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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 16.07.2019

1. CWP-5558-2017 (O&M)

Deepak Bhardwaj and another
... Petitioner(s)
Versus
State of Haryana and others
... Respondent(s)

2. CWP-11201-2017 (O&M)

Rajbala
... Petitioner(s)
Versus
State of Haryana and another
... Respondent(s)

3. CWP-9608-2017 (O&M)

Savita and others
... Petitioner(s)
Versus
State of Haryana and another
... Respondent(s)

4. CWP-10728-2017 (O&M)

Pinki
... Petitioner(s)
Versus
State of Haryana and another
... Respondent(s)

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5. CWP-8792-2017 (O&M)

Renu Sharma

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

6. CWP-6298-2017 (O&M)

Priya and another

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

7. CWP-8027-2017 (O&M)

Sachin Kumar

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

8. CWP-8625-2017 (O&M)

Renu Bala

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Nehra, Advocate;
Mr. Surender Pal, Advocate;
Ms. Sharmila Sharma; and
Mr. Sunny Bhardwaj, Advocate
for the petitioner(s).

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Nilesh Bhardwaj, Advocate

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for the respondent(s)-University.
Mr. Anurag Goyal, Advocate
for the respondent Nos.2 to 4 in CWP-8625-2017.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of a bunch of eight writ petitions bearing CWP Nos.5558, 11201, 9608, 10728, 8792, 6298, 8027 and 8625 of 2017 as learned counsel for the parties agreed that the issues involved in all these writ petitions are identical. However, the facts are being extracted from CWP No.5558 of 2017.

The petitioners by invoking the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India sought *mandamus* directing the respondent(s)/University, to consider the candidature of the petitioners in Economically Backward Persons in General Category (EBPG), for the post of Staff Nurse, instead of General Category.

Learned counsel for the petitioner(s) submitted that vide advertisement dated 28.09.2016 (Annexure P-1), applications were called for filling up the non-teaching posts of Staff Nurse i.e. 535 and the essential qualification for the said posts was as under:-

(i)Matriculation or its equivalent from a recognized university/board with Hindi as a compulsory subject.

(ii)Certificate in general nurses and midwifery from a recognized institution recognized by the Indian Nursing Council or any recognized higher qualification (BSE/M.SE Nursing) should be registered A grade nurse and midwifery with Haryana registration nursing council.

Since the petitioners having requisite qualification, submitted

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application online under General Category. Vide corrigendum dated 18.11.2016 (Annexure P-4), last date for submission of online application was extended upto 30.12.2016, wherein 44 posts under EBPG Category, were sought to be filled up. There was no indication in the corrigendum, whether the application was to be submitted by newly introduced category with regard to the candidates, who already had applied under General Category. Since the petitioners, as per the certificate belonged to EBPG Category, have been prevented for right of consideration, thus, the act of the respondents is wholly fallacious. Result was declared on 12.02.2017 and few of the candidates/petitioners with specific roll numbers, secured 44 marks, but their candidature has been considered under General Category, instead of EBPG. As per cut off list, only 21 candidates were called for interview against 44 posts under EBPG Category. The date and time of the verification for the post of Staff Nurse was 28.03.2017 and interview was to be held on 29.03.2017. No heed has been paid to the legitimate request of the petitioners to consider their candidature under EBPG category, thus, urge this Court for allowing of the writ petitions.

Per contra, learned counsel for the respondent(s) submitted that there is a concealment of fact as the corrigendum (Annexure P-4) is not the correct one. The attention of this Court was drawn to Annexure R-1, the exact corrigendum dated 30.11.2016, whereby it specifically clarified that EBPG candidates, who had applied under General Category and wanted reservation in EBPG Category, were required to apply "afresh" with a stipulation that fees received under General Category would be refunded. Out of 44 posts, 21 candidates qualified for interview and 20 were selected. The petitioners did not apply, therefore, their candidature, at this stage,

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cannot be considered under reserved category.

In rebuttal, Mr. Nehra, drew the attention of this Court to Annexure A-2, notification dated 01.06.2018, issued by the office of Chief Secretary, Government of Haryana, addressed to all the Departments including the Registrar of University, mandating the selection process to contain EBPB Category. The cumulative reading of the submissions of learned counsel for the petitioners, thus, was that the Department failed to give reservation, therefore, entire selection process is liable to be set aside.

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

It would be apt to reproduce para No.4 of the writ petition bearing CWP No.5558 of 2017 as well as the relevant contents of corrigendum dated 30.11.2016 (Annexure R-1), which reads as under:-

"Para No.4 of CWP No.5558 of 2017

4. That a corrigendum was issued by the respondent vide letter No.22/10/2013-IGS111 dated 18.11.2016 and last date of submission of online applications were extended upto 30.12.2016. In the corrigendum break up of the posts was revised and one other category namely EBPB was also added and number of posts was 44. Its worth mentioning here that these 44 posts were taken out of general category posts which were earlier if 189, but subsequently were reduced to 145. But nothing was indicated in the corrigendum, if another application is to be submitted for newly introduced category i.e. EBPB by the candidate who have already applied in General Category. Copy of corrigendum is appended herewith as Annexure P/4.

Corrigendum dated 30.11.2016 (Annexure R-1)

As per Haryana Govt. notification mentioned above, 10% posts have been reserved for EBPB Category category. The EBPB

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category candidates who have already applied against General Category may apply afresh and also pay requisite fee. The application fee paid earlier for General Category will be refunded. For breakup of posts and more details, kindly visit the University website i.e. www.uhsr.ac.in."

Annexure P-4 is not the corrigendum, nor it is known whether it is in vernacular or true copy. It only says non-teaching posts and last date for submission of application was only extended and revised breakup posts considering EBPG Category was also included, whereas on going through corrigendum dated 30.11.2016 (Annexure R-1), there is clear cut recital with regard to submissions of the applications. It is a common practice amongst aspirants/petitioners, not to divulge the information to their counsel, resulting into, issuance of notice of motion and some interim order. One who comes to the court, must come with clean-hands. If otherwise i.e. withholds some vital information in order to gain advantage on the other side, would be guilty of playing fraud on the court as well as on the opposite party. This view of mine is derived from the ratio decidendi culled out by Hon'ble the Supreme Court in **S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors., AIR 1994 SC 853.**

Once there is no reservation under General Category and the petitioner did not avail the benefit extending under EBPG Category, cannot volte-face and seek the intervention of this Court under Article 226/227 of the Constitution of India, for being considered them under aforementioned category. The notification dated 01.06.2018 do not come to the rescue of the petitioners, in the absence of submission of application under EBPG Category.

Keeping in view the aforementioned facts, the writ petitions are

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devoid of merit and accordingly, the same are dismissed with costs of ₹10,000/- each, to be deposited in the Bar Association of this Court.

16.07.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No