

CWP No.19325 of 1996

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

CWP No.19325 of 1996 (O&M)

Date of decision : 11.02.2019

Suresh Kumar Yadav

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Aman Chaudhary, Advocate for the petitioner.

Mr.Harish Rathee, Sr.DAG Haryana.

Mr.H.N.Mehtani, Advocate for HPSC.

Mr.R.K.Malik, Sr.Advocate with
Mr.Sandeep Dhull, Advocate for the private respondents.

RAJIV NARAIN RAINA, J. (ORAL)

This Court passed the following order on 16.10.2018:

“Learned State counsel has filed an affidavit of Birender Singh “Engineer-in-Chief, dated 15.10.2018 and the same is taken on record. Copy has been supplied to counsel opposite.

The petitioner avers in the petition that he belongs to BC category but he does not assert in paragraph No.6 of his petition that he applied under the BC category for the post of Assistant Engineer (Civil) HSE Class-II in the recruitment process by way of direct appointment. He was an in-service candidate working on the lower post. 04 vacancies in BC category were advertised. Mr.Chaudhary submits that as per Tehsildar order dated 1.4.1991 the caste 'Yadav' was declared as an 'OBC'. Mr.Malik submits that 'Yadavs' were declared 'BC' in Haryana by notification dated 7.6.1995. That document has been placed on record by the petitioner at Annex.P-22. The record of the selection that Court is informed the Commission has weeded out, Mr.Chaudhary submits that two BC candidates were

interviewed but were unsuccessful. He says that their cases were considered so, therefore, the case of the petitioner should also have been considered as a 'BC' candidate.

The cut off date of receiving applications in the advertisement was 14.2.1995. By a corrigendum, the date was extended to 10.01.1996 as a result of correction and change in age but other terms and conditions were not varied. If the rights of the aspirants are seen existing as on 14.2.1995, the petitioner was not a recognised BC category candidate since the notification came later. This is the prima facie case as far as BC category is concerned.

In addition to the above position, the petitioner has claimed 5 marks for publication based on a paper the petitioner co-authored which was accepted to be presented at a Seminar to be held in February 1996. The acceptance from the Institution of Engineers, Roorkee of the paper came in July 1995 i.e. after the cut off date. The petitioner informed the Commission of these tidings in September 1995 asking for consideration for award of marks as per the criteria. Mr.Chaudhary refers to the terms and conditions of the advertisement which stipulated that only the description of the publication was to be mentioned in the application form, if possible, than a copy be placed on record. But its production could take place later. If the cut off date of eligibility is sacrosanct and remains unaltered regarding matters other than age on 14.2.1995 then it is apparent that the acceptance of the paper was much later in July 1995. If consideration on this is permitted what would be the effect on the selection and cut off date 14.2.1995 and further whether it would prejudice other candidates who may have depended on publication for extra marks since equal opportunity would have been given to all. Mr.Chaudhary has to answer this question.

The third aspect of the case is of weeding out record of selection including the original application forms and its implications. This petition came up for hearing for the first time on 11.8.1997 and the only direction issued was that CM-19106 of 1997 was directed to be listed with main case for hearing on 10.9.1997. On 10.9.1997 the case was adjourned by order and on 18.12.1997 the case was admitted by the Division Bench for regular hearing. It may be noted that the petitioner has not placed a copy of publication alongwith writ petition when presented. Mr.Mehtani has regretted

that the record has been weeded out.

The question to be answer is to what extent can adverse inference be drawn and whether it would go far enough to go in favour of the petitioner. The effect of adverse inference is that the version of the opposite party is taken to be correct without documentary proof to rebut it. Even if adverse inference is drawn to the extreme even then the petitioner is faced with two hurdles; one that he did not apply in the BC category as per his statement in paragraph No.6 though he asserted that he belonged to the category and; secondly, whether he could be allowed to introduce the publication after 14.2.1995.

Lastly, it is contended that the petitioner is also entitled to 02 marks for experience. In case the marks for publication are to be declined, then marks for experience would become an academic issue bringing no fruit to the petitioner. The difference of marks to bring the petitioner in the zone of consideration as far as General category is concerned is 04 marks. The petitioner cut off is 50.50 and that of the last candidate selected is 53.66 marks.

Another issue raised in the petition is that high marks were given to the selected candidates in the interview to bring them in the zone of consideration while marks of meritorious post graduate candidates in the interview, like the petitioner, were depressed to keep them out of the select list.

Mr.Chaudhary prays for time to examine these aspects and respond to the same on the next date of hearing.

List on 11.2.2019.”

I have also considered the written submissions of Mr.Aman Chaudhary filed today in Court, which are retained on record.

Having heard parties at length and on perusal of the papers on file and noticing the compass of the case as crystallized in the order reproduced above, I have no reason whatsoever to consider any of the prayers of the petitioner for grant of relief when he seeks a writ of certiorari for quashing the impugned selection made over two decades ago on 1.6.1996. I have found nothing unfair in the selection made on the basis of

criteria adopted for the direct recruitment of Assistant Engineers (Civil) under advertisement No.5 with closing date on 14.2.1995 with extended date until 1.1.1996. The Phd degree earned by the petitioner after the cut off date is not liable to be considered towards the criteria. Nor would the BC caste certificate produced by the petitioner after the cut off date of any value to bring appointment to the petitioner or even to consider grant of any relief in this case especially at this distance of time. It would be rather meaningless pursuit.

Moreover, Mr.Chaudhary on the asking of the Court as to the age of the petitioner states that he has retired on reaching the age of superannuation in his department/Institution, which draws a curtain on expectation of an appointment.

The petition is dismissed. CM application/s, if any pending, shall stand disposed of.

11.02.2019
Meenu/Vimal

(RAJIV NARAIN RAINA)
JUDGE

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