

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

CWP No. 3688 of 2013.

Date of Decision: 14.01.2019.

Sharandeep Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Gaurav Sharma, Advocate for
Ms. Maninder, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. L.S. Sidhu, Advocate,
for respondent No.3.

JITENDRA CHAUHAN.J.

The petitioner seeks quashing of impugned order dated 08.02.2013 (Annexure P-13) vide which the claim of the petitioner for appointment as Punjabi Mistress had been rejected.

An advertisement dated 23.09.2009 (Annexure P-6) was issued by the respondents inviting applications for various posts including 3638 posts of Masters/Mistress to be filled on contractual basis by Government of Punjab. The petitioner belongs to Nai Sikh caste which has been declared as Backward class. The petitioner applied for the post of Mistress. The petitioner obtained 60.372 marks. In the combined merit list, name of the petitioner was shown at serial No.245. The petitioner appeared in the counselling. However, the name of the petitioner did not figure in the final selection list despite the fact that candidates from serial No.10 to 39 in the merit list were

lower in merit than the petitioner. Reliance has been placed on (i) *Jyoti Rani vs. State of Punjab and others CWP No. 2831 of 2011 decided on 05.12.2012* and (ii) *State of Punjab and others vs. Jyoti Rani LPA No.2111 of 2013 decided on 19.12.2013* to contend that the claim of the petitioner could not be defeated on the ground that the certificate of backward class was issued after the cut off date.

On behalf of the respondent-State, it is contained that as per condition No.6 in the advertisement (Annexure P-6), the certificate of Backward Class was required to be issued within one year from the last date of submission of applications and the certificate should be in terms of the letter dated 17.01.1994 and 17.08.2005 issued by the Department of Welfare, Punjab Government whereas, the first certificate produced by the petitioner was issued 05.02.1999 which was not within one year of cut of date i.e. 09.10.2009. The second certificate dated 14.11.2009 was issued after the last date of submission of application. Reliance has been placed on *(i) Charanjit Kaur vs. State of Punjab and others CWP No.22198 of 2012 decided on 16.02.2016* *(ii) Jaspal Kaur and others vs. State of Punjab and others CWP No. 5560 of 2011 decided on 02.11.2011* to contend that the certificate produced after the cut-off date will not come to her rescue.

Heard.

Condition No.6 incorporated in the advertisement (Annexure P-6) is reproduced as under:-

“The certificate of Backward Class category should not be more than one year prior to the last date of submission and this certificate should be as per the Punjab Government Department of Welfare letter No.1/41/93-RS/1209 dated 24.02.2009”

It is an admitted position of fact that the petitioner produced two certificates of backward class. The first certificate was issued on 05.02.1999 and the other was issued on 14.11.2009. The first certificate was not issued within one year of last date of submission of the application. The another certificate was issued after the last date of submission of applications. In this regard, paragraph Nos.13 and 15 of the judgment rendered in Charanjit Kaur's case (supra) are reproduced as under:-

“13. It would not be out of place here to deal with the few judgments cited by Ms. Chatrath appearing for the petitioner. In Jyoti Rani Vs. State of Punjab (CWP No.2831 of 2011 decided on 5th December, 2012), the Court dealt with an advertisement which stipulated that the original caste certificate issued by the competent authority in favour of the Ex-servicemen (Dependent) would be produced at the time of counting itself. Therefore, the said case is distinguishable on latitude given in the advertisement. In Surinder Kumar Vs. Union of India & others (CWP No.15272 of 2012 decided on 6th November, 2013), I had the occasion to deal with a somewhat similar issue arising in a recruitment process of Constables in Central Industrial Security Forces (CISF) for the reserved categories of Other Backward Classes. In this case, amended Caste certificate issued on 9th May, 2012 was beyond the closing date on 4th March, 2011 but it was issued in place of original certificate by the competent authority himself, the Tehsildar Fazilka which would relate back to save candidature in the reserved category. The problem arose when the petitioner submitted his caste certificate in on Central Government format which was required in the Punjab format. This defect was cured retrospectively as the caste fell in both the lists. But such a thing has not happened in this case and therefore no reliance can be placed on Surinder Kumar's case.”

15. *In summary, the position is that the case of the petitioner is foreclosed with the passing of the orders in Jaspal Kaur's case to which she was a party in a connected writ petition decided by common order. The only window left open was of unfair discrimination dependent on verifiable facts, the petitioner claiming that similarly situated persons had been treated differently but this assertion stands belied. On facts discrimination stands ruled out in view of the explanation given by the State in its written statement. Therefore, no relief can be claimed by the petitioner and she remains bound by the terms of the advertisement. The certificate produced after the cut-off date will not come to her rescue. In any case, if such a prayer were to be allowed, it would result in opening of a Pandora's box seriously affecting 3rd party rights, which may have necessitated reopening the advertisement itself and ordering a fresh selection to accommodate those valuable rights of equal treatment in others similarly situated as the petitioner, which contention is the veritable storehouse of the petitioner armoury claiming relief. The argument is dangerous and quite apparently cuts both ways. The petitioner cannot have her cake and eat it too. Equally, equal opportunity would have to be given to all contenders to consider their cases where Backward Class certificates have been issued and obtained after the cut-off date. Those who read the advertisement and did not apply for lack of valid caste certificates effective on the material date would not have applied. Their rights of consideration would be revived complicating the whole thing beyond judicially manageable standards apart from causing administrative chaos in the event of success of the petition on a fleeting moment. Equal treatment would be lost cause. In any case, no orders can be passed without hearing persons likely to be affected in case the prayer of the petitioner is accepted in arguendo."*

In view of the above, the judgments relied upon by

the learned counsel for the petitioner are distinguishable and are not applicable on the facts of the present case. Thus, the claim of the petitioner has been rightly rejected.

Dismissed.

14.01.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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