*"... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity.... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, *must be confined to a minority of seats*. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ..." [Constituent Assembly Debates, Vol. 7, pp. 701-702 (1948-49).]*

These words embody the raison d'etre of reservation and its limitations. Reservation is one of the

measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal. (Indra Sawhney case⁷, SCC pp. 433-34, para 251)."

9.) In view of these facts and circumstances and legal position, the respondents are directed to consider the fresh certificate of DESM category dated 7.11.2012 of the petitioner for the purpose of selection and appointment to the post of Steno Typist under DESM BCB category and appoint petitioner to one post of Steno-Typist. The above exercise shall be completed within a period of three months from today. Having regard to these facts and circumstances, petitioner is entitled to only notional service benefits.

10.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

January 20, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.