

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

CWP No.23206 of 2019

Date of Decision: August 29, 2019

Sonia Devi & another

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jasbir Mor, Advocate,
for the petitioners.

AMIT RAWAL, J. (Oral)

Petitioners, two in number, have sought the intervention of this Court for issuance of direction to the respondents to consider their candidature under the Economically Backward Persons (for short, EBP) in General Category in view of the notifications dated 23.01.2013 and 27.09.2013 (Annexures P-9 and P-10) for the post of Female Constable with consequential relief of undertaking Physical Measurement Test and not to re-advertise the remaining 57 vacant posts of Female Constable of general category reserved under EBP category.

The facts which enumerated from the writ petition are that the Haryana Staff Selection Commission caused an Advertisement No.08/2015 dated 19.07.2015 (Annexure P-1) inviting online applications from the eligible candidates by keeping the minimum qualification. Petitioners possessing qualification of 10+2 and Matric with Hindi as one of the subject, submitted applications under SBC category by enclosing the

certificates Annexure P-3 (colly). Finding the documents to be intact, were issued admit cards and called upon for undertaking Physical Measurement Test held from 08.03.2016 to 14.03.2016, which they qualified and thereafter sat in the written examination held on 17.04.2016. Respondent-Commission on 29.10.2016 declared the result of the Female Constables and of the EBP in general category on 30.11.2016 owing to the pendency of certain writ petitions. However, during the entire process, the Government had withdrawn the Special Backward Class (SBC) category and converted the posts into general category.

Mr. Jasbir Mor, learned counsel representing the petitioners submitted that during the interregnum and in pursuance to the instructions dated 07.06.2017 (Annexure P-16) had submitted an application for obtaining the certificates belonging to EBPGC which have been issued vide Annexure P-18 dated 20.06.2017 and 07.07.2017 respectively. In this regard, representations Annexure P-20 dated 25.07.2017 and Annexure P-21 dated 13.07.2017 have been submitted, but no action has been taken, thus, the action of the respondents in inviting the applications under EBP category and thereafter withdrawing the aforementioned reservation is wholly illegal. In respect of the cases of Male Constable belonging to EBP category, they have been given a chance to appear for the Physical Measurement Test and interview vide order dated 10.04.2019 in CWP No.9665 of 2019 and vide Annexure P-24, petitioners have been called for interview. The respondent-Commission is not averse to allowing the petitioners to undertake the physical test but only subject to the order of the Court. In such circumstances, petitioners have been compelled to come to this Court.

I have heard the learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners.

The qualification laid down in the aforementioned advertisement is as under:-

- “i) *The minimum educational qualification for the post of Constable shall be 10+2 for all categories.*
- ii) *Hindi/Sanskrit upto Matric standard or higher education;*

PHYSICAL STANDARD

<i>Category</i>	<i>Height</i>
<i>General category</i>	<i>160 centimeter</i>
<i>Eligible Reserve categories</i>	<i>157 centimeter</i>
<i>as per latest existing Govt. reservation policy.”</i>	

No doubt, petitioners have undergone the preliminary physical training test and sat in the written examination, but once Government had already taken away the reservation under the EBP GC after having given an undertaking in this Court in a pending writ petition and converted the posts to general category, the petitioners cannot claim the reservation under the EBP in general category after obtaining the certificates as referred to above, particularly when 57 posts are lying vacant as the process of selection is already over. In case the aforementioned request of the petitioner is accepted, it will take away the right of the other eligible aspirants. The order relied upon by Mr. Mor would not apply in this case, for, petitioners had more marks than the one candidate under the general category.

Since the result of the petitioners has been withheld and not declared nor the petitioners have sought the same under any provisions of the Act, the grievance of the petitioners cannot be redressed, particularly

restraining the Commission from not advertising the posts. In my view, the right of pre-emption in the service jurisprudence is wholly unknown and cannot be applicable. No ground for interference is made out. Resultantly, the writ petition is dismissed.

August 29, 2019
ramesh

(AMIT RAWAL)
JUDGE

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