

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

CWP No. 12185 of 2015

Date of Decision: 29.03.2019

Mandeep Singh & Anr.

... Petitioners

versus

**Punjab State Civil Supply Corporation Ltd. through its Managing
Director & Ors.**

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. A.S. Nabhewala, Advocate,
for the petitioners.

Mr. Gautam Pathania, Advocate,
for respondent No. 1.

Respondents No.2 to 13 ex-parte

ARUN MONGA, J.

1. The prayer in the instant writ petition is for issuance of directions to the respondents to consider the candidature of the petitioners in 'general category' instead of 'sports category' as they had secured more marks than the private respondents No.2 to 13, who were selected in general category.

2. The uncontroverted facts of the case are that, pursuant to an advertisement dated 27.08.2014(Annexure P-1), the petitioners applied for the post of Inspector Grade-II under 'Sports Category'. After written examination, the shortlisted candidates were interviewed category-wise.

Petitioner No.1 secured 92 marks, whereas petitioner No.2 got 80 marks. The petitioners were not selected in the sports category, whereas respondents No.2 to 13, who were interviewed against the posts of 'General Category' and had secured lesser marks than the petitioners, viz. 76 marks, were given the job.

3. The grouse of the petitioners is that in the qualifying examination they secured much more marks than respondents No.2 to 13, who were given appointment under general category. It is averred that once they had secured more marks than the candidates selected in general category, the respondents were under legal obligation to consider their candidature under 'general category' instead of 'sports category'.

4. Respondent No.1 filed a short reply and has not disputed factual aspect of the matter.

5. The claim of the petitioners is resisted on two grounds viz., firstly, condition No.11.2 of the advertisement creates an embargo upon the candidates to subsequently change the category from their initially exercised option. Even if the petitioners secure more marks than the selected candidates of General Category, their candidature will thus be considered only in sports category under which they had applied. Secondly, though the names of the petitioners were there in the list of the shortlisted candidates under sports category, but the merit list of this category was prepared by the Department of Sports, Punjab in accordance with the Punjab Recruitment of Sportsmen Rules, 1988 and Sports Gradation Policy and the candidate having more gradation certificates than the petitioners, were selected.

6. It is further averred that the petitioners have no right to claim selection under general category as they had participated in the recruitment

process as sports category candidates out of their own volition and after having failed to secure the appointment, they have filed the writ petition.

7. I have heard learned counsel for the parties and have gone through the paper-book carefully with their able assistance.

8. From the pleadings of the parties, the short controversy which arises for consideration is, whether a candidate who has applied under any reserved category can be shifted to the General Category on having secured more marks than the persons who were finally selected under General Category. This issue is no more *res integra*. If a candidate claims reservation in any category and it is found that he is not eligible in that category, he immediately shifts to general category and his merit position has to be considered on the basis of marks obtained by him. In '**Deepak Kumar vs. State of Punjab and another**', reported as **2014 (3) SCT 789**, a Coordinate Bench of this Court has clarified the position regarding the issue and observed as under:-

“30. I find merit in the contention raised by learned counsel for the petitioner in CWP No. 1475 of 2014, where the candidature of the petitioner, who had applied in sports category, was not considered in that category, as he could not get the requisite sports accreditation certificate. His prayer that in the absence thereof, his candidature was to be considered in general category. The action of the authorities in this regard, whereby they had denied consideration of the candidature of the petitioner herein in general category, who had secured more marks than the shortlisted candidates in general

category is found to be erroneous. If a candidate claims reservation in any category and it is found that he is not eligible in that category, he immediately shifts to general category and his merit position has to be considered on the basis of marks obtained by him. Consideration of his candidature cannot be denied altogether.”

9. Adverting to the facts of the case in hand, it is not disputed that the petitioners secured more marks than respondents No.2 to 13, who were selected for the post in General Category. Once the result of selection for the post was compiled and the petitioners were found to have secured higher marks than the candidates selected in general category, it was incumbent upon the authorities to shift the petitioners in the general category. That was not done. Their case was considered only under sports category. Respondent No.1 lost sight of the fact that on having secured more marks than the candidates selected in general category, the names of the petitioners were required to be considered/ shifted in the general category. It was not to be a voluntary change by the petitioners, as contended, but was requirement of the law in order to have more meritorious candidates in the zone of consideration. Once there is non adherence to the rules by respondent No.1, the plea of *estoppel* against the petitioners cannot be accepted to bar their challenge to the selection process on the ground that they had unsuccessfully participated in the same.

10. In view of the discussion and observations made above, the writ petition is allowed. Respondent No.1 is directed to consider the candidature of petitioners in general category. Vide order dated 05.06.2015

this Court had passed interim orders in connected CWP No. 12184 of 2015, by virtue of which the services of private respondents, if allowed to join, were subject to the outcome of that writ petition and interim directions in the same terms were ordered in this case as well. In view thereof, respondent No.1 is directed to recast the merit list and finalize the selection process, in accordance with law.

(ARUN MONGA)
JUDGE

March 29, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |