

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

CWP No. 3592 of 2019

Date of Decision: 11.02.2019

PARDEEP KUMAR

....Petitioner

VS.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.**
 HON'BLE MR. JUSTICE HARNARESH SINGH GILL.

Present: Mr. Sunil Kumar Nehra, Advocate,
 for the petitioner.

Mr. Sandeep Moudgil, Addl. A.G., Haryana.

Mrs. Munisha Gandhi, Senior Advocate,
with Mr. Gaurav Chopra, Advocate,
for the Punjab and Haryana High Court.

Mr. H. N. Mehtani, Advocate,
for the respondent-HPSC.

RAKESH KUMAR JAIN, J. (ORAL)

The Haryana Public Service Commission (for short “HPSC”) had issued an advertisement No. 6 of 2016 dated 20.03.2017 for the purpose of recruitment of Civil Judge (Junior Division) in the Haryana Civil Service (Judicial Branch) for the year 2017 in which online applications were invited for 109 posts, in various categories including the Economically Backward Person in General Category (for short “EBP(G) category”). The petitioner, who is allegedly belonging to the EBP(G) category, had also applied for the said posts vide application form (Annexure P-2) on the strength of the certificate dated 08.01.2014 (Annexure P-3). He was issued Roll No. 27764 by the HPSC while putting him in the category of EBP(G). As per the advertisement, examinations were to be held in three stages namely;

preliminary examination, main written examination and viva voce. The preliminary examination was to be held on 22nd December, 2018.

The HPSC had issued a corrigendum dated 27.08.2018 (Annexure P-3A) by which 8 posts offered for the EBP(G) category were abolished. The petitioner had taken the preliminary examination in the EBP(G) category and secured 205.6 marks. Since the category in which he had taken the exam was abolished and the result of the preliminary exam has been declared on 21.01.2019 in various categories, the petitioner felt aggrieved and made a representation to the HPSC. But as he did not get any favorable reply, hence, present petition has been filed for the issuance of a writ in the nature certiorari to quash the result dated 21.01.2019 in which the candidates belonging to EBP(G) category have not been called for taking the main written examination and for assailing the validity of the corrigendum dated 27.08.2018 (Annexure P-3A) on the ground that it is contrary to the advertisement dated 20.03.2017 and is in violation of the order dated 18.05.2018 passed by this Court in CWP No. 18514 of 2016 on an application for seeking clarification and has also prayed for a writ in the nature of mandamus to direct the respondents to allow the petitioner to take the written exam in his category.

Learned counsel for the petitioner has argued that though order has been passed on 17.12.2017 in a bunch of writ petitions that the ordinance, by which the EBP(G) category, has been abolished but the matter is pending before the Hon'ble Supreme Court and the learned State counsel has contended that the matter is being revisited in view of the pendency of the proceedings before the Hon'ble Supreme Court but in the said order it has

been further observed that *“then it would be in the fitness of things that the impugned notification be not given effect to.”*

After passing of the order dated 07.12.2017, an application was filed for seeking clarification of the said order in which a further order was passed on 18.05.2018 that the selection process initiated prior to the passing of the order and some appointments made in part would be completed but all the incumbents who would join the appointments would be subject to the outcome of the proceedings which were pending before the Hon’ble Supreme Court. Thereafter, instructions were issued by the State Government on 01.06.2018 and the relevant portion of it is reproduced as under:-

“Now, keeping in view High Court order dated 18.05.2018 in CM No. 3905 of 2018 in CWP No. 18514 of 2016, State Government has decided to proceed to complete the selection and appointment process in respect of all cases where the selection process was notified prior to 07.12.2017. Concerned Departments/Boards/Corporations are directed to grant appointments to candidates selected under the EBP(G) category in all cases where selection process was notified prior to 07.12.2017.”

Learned counsel for the petitioner has submitted the instruction dated 01.06.2018 is in favour of the petitioner because the selection process in this case was notified on 20.03.2017.

The respondents have filed their reply today in Court. In the preliminary objection, the respondents have pleaded that the petitioner has not approached this Court with clean hands as he has not put on record the complete corrigendum dated 27.08.2018 and has referred to the corrigendum dated 27.08.2018 which runs into various pages and has made a particular reference to Note I and Note II which read as under: -

Note I:- *Those candidates who had applied earlier against Advertisement No. 6 of 2016 published on 20.03.2017 need not to apply afresh. The terms and conditions regarding eligibility for these candidates shall remain same as detailed in advertisement published on 20.03.2017.*

Note II:- *As per new reservation policy of the State Government, EBP(G) Category is not in existence after 07.12.2017, Hence, 08 posts reserved for EBP(G) category in advertisement No. 6 of 2016 published on 20.03.2017 have been released and merged in General/Unreserved category. The EBP(G) category candidates who had earlier applied will be considered in the General Category if they fulfill all eligibility conditions as meant for General category candidates except fee.”*

Learned senior counsel appearing on behalf of the respondents has submitted that it has been made clear that as per the new reservation policy of the State Government, EBP(G) category is not in existence after 07.12.2017. Therefore, 8 posts reserved in the said category in the advertisement No. 6 of 2016 were released and merged in the General Category/Unreserved category. It is further submitted that the petitioner is misinterpreting the instructions dated 01.06.2017 in his favour when it is sought to be argued that the selection process was notified prior to 07.12.2017 but it is not the selection process alone which has been taken into consideration as the instructions further says that it would relate to the selection of the candidates in the EBP(G) category where the selection process was notified prior to 07.12.2017. It is further submitted that in the present case, the process has been exhausted only at the stage of preliminary

examination which is an examination meant for short listing of the candidates for taking the main written examination.

Learned counsel for the petitioner has then argued that the petitioner has been given Roll No. under the EBP(G) category and his result has also been declared in the same category, therefore, respondents cannot blow hot and cold in the same breath by alleging that they had already abolished the EBP(G) category in terms of the instructions of the State Government.

In this regard, learned counsel for the respondents has drawn the attention of this Court to Note I and Note II of the corrigendum (Annexure R/2/1) in which it is provided that those candidates who had applied earlier against Advertisement No. 6 of 2016 published on 20.03.2017 need not to apply afresh in terms of the corrigendum and those EBP(G) category candidates who had earlier applied will be considered in the General Category if they fulfill all eligibility conditions as meant for General category candidates except fees. It is sought to be argued that since the petitioner had taken the examination in the EBP(G) category, therefore, his result was declared in the said category but had he got the marks above the cut off marks meant for the General Category, then he would have been considered in the General Category and not in his category.

We are satisfied with the reply of the learned counsel for the respondents in this regard. It is also pertinent to mention here that the petitioner has challenged only a part of the corrigendum (Annexure P-3A) in which Note I & II are conspicuous by their absence and therefore, it cannot be said that the petitioner has challenged the Note I & II which is a part of the Annexure R-2/1.

Therefore, keeping in view the aforesaid facts and circumstances, we are of the considered opinion that there is hardly any scope in the case of the petitioner for the purpose of interference by this Court. Hence, the present petition is hereby dismissed though without any order as to costs.

February 11, 2018
Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

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