

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 22.03.2018****CWP No.7241 of 2018**

Rekha Rani

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Lalit Rishi, Advocate,
for the petitioner.**RAJIV NARAIN RAINA, J. (ORAL)**

Firstly, there can be no reservation on a single post. [*see Post Graduate Institute of Medical Education & Research, Chandigarh & others Vs. K.L.Narasimhan & another*, (1997) 6 SCC 283]

Secondly, the argument advanced that the last incumbent holder of the post on retirement was a member of the Scheduled Caste category and therefore, the theory of replacement should be applied and the post open only to Scheduled Caste candidates, like the petitioner, is an argument, which has to be noticed and turned down. The replacement theory is applicable in cases of promotion, a doctrine evolved by the Supreme Court in *R.K.Sabharwal & others Vs. State of Punjab & others*, AIR 1995 SC 1371; (1995) 2 SCC 745 to justly balance the working of the roster so that the prescribed percentage in promotion for reserved and general category candidates is not exceeded. Thus, this principle would not apply in cases of direct recruitment, and not at all in the case of Anganwari Workers. Anganwari Workers are not holders of civil posts under the State. No rule of reservation has been shown operating in the subject-matter field, which

gives the petitioner an exclusive right to be considered in the reserved category to the exclusion of the general category and other reservation than SC, when the last incumbent retired from service was a member of the Scheduled Caste category. The ground is not found tenable.

Thirdly, as far as the argument raised that the petitioner should be considered as a 'destitute' person for whom age of entry was relaxable up to 50 years is concerned, a look at Bullet-I of the letter dated 17.01.2018 (Annex P-2) from the Women & Child Development Project Officer, Samalkha to the Sarpanch, Village Panchayat – Jaurashi Khalsa, Block Samalkha, reveals that it contains age limit for applicants to be between 18 to 44 years. The petitioner was aged 45 years and 1 month on the date of application and was thus ineligible being age barred. However, as far as 'destitute' is concerned, the expression not being defined for the post it is a matter of evidence and cannot be resolved in these writ proceedings, when it is not definite in its outcome. Therefore, on this aspect, the petitioner is free to get an adjudication done from the Civil Court. I would, therefore, not agree with the third argument as well as a ground for interfering in the selection process.

Though interviews are over, but the Court is informed that appointments have not been offered and, therefore, the writ is premature in view of law laid down by the Supreme Court in Mrs. Kunda S. Kadam Vs. Dr. K.K.Soman & others, AIR 1980 SC 881 holding that a writ would not lie till appointments are not offered and candidates join.

In case, the petitioner proves to the satisfaction of the Sarpanch/Village authorities that she is a 'destitute' person as viewed by the village elders, then the Sarpanch may consult the members of the Sabha and

forward the petitioner's name to the Committee for consideration by way of an interview. In this case, determination from the Civil Court may not be required, if it is agreed to by the Gram Panchayat/Sabha/Committee.

With these observations, the instant petition stands dismissed.

22.03.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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