

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

**CWP-4678-2019 (O&M)
Date of Decision:16.07.2019**

Karamjeet Singh

... Petitioner

Versus

Punjab Urban Planning & Development Authority

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Vikas Chatrath, Advocate for the petitioner.

....

TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner seeks quashing of an office noting dated 03.12.2018 (Annexure P-8). Further a writ of mandamus is sought directing the respondent/Punjab Urban Planning and Development Authority to consider and appoint him on the post of Junior Engineer (Civil) under the physically handicapped (visual impairment) category against a vacant post.

It has been averred that the petitioner possesses the qualifications of Matric and three years Diploma in Civil Engineering. He belongs to the 'Bhat' Caste which has been notified as a Backward Class by the Government of Punjab and a Backward Class certificate has been issued by the competent authority dated 09.05.2018. Besides that the petitioner is stated to be suffering from a disability of visual impairment since birth. Copy of the certificate issued by the Civil Surgeon, Amritsar stands appended as Annexure P-2 reflecting a 30% permanent visual impairment. Respondent/PUDA issued an advertisement dated 07.07.2018 (Annexure P-3) inviting applications for filling up various posts including 27 posts of

Junior Engineer (Civil). 4 posts were reserved for the Backward Class category and 2 for the physically handicapped with a further break up of 1 post for visually impaired and 1 for deaf and dumb. Selection was based entirely on a written examination carrying 100 marks.

Petitioner claiming himself to be eligible and fulfilling the essential qualifications prescribed, submitted an application for the post of Junior Engineer (Civil) under the Backward Class category. It is averred that at the time of filling up of the application form, the disability certificate dated 10.07.2009 had been misplaced and despite efforts, such certificate could not be traced. Accordingly, an application had been submitted claiming reservation under the Backward Class category. The written test was conducted on 23.09.2018 and the petitioner was issued an admit card under Roll No.204057. Result of the written examination was declared on 17.10.2018 and petitioner secured 49.25 marks under the Backward Class category and his name was reflected at Sr. No.62.

Case projected on behalf of the petitioner is that 5 candidates had applied and appeared in the written examination under the physically handicapped (visual impairment) category but none of them had secured the minimum bench mark of 40% as per the criteria. Resultantly, one post of Junior Engineer (Civil) reserved for physically handicapped (visual impairment) category was not filled up and is lying vacant. After declaration of the result, petitioner is stated to have found his disability certificate dated 10.07.2009 and submitted representation dated 23.10.2018 by annexing copy of such certificate and made a prayer for his candidature to be considered under the physically handicapped (visual impairment) category. Since no

response was forthcoming to the representation filed, petitioner sought information under the provisions of the Right to Information Act. It is pleaded that the concerned Superintendent, PUDA has supplied information on 22.01.2019 which is in the form of office noting dated 03.12.2018 (Annexure P-8). Case of the petitioner is that the noting dated 03.12.2018 (Annexure P-8) amounts to rejection of the claim of the petitioner and resultantly, the instant writ petition.

Counsel has argued that the action of the respondent/authorities in denying to the petitioner consideration of selection and appointment inspite of existence of a vacancy of Junior Engineer (Civil) under the physically handicapped (visual impairment) category is patently unjust and arbitrary as also violative of Articles 14 & 16 of the Constitution of India. Counsel contends that it is not a case of change of category from Backward Class to Physically Handicapped inasmuch as the petitioner suffers from the visual impairment since birth. It is submitted that the eligibility to be considered against the physically handicapped (visual impairment) category has not been acquired after the closing date stipulated in the advertisement and under such circumstances, the petitioner had a vested right to be considered for appointment against the sole vacant post falling under such category. Reliance has also been placed upon a judgment of the Apex Court in **Dolly Chhanda Vs. Chairman, J.E.E., 2004 (4) SCT 546** to contend that acceptance of the correct/eligibility certificate after due date and during the process of counselling would be within the domain of procedure and procedural provisions can always be relaxed in a given case situation. Yet another submission raised by counsel is that since the petitioner possessed

the physically handicapped (visual impairment) certificate of a date prior to issuance of the advertisement, there would be a legitimate expectation to be afforded a fair chance of consideration and appointment under such reserved category.

Counsel has been heard at length and the case paper book has been perused.

At the outset, it is held that the challenge to the noting at Annexure P-8 by terming the same as a rejection of the claim of the petitioner is wholly misconceived. It is by now well settled that rights of any applicant/employee would stand crystallized only upon the competent authority taking a conscious decision and thereafter an order in such regard being issued. No rights can either flow or be curtailed solely on office notings-Intra Departmental Correspondence.

Be that as it may, petitioner has sought a mandamus directing the respondent/authority to consider and appoint him to the vacant post of Junior Engineer (Civil) under the physically handicapped (Visual Impaired) category. Such prayer needs to be dealt with.

The process of selection and appointment to the post in question was initiated in terms of issuance of advertisement dated 07.07.2018 (Annexure P-3). The rights of any applicant, as such, would be determined by the terms and conditions contained in the advertisement. Perusal of the advertisement at Annexure P-3 would reveal that out of the 27 posts of Junior Engineer (Civil) that were advertised, 4 were reserved to be filled up from the Backward Class category. Reservation for the 2 posts under the Handicapped Category was further bifurcated i.e. visually impaired - 1 post

and deaf and dumb – 1 post. It was clearly laid down in the advertisement that selection would be entirely based on the written examination. There would be no interview. The merit would be prepared on the basis of marks obtained by the candidate in the written examination to be conducted by PUDA. The Clause under the advertisement relating to Reservation would be relevant and is reproduced hereunder:

RESERVATION

- i. Reservation to the posts shall be given as per the provisions of the Punjab Schedule Caste and Backward Class (Reservation in Services) Act, 2006 and other policies instructions issued by the State of Punjab from time to time applicable to other categories.*
- ii. All applicants who are seeking selection under any category of reservation must specify the category in the online application. While filling the online application form, also submit scanned copies of the requisite certificates on the basis of which reservation to any post is claimed issued by the competent authority as prescribed by the Government of Punjab. In case such scanned documents are not submit with the online applications, the same shall be liable to be rejected without any further intimation to the candidate.*
- iii. In case of candidates seeking reservation under Sportsperson category, the application should be accompanied with sports gradation certificate issued by the Director, Sports, Punjab in accordance with the latest instructions issued by the Government in this regard.*
- iv. Criteria for selection of candidates from Sportsman Category shall be on the basis of Sports Gradation Certificate.”*

The language of the relevant clause under the advertisement

governing Reservation was clear, categoric and unambiguous. All applicants, who were seeking to apply under any category of Reservation were to specify 'Category' in the online application form. While submitting online application form, the applicant was also mandated to submit scanned copies of the requisite certificates on the basis of which 'Reservation' to any post was claimed. There was a clear caution that in case the scanned documents are not submitted with the online application, the same was liable to be rejected without any further intimation to the candidate. As per relevant clause in the advertisement governing 'Reservation' a candidate could at best avail of the benefit of reservation under one category. Admittedly, the petitioner submitted his online application seeking benefit of reservation under the Backward Class category. Application having been processed, the petitioner was issued an admit card and he appeared in the written examination as a Backward Class category candidate. In the result that was declared on 17.10.2018, petitioner secured 49.25% marks and his name was reflected under the Backward Class category at Sr. No.62. Petitioner having taken his chance under the Backward Class category and having not secured the requisite merit position so as to be appointed on the post of Junior Engineer (Civil) under the Backward Class category now wants his claim to be considered under the Physically Handicapped (visual impairment) category. The same would not be permissible in law.

Petitioner had never applied for the post in question under the physically handicapped (visually impairment) category. Even though, he is stated to be possessing a disability certificate dated 10.07.2009 i.e. prior to the issuance of the date of advertisement but he claims that such certificate

had been misplaced. It is only after the declaration of the result of the written examination which was the sole determinative factor for preparation of merit, petitioner moved a representation on 23.10.2018 raising a prayer that his candidature be now considered under the Physically Handicapped (visual impairment) category. In the considered view of this Court, consideration of the claim of the candidates under the Physically Handicapped (visual impairment) category had to be confined to the candidates who had applied in response to the advertisement on or before the last date stipulated under such category. The marks obtained by the petitioner having appeared in the written examination as a Backward Class category cannot now be juxtaposed to be considered for appointment against the physically handicapped (visual impairment) category. Even if the solitary post of Junior Engineer (Civil) against the reserved Physically Handicapped (visual impairment) category has not been filled up and is lying vacant, it would be open for the respondent/authority to initiate a fresh process of selection and appointment in terms of following a criteria which is just, fair and passes the test of equality as enshrined under Articles 14 and 16 of the Constitution of India. As and when the respondent/authority chooses to do so, the petitioner may also apply subject to his fulfilment of the eligibility conditions.

The submission with regard to legitimate expectation raised by counsel is without merit. The petitioner having not applied for the post under the Physically Handicapped (visual impairment) category cannot agitate the plea of legitimate expectation after the process of selection already stood culminated and a post in such category having remained vacant.

Even the reliance placed by the counsel on the judgment in

Dolly Chhanda's case (supra) is misplaced. In that matter, the appellant/Dolly Chhanda was desirous of joining a medical post and had appeared in the Joint Entrance Examination, 2003 (JEE-2003) under the reserved M.I. Category being daughter of an Ex. Serviceman who had been discharged from the Armed Forces on the ground of permanent disability. Under Clause 2.1.4 of the Information Brochure of JEE-2003, certain percentage of seats were reserved for children/widows of personnel of Armed/Paramilitary Forces of Orissa killed/disabled in action during war or peace time operation. The rank of the appellant in JEE-2003 in the reserved MI category in the medical stream was 20 and accordingly she was called for counselling. During the course of scrutiny of papers, it came to be revealed that in the certificate dated 29.06.2003 given to her father by the Zila Sainik Board, a typographical mistake had occurred. On such basis her candidature was rejected and candidates who had secured a lower rank at Sr. Nos.24 and 26 in the reserved MI Category were given admission. The appellant thereafter had got the mistake rectified and was relying upon the corrected certificate. It is against such backdrop that a view was taken that even though no relaxation in the matter of holding the requisite eligibility qualifications by the last date fixed can be granted but the nature of proof of holding of a particular qualification or percentage of marks secured or entitlement for benefit of reservation would be within the domain of procedure and as such some relaxation could be afforded in the matter of submission of proof. In the case of **Dolly Chhanda's case (supra)**, the candidate had duly applied under the reserved MI Category and had secured sufficient high ranking in the JEE-2003 while appearing in such category.

Under such circumstances, furnishing of the duly corrected certificate in support of the reserved category for which she had applied had been permitted even after the closing date stipulated in the advertisement. In the present case, the petitioner had not even applied under the reserved Physically Handicapped (visual impairment) category. The facts of the case of **Dolly Chhanda's (supra)**, as such, are completely distinguishable. Such judgment would have no applicability to the present case.

For the reasons recorded above, no merit is found in the instant writ petition and the same is dismissed.

16.07.2019*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |