

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

CWP No.19270 of 2017 (O&M)

Date of decision: 08.05.2019

Pawan Kumar

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Shekher Verma, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. WALIA, J (ORAL)

1. Prayer in the writ petition is for the issuance of a writ in the nature of Mandamus directing the respondents to consider the candidature of, and application form dated 26.12.2015 Annexure P-3) submitted by, the petitioner under Backward Class (A) Category instead of Backward Class (B) Category as also to issue a writ in the nature of Certiorari to quash order (Annexure P-8) dated 07.08.2017 passed by respondent No.2 rejecting the representation of the petitioner for consideration of his candidature in Backward Class (A) Category.

2. Brief facts of the case leading to the filing of the writ petition are that advertisement dated 24.11.2015 was issued by the respondents for appointment of 4425 Clerks in the State of Haryana. The application forms were to be submitted online and the last date for submission of online

application form was 06.01.2016. The petitioner, who belongs to Backward Class (A) Category as is evident from Certificate (Annexure P-2) issued by the Tehsildar, Kaithal dated 07.05.2004, inadvertently while filling up online application forms mentioned his category as Backward Class (B). The petitioner was issued a Roll number and appeared in the written test which was conducted by the respondents. However, before the declaration of the result of the written test and calling of candidates for interview, the petitioner realized his mistake in having filled up BC(B) category in online application form instead of BC(A) category. Consequently, the petitioner submitted a representation (Annexure P-4) dated 20.6.2017 to the respondents requesting for necessary correction to be made and for treating him as if he had applied under BC(A) category. When no action was taken on the representation, the petitioner invoked the jurisdiction of this Court by way of CWP No.14618 of 2017. The same was disposed of vide order dated 10.07.2017 by directing the respondents to consider and decide representation (Annexure P-4) dated 20.06.2017. On consideration of the representation, the respondents vide order (Annexure P-8) dated 07.08.2017 rejected the prayer of the petitioner for correcting the mistake and for treating him as having applied under BC(A) category.

3. It is in the aforementioned circumstances that the petitioner has invoked the jurisdiction of this Court by filing the instant writ petition. Vide order dated 28.08.2017, while issuing notice of motion, it was directed that in case the petitioner qualified the written test in the BC(A) category then he be provisionally interviewed. On the petitioner having qualified in BC(A) category, he was provisionally interviewed.

4. Pursuant to order of this Court dated 19.04.2018, learned Senior Deputy Advocate General has produced the result of the petitioner in a sealed cover which was opened and perusal thereof reveals that as against cut off marks 158 for final selection in BC(A) category the petitioner secured total of 169 marks out of 225 marks. After perusal, result of the petitioner was returned to learned State counsel who contends that order (Annexure P-8) dated 07.08.2017 is valid and immune from challenge.

5. Learned counsel for the petitioner states that admittedly the petitioner secured more marks than the cut off marks fixed for final selection in category BC(A) and in view of the decision of a Coordinate Bench of this Court in CWP No.14863 of 2017 in case titled as 'Sarla and others versus Haryana Staff Selection Commission through its Secretary' wherein, in similar circumstances, cancellation of candidature of the petitioner who had wrongly filled up the category in the on line application form was allowed and the petitioner therein was held eligible to be considered for selection and appointment subject to merit.

6. The aforementioned decision was carried in appeal and vide order dated 22.2.2019, Hon'ble the Division Bench was pleased to dismiss the appeal. Hon'ble the Division Bench while dismissing the appeal, observed as under:

“5. We cannot lose sight of the fact that in view of the prevailing socio economic condition in our country, every citizen is neither net savvy nor has a computer or laptop readily available for use. In these circumstances, when such a candidate has to submit an application on-line he has to dependent upon the cyber cafés providing the net services. Being himself/herself not computer and net savvy the candidate has to depend upon the operator in the

cyber café to fill in online form and in such a circumstance if any mistake occurs it would be wholly unrealistic and arbitrary to make such a candidate suffer. It is also to be taken note of that if an incorrect entry is made due to human error, there is no provision on the website of the Commission allowing correction in the online application form. In these circumstances, if a mistake is committed, there being no provision for carrying out correction, even if it is noticed subsequently, a poor candidate is to suffer for no fault.”

7. Admittedly, the petitioner belongs to the BC(A) category as is evident from Certificate (Annexure P-2) dated 07.05.2004 which was issued by the competent authority much before the cutoff date. However, the petitioner inadvertently while filling up the on line application form mentioned BC(B) category. Before the result of the written test was declared, the petitioner realized his mistake and immediately submitted representation dated (Annexure P-4) 20.06.2017 requesting the respondents to permit him to correct the category from BC(B) to BC(A) i.e. the category to which the petitioner belongs. Since no action was taken, the petitioner invoked the jurisdiction of this Court by way of CWP No.14618 of 2017 which was disposed of vide order dated 10.07.2017 directing the respondents to consider and decide the representation (Annexure P-4). On consideration, the respondents vide order dated (Annexure P-8) 07.08.2017 rejected the claim leading to the instant writ petition being filed. Since the mistake by the petitioner was inadvertent and contrary to the certificate issued by the competent Authority, besides the petitioner had approached the respondents before the declaration of the result of the written test requesting for correction of the category to BC(A), therefore, following the decision of the Coordinate Bench of this Court as upheld by the Hon'ble Division Bench of this Court,

the writ petition is allowed. Impugned order (Annexure P-8) is quashed. The respondents are directed to take action and process the claim of the petitioner for appointment under BC(A) category in accordance with law with effect from the date persons junior to the petitioner were appointed. However, the petitioner shall not be entitled to any arrears.

May 08, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No