

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

Civil Writ Petition No.15940 of 2018
Date of Decision: August 27, 2019

Krishan Kumar

...Petitioner

Versus

Maharishi Dayanand University, Rohtak & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate,
for the petitioner.

Mr. S.P.Arora, Advocate,
for respondent Nos.1 & 2.

Mr. Shobit Phutela, Advocate,
for respondent Nos.3 & 4.

AMIT RAWAL, J.

As per the facts, which enumerated from the writ petition, vide advertisement dated 16.03.2017, respondent Nos.3 and 4 College caused an advertisement for filling up one post of Library Attendant. Petitioner being fully eligible applied for the aforementioned post and alleged to have been selected as per copy of the proceedings of the Committee and put at Sr.No.2 in the list.

Mr. R.K.Malik, Senior Advocate assisted by Mr. Sandeep Dhull, Advocate representing the petitioner submitted that the College, vide communication dated 27.09.2017 (Annexure P-2), sought the approval of the proceedings of the Selection Committee from Director General Higher Education, Haryana, Panchkula, which were approved vide communication dated 12.03.2018 (Annexure P-3), but vide impugned order dated

22.02.2018 (Annexure P-4), Superintendent (Colleges) informed the Principal that the proceedings for the post of Library Attendant were considered by the Vice Chancellor and rejected. Principal, vide letter dated 13.03.2018 (Annexure P-5) requested the Vice Chancellor, Maharshi Dayanand University, Rohtak to re-examine the case and also sent a request to the Director General, Higher Education vide communication dated 09.04.2018 (Annexure P-6). Director, Higher Education, Haryana, vide letter dated 03.05.2018 (Annexure P-7), informed the University regarding reservation, thus, the action of the College in rejecting the candidature of the petitioner, though belong to Scheduled Caste category but applied under the General Category is wholly erroneous and liable to be set-aside. In support of the aforementioned contention, relied upon Para 39 of the unreported judgment rendered in **Civil Appeal No.74 of 2010 (Jitendra Kumar Singh and another Versus State of U.P. and others,** decided on 08.01.2010.

He next contended that though the petitioner had applied under General Category, but belongs to scheduled caste and sought the concession in the age which has, as per the verdict relied upon, held to be only having a tilting balance in preparation of final/merit list. In view of the provisions of Articles 14, 15, 16 and 38 of the Constitution of India, concession in the age provided to the reserved category candidates is with an object to enable them to compete and seek the benefit of reservation and nothing beyond.

Mr. S.P.Arora, learned counsel representing respondent Nos.1 and 2 and Mr. Shobit Phutela, learned counsel for respondent Nos.3 and 4 submitted that once the petitioner at the time of submission of the application was aged 47 years and sought the relaxation, then his

candidature could not be considered under General Category, though there is no bar for a scheduled caste candidate to fall within the zone of consideration, but cannot take the benefit of relaxation for consideration under General Category. Attention of this Court was drawn to (Annexure R1/1), a communication of Assistant Registrar (Colleges) to the Principal specifying the instructions issued by the Special Secretary, office of Principal Secretary to Government of Haryana, Welfare of Scheduled Castes and Backward Classes Department, Chandigarh that the candidature of such persons seeking relaxation, if applied for reservation under General Category will be treated only against reserved category. Since no post was kept reserved for reserved category, petitioner's selection was rightly rejected, though it was a mistake, which was considered. The Director General has no role to play in grant of approval and, thus, prayed for dismissal of the writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

Concededly, petitioner at the time of submission of the application, was 47 years of age as 20.05.1970 is his date of birth. It is the prerogative of the University to grant approval followed by the approval of the State Government. This fact is evident from Para 4 of the letter written by the Director, Higher Education, Haryana to the Registrar of Maharishi Dayanand University, Rohtak. For the sake of brevity, Para 4 of Annexure P-7 dated 03.05.2018 is extracted herein below:-

“4. It is also requested to provide the rule/ instructions wherein it has been laid down that State Government will accord its approval only after the approval of the University.”

Thus, the argument of Mr. Malik with regard to its approval

vide communication dated 12.03.2018 (Annexure P-3) is wholly preposterous and hereby rejected.

During the course of the hearing, Mr. Arora had shown to this Court instructions dated 26.04.2018 issued by the Principal Secretary to Government Haryana to all the Administrative Secretaries to Government Haryana. For the sake of brevity, relevant portion of the same read as under:-

*“Principal Secretary to Govt. Haryana,
Welfare of Scheduled Castes and Backward Classes
Department, Chandigarh.*

- 1. All Administrative Secretaries to Govt.Haryana,*
 - 2 All Heads of the Departments in the State of Haryana,*
 - 3. Secretary, General Administration, Haryana Civil
Secretariat, Chandigarh.*
 - 4. All the Managing Directors of Boards/Corporations/Public
Sector Undertakings.*
 - 5. All Divisional Commissioners, Ambala, Hisar, Rohtak and
Gurugram,*
 - 6. The Registrar, Punjab & Haryana High Court, Chandigarh.*
 - 7. All the Deputy Commissioners in the State of Haryana.*
 - 8. All the Registrars of the Universities in the State of Haryana.*
- No.EC/2018/20179-389 Dated: 26.04.2018*
- Subject: Candidates of any category (SC/BC/OBC etc.)
qualifying/selected in Govt.job or admitted in Educational
Institute/Universities based on General criteria or merit must
be allocated seat from General category.*

*I am directed to invite your kind attention to the State
Government instructions no.22/88/96/3GS-III dated
25.06.1997 wherein it is observed that the Scheduled
Castes/Backward Classes candidates who get selected in
Govt.job in the open competition on the basis of general merit
(without availing any relaxation of age etc.) will have to be
counted against general seats as they are open competition*

candidates. They will not be considered against reserved seats. However, such candidates should fulfill conditions of eligibility regarding age etc.as are meant for the General category candidates.

Hence, this department being a Nodal agency of the Government for implementation of the reservation policy issue this clarification that Government department must follow the above instructions dated 25.06.1997. These instructions were issued in connection with the reservation policy pertaining to Govt.job. On the same analogy, the Scheduled Castes/Backward Classes candidates who get selected/admitted in Educational/Professional/Technical Institution and Universities in the open competition on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Castes/Backward Classes, rather they will be treated as open competition candidates. Cases where a reserved category candidate avail relaxation say in age qualifying norms etc.then he/she will be treated against reserve category.

This may please be brought to the notice of all concerned for strict compliance in letter and spirit.

Special Secretary

*for Principal Secretary to Govt. Haryana
Welfare of Scheduled Castes and
Backward Classes Department,
Chandigarh.”*

From the perusal of the same, it is axiomatic that a person seeking relaxation in the age, though belong to scheduled caste category, cannot seek appointment on the basis of the general category as he/she shall be treated against a reserved seat. There is no denial to the findings referred to by Mr. Malik, but the question raised by the Hon'ble Supreme Court for consideration was with regard to a dispute amongst the parties for reservation of posts for Backward Classes, Scheduled Classes, Scheduled

Tribes, Women candidates and Sportspersons. For the sake of brevity, Para 4 of the judgment cited supra reads thus:-

“The dispute between the petitioners and the respondents resolves around the issue of reservation of posts for Backward Classes, Scheduled Classes, Scheduled Tribes, Women candidates and Sportspersons.”

In view of what has been observed above, I am of the view that the grievance of the petitioner is wholly devoid of merit. No ground for interference is made out. Resultantly, the writ petition is dismissed.

August 27, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No