

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

CWP No. 9302 of 2010

Date of Decision: 04.10.2018

Sohan Lal

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Saroj Malakar, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. I cannot find my way to distinguish the judgment and order passed by my learned brother Amit Rawal, J in CWP No. 19993 of 2009, in case titled 'Kashmir Chand Kamboj Vs. State of Haryana and others' decided on 27.07.2015 covering all the aspects of fact and law in favour of the petitioner therein relating to the same advertisement and same description of post i.e. Assistant Engineer (Civil)) except the department (Public Works (B&R) Department, Haryana as in the present case) and in Kashmir Chand's case, the Public Health Department). Even the State counsel has not been able to distinguish the judgment and, therefore, it may not be necessary to narrate the facts in any detail on which the issues arose for determination.

2. The dispute in short was and is, that the minimum

qualifying marks for the general category candidates in written test was 200/400 whereas for Backward Class candidates was 180/400. After the written test was conducted and the result declared, a resolution dated 23.02.2009 was issued by the Haryana Staff Selection Commission (in short 'Commission') which lowered the threshold of the minimum qualifying marks in order to call 3 times the number of candidates for the interview. The effect of the resolution was to expand the zone of consideration to the detriment of those candidates who had appeared in the written test and secured the earlier minimum cut off marks.

3. The learned single Judge applied the ratio laid down in Tamil Nadu Computer Science B.ed Graduate Teachers Welfare Society (I) Vs. Higher Secondary School Computer Teachers Association and others.. 2009 (14) SCC 517. In this case the Supreme Court was faced with a situation similar to the facts of this case and in the case of Kashmir Chand Kamboj (supra) and held that guidelines of recruitment laid down in policy decision are sacrosanct and require to be adhered to and followed for all practical purposes.

4. The Government in Tamil Nadu's case has reduced the qualifying marks from 50% to 35% which action was not approved by the Supreme Court. The selection was, accordingly, struck down for candidates who secured less than minimum 50% marks. Applying the ratio in the *Tamil Nadu* case, learned Single Judge held that there can no manner of doubt that once the eligibility criterion before the written

test had been circulated then it was not open to the Commission to change the criterion before the interviews, for, it may entail an element of biasness and favouritism.

5. However, having reached the conclusion, the Court in Kashmir Chand Kamboj did not set aside the selection to bring the least harm to anyone since it found that one post was lying vacant and the Kashmir Chand Kamboj had obtained more than the minimum qualifying marks than the private respondents and, therefore, he was held to be entitled for the post of Assistant Engineer (Civil) in the SC/BC category.

6. The petitioner in the present case also belongs to the BC category. Information received from the department through an application under the RTI Act, informs that there are vacancies available to accommodate the claim of the petitioner in case the petition succeeds (see letter from PIO at page 76 & 77 of the paper-book).

7. As a result, this petition is allowed in terms of the decision in Kashmir Chand Kamboj's case (Supra) with the direction to the respondent to consider appointing the petitioner as Assistant Engineer (Civil) in Public Health Department within six weeks from the date of supply of order after completing the requisite formalities.

8. On appointment, the consequential benefits will be notional but actual from the date of appointment. Seniority of the petitioner would rank at the due place in the batch in the order of merit determined

by the Commission.

04.10.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*