

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 26352 of 2018(O&M)
DATE OF DECISION : 05.11.2019

Harjit Kaur

... Petitioner

versus

State of Punjab & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rohit Singla, Advocate,
for the petitioner.

Ms. Monica Chhibbar Sharma, Sr. DAG Punjab.

ARUN MONGA, J. (ORAL)

1. During the course of hearing, an affidavit of petitioner, pursuant to order dated 22.11.2018 has been filed, which is taken on record and a copy thereof has been supplied to learned State counsel.

2. *Inter alia* issuance of a writ in the nature of *mandamus* has been sought herein commanding the respondents to consider the candidature of the petitioner in Scheduled Castes(SC) category for appointment to the post of Clerk.

3. At the time of filling up the application form, the petitioner had inadvertently applied in General Category by clicking the wrong online option in the computer, contends learned counsel for the petitioner.

4. Per contra, learned State counsel submits that terms and conditions of the advertisement are amply clear that no candidate shall be

allowed to change the category once the same has been opted.

5. While I am in agreement with the terms and conditions of the advertisement, but here is a case where it is not disputed by the respondents, as would be reflected from their return, that the petitioner indeed belongs to SC category and certificate produced by her is not in dispute. The only defence is with respect to her having opted for general category at the time of filling original application. It is further contended that it does not seem to be a genuine case of inadvertence as the total number of seats advertised in general category were 705 as against 371 seats in SC category.

6. Learned State counsel argues that since the number of seats in general category were much more, the petitioner deliberately opted in general category so as to have higher probabilities of her being selected and having remained unsuccessful, she belatedly approached the respondents for change of category.

7. Ordinarily, the arguments of learned State counsel would have had some force, but since the same is mere a probability and going by the same, it seems rather contradictory that candidates in the reserved category would out-way the candidates in the general category. Ordinarily, reserved category being restricted number of candidates have less competition viz-a-viz general category candidates who are large in number.

8. Another aspect of the matter is that the equity also is tilted in favour of the petitioner. Vide an interim order dated 22.11.2018 one post of Clerk in the SC Category was directed to be kept in abeyance during pendency of the writ petition. The result of the petitioner has also been declared, whereby she has been placed at Sr. No.41 in the SC category as against 180 posts advertised in the category of SC(M&B), to which the

petitioner belongs. Not only that, the petitioner has also been invited for the counseling and scrutinization of her documents. Pursuant thereto she has also been asked to give her option for the place of posting.

9. In the totality of circumstances, it would be travesty of justice to deny the benefit of her merit to the petitioner pursuant to her having been successful in the selection in her category.

10. However, I am in agreement with the submission of learned State counsel that present case shall not be treated as a precedent and this order shall not be construed in a way that a candidate is allowed to change his/her option after having opted in a particular category even if the same is inadvertence, as is contention in the present case. Terms and conditions of recruitment are sacrosanct and have to be adhered to, unless challenged, which is not a case herein.

11. In view of the discussion and reasoning above, the writ petition is disposed of with a direction to the respondents to issue appointment letter to the petitioner for the post of Clerk, in SC category, against which she has been selected pursuant to advertisement dated 01.09.2016. She be also permitted to carry out necessary corrections in her original form. **She be placed at the bottom of the merit list in the category of SC(M&B) by adjustment against the vacant post, as per her undertaking given by the petitioner vide affidavit dated 05.11.2019 pursuant to order dated 22.11.2018.**

11. Disposed of in above terms.

(ARUN MONGA)
JUDGE

November 05, 2019

Jiten

1. Whether speaking/ reasoned:

Yes/ No

2. Whether reportable:

Yes/ No