

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

CWP No. 12184 of 2015

Date of Decision: 29.03.2019

Gurdit Singh

... Petitioner

versus

**Punjab State Civil Supply Corporation Ltd. through its Managing
Director & Ors.**

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. A.S. Nabhewala, Advocate,
for the petitioner

Mr. Gautam Pathania, Advocate,
for respondent No. 1.

Respondents No.2 to 6 ex-parte

ARUN MONGA, J.

1. The prayer in the instant writ petition is for issuance of directions to the respondents to consider the candidature of the petitioner in 'general category' instead of 'sports category' as he had secured equivalent or more marks than the private respondents No.2 to 6, who were selected in general category.

2. The uncontroverted facts of the case are that, pursuant to an advertisement dated 27.08.2014, Annexure P-1, the petitioner applied for the post of Inspector Grade-I under 'Sports Category'. After written examination, the shortlisted candidates were interviewed category-wise.

Respondents No.2 to 6, appeared in interview against the five posts of 'General Category' and all of them were given the job. Whereas, out of total of 10 candidates, the petitioner was though finally shortlisted for one post under 'sports category', but the same was given to some other candidate.

3. The grouse of the petitioner is that in the qualifying examination he and respondent No.2 had secured 91% marks, as against the last candidate of general category who secured 86% marks. The respondents were under legal obligation to consider his candidature under 'general category' instead of 'sports category' as the petitioner secured marks equivalent to respondent No.2 and more marks than the ones secured by respondents No.3 to 6.

4. Respondent No.1 filed a short reply and has not disputed factual aspect of the matter.

5. The claim of the petitioner is resisted on two grounds viz., firstly, condition No.11.2 of the advertisement creates an embargo upon the candidates to subsequently change the category from their initially exercised option. Even if the petitioner secures more marks than the selected candidates of General Category, his candidature will thus be considered only in sports category under which he applied. Secondly, though the petitioner was at Sr. No.1 of the shortlisted candidates, but the merit list of the sports category was prepared by the Department of Sports, Punjab in accordance with the Punjab Recruitment of Sportsmen Rules, 1988 and Sports Gradation Policy and the candidate having more gradation certificates than the petitioner was selected.

6. It is further averred that the petitioner has no right to claim selection under general category as he had participated in the recruitment

process as a sports category candidate out of his own volition and after having failed to secure the appointment, he has filed the writ petition.

7. I have heard learned counsel for the parties and have gone through the paper-book carefully with their able assistance.

8. From the pleadings of the parties, the short controversy which arises for consideration is, whether a candidate who has applied under any reserved category can be shifted to the General Category on having secured more marks than the persons who were finally selected under General Category. This issue is no more *res integra*. If a candidate claims reservation in any category and it is found that he is not eligible in that category, he immediately shifts to general category and his merit position has to be considered on the basis of marks obtained by him. In '**Deepak Kumar vs. State of Punjab and another**', reported as **2014 (3) SCT 789**, a Coordinate Bench of this Court has clarified the position regarding the issue and observed as under:-

“30. I find merit in the contention raised by learned counsel for the petitioner in CWP No. 1475 of 2014, where the candidature of the petitioner, who had applied in sports category, was not considered in that category, as he could not get the requisite sports accreditation certificate. His prayer that in the absence thereof, his candidature was to be considered in general category. The action of the authorities in this regard, whereby they had denied consideration of the candidature of the petitioner herein in general category, who had secured more marks than the shortlisted candidates in general

category is found to be erroneous. If a candidate claims reservation in any category and it is found that he is not eligible in that category, he immediately shifts to general category and his merit position has to be considered on the basis of marks obtained by him. Consideration of his candidature cannot be denied altogether.”

9. Adverting to the facts of the case in hand, it is not disputed that the petitioner secured marks equivalent to respondent No.2 and more than respondents No.3 to 6 who were selected for the post in general category. Once the result of the score was compiled and the petitioner was found to have secured higher marks than the candidates selected in general category, it was incumbent upon the authorities to shift the petitioner in the general category. That was not done and instead his case was considered only under sports category. Respondent No.1 lost sight of the fact that on having secured equivalent or more marks than the candidates selected in general category, the name of the petitioner was required to be considered/ shifted in the general category. It was not be a voluntary change by the petitioner, as contended, but was requirement of the law in order to have more meritorious candidates in the zone of consideration. Once there is non adherence to the rules by respondent No.1, the plea of *estoppel* against the petitioner is not sustainable to bar a challenge to selection process only because he had unsuccessfully participated in the same.

10. In view of the discussion and observations made above, the writ petition is allowed. Respondent No.1 is directed to consider the candidature of petitioner in general category. Vide order dated 05.06.2015

this Court had observed that if respondents No.2 to 6 are allowed to join, the same shall be subject to the outcome of this writ petition. In view thereof, respondent No.1 is directed to recast the merit list and finalize the the selection process, in accordance with law.

(ARUN MONGA)
JUDGE

March 29, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |