

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

**CWP-13696-2013 (O&M)
Date of decision : 22.01.2019**

Sonipreet

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.N. Lohan, Advocate,
for the petitioner(s).

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

By way of the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner, *inter alia* seeks issuance of Mandamus directing the respondents to select and appoint the petitioner on the post of Staff Nurse w.e.f. the date respondent No.3 was appointed.

It is asserted that the petitioner who belongs to Saini Caste, under a bona fide mistake, inadvertently applied in the category of OBC. The caste of the petitioner is not covered by the Presidential Order which declares the castes as OBC. Therefore, her candidature was rejected. It is submitted that rejection of candidature of the petitioner is against law. The candidature of the petitioner ought to have been considered against the unreserved category. It is further asserted that the petitioner secured 58.40 marks as against 57.6 marks secured by the last selected candidate i.e.

respondent No.3 in the unreserved category. He further asserts that certain posts are still lying vacant.

On the other hand, learned State counsel submits that the petitioner applied in the reserved category of BC. The caste of the petitioner does not fall under the BC category, therefore, her candidature was rightly rejected. A short affidavit on behalf of respondent Nos.1 and 2 in compliance of order dated 20.03.2018, has also been filed in the Court, which is taken on record. As per the affidavit, one post of Staff Nurse is lying pending in the Department.

Heard.

It is not in dispute that the petitioner is a domicile of State of Punjab and she is higher in merit to respondent No.3. However, on account of a bona fide understanding, she applied under the BC category (though, mentioned as OBC by the petitioner). Rather than considering the petitioner against unreserved vacancies, the respondents rejected her candidature. The issue in question was considered by this Court in ***Parminder Singh Vs. State of Punjab (P&H), 2018(2) S.C.T. 116***, and it was laid down as under:-

“In the present case the respondents have proceeded to prepare a select list separately category wise on the erroneous premise that there is reservation even for General Category. In Jitendra Kumar Singh and another Vs. State of Uttar Pradesh and others (2010) 3 SCC, 119 it has been reiterated by the Hon'ble Apex Court that there is no reservation for General Category candidates. A reserved category candidate in addition to

the reserved seats can always compete for an unreserved seat. It is only in an eventuality where selection criteria is lowered for the reserved category 12 of 19 CWP No.12618 of 2014(O&M) & other connected petitions -13- candidate, then, such difference in standard or criteria would disentitle the reserved category candidate to compete in the General Category. It was further held that if a candidate has availed concession in fee and/or age limit, it cannot be treated to be a relaxation in standard of selection. Therefore, it would not deny a reserved category candidate selection in open competition with General Category candidates. Relaxations in age and concession in fee were held to be provisions pertaining to eligibility of a candidate to find out as to whether he/she can appear in a competitive test or not. Adverting to the facts of the present case, the essential qualifications for the post of Clerk were laid in the advertisement. Such essential qualifications were mandatory to be possessed by all irrespective of the category. There was a prerequisite to qualify a Punjabi Type Test. Even such condition applied across the board. Thereafter, selection was to be made by determining merit on the basis of marks secured in graduation. Clearly in the scheme of eligibility as also selection and for determining final merit, it was a level playing field amongst the General Category as also reserved/B.C category candidates. Under such circumstances, Backward Class/reserved category candidates who secured a higher merit position than the last General Category candidate should have been considered against the open/General Category posts.”

In the instant case, there is no assertion on behalf of the respondents that the petitioner claimed any benefit of lowered selection criteria for the BC category candidates. In the circumstances, the Court feels that the petitioner cannot be denied the benefit claimed on the solitary ground that she under a bona fide belief, applied seats reserved for backward classes are to be filled

In view of the above, this Court is of the considered opinion that the candidature of the petitioner ought to have been considered against the general category. It is ordered accordingly. At this stage, learned counsel for the petitioner states that the petitioner shall not claim any monetary benefits.

Furthermore, as per the affidavit filed in the Court today, one vacancy is lying vacant. Therefore, the respondents are directed to issue appointment letter to the petitioner forthwith against the said vacancy. The petitioner shall also be entitled to all consequential benefits. The seniority of the petitioner shall be determined in accordance with the original merit list of the general candidates.

Allowed in the above terms.

22.01.2019

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(JITENDRA CHAUHAN)

JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No