

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.3863 of 2013(O&M)

Date of Decision: 17.11.2017

Balwinder Kaur

--Petitioner

Versus

State of Punjab and others

--Respondents

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

Present:- Mr. Sameer Sachdeva, Advocate for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Challenge in the instant petition is to the order dated 27.6.2012 (Annexure P-5), whereby the claim of the petitioner seeking appointment to the post of Teaching Fellow against the reserved B.C category pertaining to Ropar District, has been declined.

Perusal of the impugned order reveals that the basis of rejection of the candidature of the petitioner is that the Backward Caste Certificate furnished by her was not considered valid as per terms and conditions of the advertisement dated 5.9.2007 in response to which she had applied for the post. In the impugned order it has also been stated that there was no reservation provided for candidates belonging to B.C. (Sports) Category and that the petitioner while claiming to be a B.C category candidate cannot claim appointment against B.C. (Ex-service man) category.

Counsel representing the petitioner would submit that the petitioner had earlier filed CWP No.1285 of 2011 claiming appointment to the post of Teaching Fellow in response to the advertisement dated 5.9.2007

and which had been disposed of on 10.5.2011 in the following terms:-

“PERMOD KOHLI.J (ORAL)

Learned State counsel submits that posts under the B.C Ex-servicemen and B.C Sports quota are lying vacant and the petitioner's claim can be considered under these posts.

In view of the above statement this petition is disposed of with a direction to the respondents to consider the claim of the petitioner under the aforementioned categories within a period of one month from the date of receipt of certified copy of this order and the consequential order be passed within a period of two months thereafter.

Sd/-

*(PERMOD KOHLI)
JUDGE”*

It is contended that inspite of the clear directions issued by a Coordinate Bench of this Court, claim of the petitioner has been declined and as such, the impugned order virtually amounts to contempt. In the same limb it is contended that the order dated 10.5.2011 was passed by this Court in view of a statement given by counsel representing the State and under such circumstances it was not open for the appropriate authority under the concerned State Govt. to have resiled from a stand taken before this Court and the State was bound by a concession duly recorded. As regards the Caste Certificate furnished by the petitioner being not valid as per terms and conditions of the advertisement, counsel argues that furnishing of a valid certificate claiming benefit of reservation stipulated in the advertisement would be within the domain of procedure. It is urged that procedural provisions are always open to be relaxed and every infraction of a condition relating to submission of proof need not necessarily result in rejection of the candidature. Counsel has also placed reliance upon a judgement dated

15.2.2013, passed by this Court in ***CWP No.14796 of 2011 (Parminder Kaur Vs. State of Punjab and others)*** to buttress his claim.

Per contra, learned State counsel would justify the passing of the impugned order dated 27.6.2012 (Annexure P-5) by contending that the claim of the petitioner has been rejected strictly in view of the terms and conditions of the advertisement and under such circumstances there would be no scope of interference by this Court in exercise of its writ jurisdiction.

Counsel for the parties have been heard.

Clause 6 of the advertisement dated 5.9.2007 and in response to which the petitioner had applied for the post of Teaching Fellow under B.C Category reads as under:-

“Candidate seeking reservation meant for the member of Scheduled Caste/Backward Classes of Punjab State only shall have to produce Scheduled Caste Certificate/Backward Class Certificate as applicable, as prescribed by the State Govt., issued by the competent authority. The B.C. Certificate must not be older than one year on the last date of submitting the application in accordance with the instructions of Welfare Department issued vide letter dated 17.1.1994 and dated 18.8.2005 clearly indicating the caste.”

It is not in dispute that the last date for submission of application forms as per advertisement dated 5.9.2007 was 30.9.2007. Counsel for the petitioner concedes that two B.C Certificates that had been produced and relied upon by the petitioner were dated 24.4.2000 and 30.9.2008.

The factual premise emerging is that the certificate dated 24.4.2000 produced by the petitioner was more than one year old in relation

to the last date of submission of application forms i.e. 30.9.2007, whereas the second certificate dated 30.9.2008 had been issued in favour of the petitioner after the last date of submission of application forms.

It is by now well settled that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from. If the petitioner's claim for validation of more than one year old B.C. Certificate is accepted, it would result to discriminatory consequences as there might be several other candidates who may have relied upon such expired certificates and have been denied benefit of reservation. Likewise, if the validity period of such like certificate is overlooked, it would be self destructive to the objectives of the reservation policy. A reference in this regard may be made to the judgement dated 18.8.2011, passed by this Court in ***CWP No.9859 of 2009 (Sukhjit Kaur Vs. State of Punjab and others)***.

An identical issue arising from a recruitment process initiated vide advertisement dated 23.9.2009 issued by the Education Department was dealt by a Coordinate Bench of this Court in ***CWP No.5560 of 2011 (Jaspal Kaur and others Vs. State of Punjab and others)*** and other connected petitions decided on 2.11.2011. The relevant condition in advertisement dated 23.9.2009 which was the subject matter of controversy in ***Jaspal Kaur's*** case (supra) was identical to clause 6 pertaining to the present case. The B.C. Certificates furnished by the candidates in ***Jaspal Kaur's*** case (supra) were also not as per the time frame stipulated under the advertisement and as such were treated not valid. Challenge to the same was negated by the Coordinate Bench in the judgement dated 2.11.2011 in ***Jaspal Kaur's*** case (supra). It would be useful to extract the judgment in

Jaspal Kaur's case (supra) herein below:-

“This order shall dispose of Civil Writ Petitions Nos. 22881 of 2010 and 3990, 4077, 4696, 4788, 5514, 5560, 5596, 5837, 6026, 7449, 7992, 8749, 8889, 11625, 11593, 12653, 12658, 12702, 12708, 12907, 13042, 15212 and 18493 of 2011, as the same broadly similar facts and issues, hence need not to be dealt with separately. For brevity, the facts are taken from Civil Writ Petition No. 5560 of 2011.

2. Suffice it to mention that the petitioners applied for different teaching posts for appointment in the Education Department, Punjab in the one or the other reserved category but their categories have been subsequently changed by the respondents after rejecting their Backward/Dependent of Ex-Serviceman Certificates, consequently treating them in the open category. The common issue raised by the aggrieved petitioners pertains to the justification of change of their respective category.

3. Petitioners in these cases were applicants for one or the other teaching posts in response to the Advertisement dated 23.09.2009, followed by the Corrigendum dated 27.09.2009. They belong to reserve categories of Backward Class or Dependent of ExServiceman. The Advertisement dated 23.09.2009 (Annexure P-2) containing Clause-6 regarding validity of a Backward Class Certificate is reproduced herein as under:-

“ 6. The Certificate of B.C. is to be within one year from the last date of submissions and this Certificate should be in terms of the letter dated 17.01.1994 and 17.8.2005 issued by the Department of Welfare, Punjab Government.”

The subsequent Corrigendum issued on 27.09.2009 (Annexure P-3) further stipulates as follows:-

“ Condition No. 6 :- The Certificate of B.C. Category should not be more than 1 year prior to the last date of submission of applications and this Certificate should be as per the Punjab Government, Department of Welfare Letter No. 1/41/93-RS/1/209 dated 24.2.2009.”

Similarly, as regard to Dependents of Ex-Servicemen, the advertisement stipulates as follows:-

“ The reservation under Ex-serviceman quota is applicable only in the case of residents of Punjab and in case the Ex-serviceman himself is not a candidate then this reservation would be applicable for the dependents. Such Ex-Servicemen/dependents would present the original certificate made prior to the last date of submission of applications and issued by the competent authority appointed by the Government at the time of counselling.”

The subsequent Corrigendum issued on 27.09.2009 (Annexure P-3) further stipulates as follows:-

“ Condition No. 8 :- The candidates seeking reservation under Freedom Fighter Quota will have produced the original certificate made prior to the last date of submission of applications in terms of Punjab Government letter No. 4-13- 8P3-95/Special-477 dated 24.9.1998 and letter No. 4-13- 8P2-25/Special/62 dated 11.2.1999 and issued by the competent authority appointed by the Government at the time of counselling.”

4. Notwithstanding the explanation(s) or justification given by the petitioners, the fact of the matter is that their Certificates of Backward Class or as Dependents of Ex-Servicemen, as relied upon by them, were more than one year old in the case of Backward Class candidates and/or the original Certificates were not produced in case of Dependents of Ex-Servicemen. Consequently, their candidatures for the reserved category have been rejected, treating them in the open category.

5. An identical question came up for consideration before a Co-ordinate Bench in Civil Writ Petition No.11647 of 2008 decided on 18.5.2009 (Loveljeet Kaur and others V. The State of Punjab and others) and the claim was turned down after observing as follows:-

“ The requirement of the notification is that the Certificate should not be older than one year preceding the last date for submission of the applications. All these Backward Class Certificates produced by the petitioners except petitioner No. 6, were issued much after the last date and, thus, cannot be considered for the purposes of selection against the Backward category. No material has been placed on record to show that the petitioners produced Certificates in accordance with condition No. 6 of

the advertisement issued by the competent authority within one year preceding the last date for submission of the applications.”

(emphasis supplied)

6. Thereafter a bunch of writ petitions were dismissed by this Court along with Civil Writ Petition No. 9859 of 2009 (Sukhjit Kaur V. State of Punjab and others) on 18.08.2011 supplementing the above reproduced reasoning as under:-

“It is well settled that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from on pick and choose basis. If the petitioner's claim for validation of more than one year old Backward Class Certificate is accepted it shall lead to discriminatory consequences as there might be several other candidates who may have relied upon such expired Certificates and have been denied the benefit of reservation. Similarly, if the validity period of such like Certificates is over looked, it can be self destructive to the object of the reservation policy which consciously excludes those who are in creamy-layers.”

(emphasis supplied).

7. Learned counsel for the petitioners vehemently contend that the view taken by this Court in the above mentioned cases is inapplicable for various reasons. Firstly, reliance is placed on on the Government Instructions dated 05.12.1996 (Annexure P-10) issued on the subject of validity of a Scheduled Caste/Backward Class Certificates for the purpose of seeking employment or admissions, laying down as follow:-

“3. It has therefore been decided that the Scheduled Caste/Backward Class Certificate issued by the competent authority as per the instructions of the Welfare Department will be accepted by all authorities and institutions as valid. To further simplify the procedure it has been decided that in the first instance it will be sufficient for the candidate seeking admission or employment or other facility to indicate in the application form whether he/she belongs to the Scheduled Caste/Backward Classes or not. Attested photocopies of the Certificate may be obtained only from the selected/wait listed candidates.”

8. They also rely upon subsequent instructions dated 08.01.2010 (Annexure P-12) on the same subject laying down that:- “ This

matter has been once again reconsidered thoroughly by the Government and it has been decided that the caste Certificates issued to B.C. Candidates shall be considered valid till the time, the candidate falls in the creamy layer. In this regard, the concerned Department will take a declaration from the candidate along with an application at the time of applying in which it should have been clearly mentioned that there is no change in his status and he does not fall in creamy layer.”

9. *It is also argued by learned counsel for the petitioners that hardly 10 days time was given to the candidates to obtain fresh Backward class/Dependent of Ex-Servicemen Certificates which was wholly insufficient. Reliance is also placed on a Division Bench decision dated 30.09.2008 passed in Civil Writ Petition No. 4242 of 2007 (**Gyatri Joyti V. State of Punjab and others**) (Annexure P-8) as also dated 06.02.2009 passed in Civil Writ Petition No. 19643 of 2006 (**Ajay Kumar Bhogal V. State of Punjab and another**) (Annexure P-9), in order to contend that once the Backward Class Certificates have been issued in favour of the persons, they were eligible in the said reserved category as the original Backward Class Certificates were required to be produced by them after selection or at the time of their appointment. They also refer to a decision of the Hon'ble Supreme Court in **Dolly Chhanda V. Chairman, JEE 2004 (4) RSJ 685**.*

10. *Having heard learned counsel for the parties, I do not find any ground to draw any distinction between the Lovejeet Kaur's and Surjit Kaur's cases (supra) vis.a.vis. the present cases. I say so for the reasons that while deciding Lovejeet Kaur's case (supra) on 18.05.2009, the Co-ordinate Bench did consider the Division Bench decision in Gyatri Joyti case (supra) and its own decision dated 23.04.2009 passed in Civil Writ Petition No. 13800 of 2008 (**Komal V. State of Punjab and another**) and drew a clear distinction based upon the conditions incorporated in the advertisement. Suffice it to reproduce the observations made by the Division Bench to the following effect:-*

“ It cannot be disputed that one acquires caste by birth and a caste Certificate is only a recognition of such status of the holder of that Certificate. It is not the case of respondents that the petitioner did not possess the Backward Class Certificate or she was not a Backward Class or

she had not submitted her Certificate along with application form. The only reason given is that the Certificate was an old one and not in terms of 2005 instructions. The respondents have, however, not been able to show either from the written statement or at the time of arguments that any condition exists either in 2005 Instruction or in the Advertisement, which informs the candidates that they must produce the revised B.C. Certificate in terms of 2005 Instructions along with their application forms. It is, therefore, inconceivable as to how the candidates like the petitioners could have anticipated the aforesaid requirement.” (emphasis supplied).

11. It may thus be seen that there was no condition incorporated in the advertisement in that case mandating the candidates to produce their Backward Class Certificates which should not be more than one year old before the cut off date. On the contrary the advertisement in the present case specifically stipulate so and it being sacrosanct, to be uniformly applied to all the candidates, it was obligatory for the petitioners who were seeking benefit of reservations to produce the Certificates strictly in terms thereof. The Government instructions dated 05.12.1996 and 08.01.2010 (Annexures P-10 and P-12) are inapplicable in the context of the issue involved. The instructions merely suggest that if a Certificate has been issued by the competent authority it is imperative upon other Departments to accept and treat it valid for the purpose of admission or employment. These instructions do not deal with the validity period of such a certificate. The second instructions also reiterate that a backward Class Certificate shall continue to be valid till the candidate falls in the 'creamy-layer'. It is for this precise reason that the Department incorporated the condition of one year validity period so as to ascertain that the candidates claiming benefit of reservation for backward class, have not meanwhile fallen to the category of creamy layer. The condition of validity period of one year has to be read into in the government instructions, referred to above.

For the reasons recorded aforesaid, I do not find any ground to interfere with the impugned action of the respondents. All the writ petitions are accordingly dismissed. The respondents are, however, directed that in case there is a candidate belonging to the category of dependent of Ex-Serviceman, whose claim falls within the

observations/directions issued in Civil Writ Petition No. 7520 of 2011 (Meenakshi Attri V. State of Punjab and others), by a separate order of even date, they shall also be entitled to the similar benefits.

It is stated that during the pendency of these writ petitions, the Departmental authorities themselves have considered the similarly placed candidates eligible in the 2nd counselling and they have been asked to produce the Reservation Certificates issued subsequently. If that is so, the petitioners shall also be at liberty to represent to the authorities to treat them at par with similarly placed candidates.

Ordered accordingly.”

The view taken by the Coordinate Bench in **Jaspal Kaur's** case (supra) would apply squarely to the facts of the present case. No exception as such can be taken to the decision of the respondent authorities in having denied to the petitioner benefit of reservation under the B.C. Category on account of having not furnished the requisite certificate in support of such reservation strictly as per Clause 6 of the advertisement dated 5.9.2007.

The heavy reliance placed by counsel upon the order dated 10.5.2011 (Annexure P-4), passed by this Court while disposing of **CWP No.1285 of 2011**, is misplaced. In the first instance it may be observed that the petition was disposed of with a direction to the respondents to consider the claim of the petitioners for appointment to the post in question under the B.C (Ex-service man) and B.C. (Sports) quota. The consideration, as such, to be accorded to the petitioner had to be in accordance with law. The word “consideration” employed in the order dated 10.5.2011, passed by this Court while disposing of **CWP No.1285 of 2011** cannot be construed to mean consideration *de hors* the terms and conditions of the advertisement in response to which the petitioner had applied for the post in question. The order dated 10.5.2011, passed by this Court at Annexure P-4 was against a statement having been given by the State counsel, who had appeared but the

same cannot be raised to a pedestal to confer and vest in the petitioner a right contrary to law.

The judgement rendered by this Court in ***Parminder Kaur's*** case (supra) would have no applicability in the present case. Parminder Kaur had applied for the post of Punjabi Mistress under the B.C Category. The B.C. Certificate relied upon by Parminder Kaur was not in terms of the advertisement dated 23.9.2009. This Court had intervened in the matter by taking cognizance of the peculiar facts, whereby the petitioner therein i.e. Parminder Kaur immediately after issuance of the advertisement had made efforts to get the requisite certificate indicating her B.C. Category and there being a delay on the part of the authority in issuing the B.C. Certificate and which ultimately was issued on 29.10.2008 i.e. at a point of time when the last date for submission of application had expired. The facts in the case of ***Parminder Kaur*** (supra) are clearly distinguishable.

Furthermore, it is not even the case of the petitioner that by virtue of her merit determined in the selection process she would fall within the zone of consideration for appointment to the post of Teaching Fellow in the open category.

For the reasons recorded above, no basis for interference is warranted. No infirmity is found in the impugned order dated 27.6.2012 (Annexure P-5) rejecting the claim of the petitioner for appointment to the post of Teaching Fellow against the B.C. Category.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

17.11.2017

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No