

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

**CWP No. 24472 of 2014 (O&M).
Date of Decision: 07.12.2018**

Shashi Bala

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. S.S. Grewal, Advocate,
for the petitioner.

Ms. Bhawna Gupta, DAG, Punjab.

Respondent Nos. 4 to 28 proceeded against *ex parte* vide
order dated 23.03.2018.

JITENDRA CHAUHAN J.

The petitioner seeks issuance of a writ in the nature of mandamus directing the respondents to consider her case for appointment as Headmistress in the category of Backward class.

In pursuance of advertisement (Annexure P-12), the petitioner applied for the post of Headmistress on contract basis against the backward class category. She attended the counselling held on 18.12.2013 and her merit was assessed at 57.3156 but she was not selected against the said category on the ground that by birth she is domicile of the State of Haryana.

It is contended that the petitioner has submitted her certificate of domicile of Punjab being a resident of Punjab for the last twelve years as she was married in Punjab and is permanently settled in Punjab. Learned counsel for the petitioner has placed reliance on

copy of backward class certificate (Mark-A) issued by Tehsildar-cum-Executive Magistrate, Rajpura in favour of the petitioner to contend that she belongs to 'Bhatt caste' which falls in the list of Backward Classes.

On the other hand, it is submitted that the petitioner is a backward class candidate from the State of Haryana. In the State of Punjab, she cannot be treated as backward class candidate. Her place of birth is State of Haryana. This fact is evident from Mark-A itself where a noting in hand dated 18.12.2013 reads as under:-

“As per the certificate issued by Haryana, this candidate originally belongs to Haryana State.”

She further submits that the petitioner failed to appear for counselling despite availing several opportunities.

Heard.

In **Marri Chandra Shakhar Rao vs. Dean, Seth G.S.**

Medical College (1990) 3 SCC 130, it was held as under:-

"We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or Backward Classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have

been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution." This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

Keeping in view the dictum of law laid down in **Marri Chandra Shakar Rao's case (supra)**, the Court feels that the petitioner cannot be treated as backward candidate in State of Punjab on the basis of certificate 'Mark-A'. Moreover, the petitioner has failed to show that she attended the counselling on 18.12.2013 as claimed by her. In compliance of the order dated 27.05.2014 (Annexure R-1/3) passed by this Court in CWP-3489-2014 the Education Recruitment Board had again called the absentee candidates for counselling from 21.07.2014 to 30.07.2014 by issuing public notice dated 14.07.2014 (Annexure R-1/4). In the general category list, last candidate is having percentage of 55.8144. The petitioner is higher in the merit in the list of general category. However, the petitioner did not appear for counselling throughout the period mentioned above. Therefore, it can

be safely inferred that the petitioner has waived her rights by not appearing in the counselling. Consequently, there is no merit in the present civil writ petition and the same is hereby dismissed.

07.12.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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