

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.A.No.386 of 2017 (O&M) in
Civil Writ Petition No.8379 of 1996
Date of Decision: May 21st, 2019

Santra Devi

...Applicant-petitioner

Versus

State of Haryana & others

...Non-applicant/respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI
HON'BLE MR. JUSTICE GURMEET SINGH SANDHAWALIA
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Applicant-petitioner Ms. Santra Devi in person.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

AMIT RAWAL, J.

The prayer in the present Review application, at the instance of the applicant (petitioner in CWP No.8379 of 1996), is for review of the order dated 06.11.2009, accompanied by an application seeking condonation of delay of 2788 days, in filing the same.

As per the averments, in pursuance to the advertisement bearing No.1/95 dated 22.01.1995 (Annexure P-9), 4 posts of Lecturers in Sanskrit of General Category for female, were advertised, but there was no post reserved for Backward Class Category (BC). The applicant/petitioner, being aspirant and belonging to Backward Class, submitted an application and in lieu thereof, received interview letter dated 22.09.1995 (Annexure P-

8) bearing Roll No.398 to appear on 12.10.1995. Before the date of interview, another advertisement bearing No.7/95 dated 10.10.1995 (Annexure P-10) for filling up 15 posts of Lecturers of Sanskrit were advertised, out of which 3 posts were reserved for Backward Class (Female Category) with a stipulation that the persons, who had already applied in pursuance to the first advertisement, need not apply again.

Since there was no post reserved for Backward Class Category in pursuance to the first advertisement, the applicant was in a quandary and as an abundant precaution, also submitted an application dated 19.10.1995 (Annexure P-11) and alleged to have received a communication dated 16.11.1995 (Annexure P-13) by assigning Roll No.655. She was directed to bring certificate of her category on the date of the interview as she had already appeared in the first interview. The second interview was to be held on 02.12.1995. However, the Selection Committee refused to interview the applicant on the premise that she was, already interviewed, in the first advertisement and was made to believe that there was a common selection, as the selection process was outcome of clubbing of the advertisements. On 18.03.1996 (Annexure P-14), the result was declared, but the applicant's Roll number was not included. On ascertaining the particulars of the result, it transpired that for Backward Class Category, cut off marks were 66 marks, whereas for General Category, 67 marks, whereas the applicant/review petitioner against Roll No.398, obtained 66 marks out of 100 marks and since the cut off marks for Backward Class Category was 66, she was liable to be offered appointment.

The applicant and many other aspirants assailed the selection process. CWP No.8379 of 1996 was on behalf of the applicant and bunch of

writ petitions was on 18.05.1998 allowed as per detailed order in CWP No.10940 of 1996, whereby the selection was quashed and the directions were issued for holding fresh selection by the Division Bench. State of Haryana assailed the aforementioned judgment before Hon'ble the Supreme Court. However, no Special Leave Petition against the decision in CWP No.8379 of 1996 was preferred. The Special Leave Petition was decided by Hon'ble the Supreme Court on 18.01.2000, wherein, the decision of this Court in CWP No.10940 of 1996 was set-aside and the matter was remitted to this Court for fresh decision.

Vide order (sought to be reviewed) dated 06.11.2009, the selections were upheld by the Full Bench of this Court. Applicant alleged to have sent a legal notice dated 11.01.2010 for considering her claim against the available vacancy of Female Backward Class Category on the premise of having obtained minimum cut off marks and, thus, prayed for direction to the respondents to offer appointment, but it remained undecided, compelling her to approach this Court vide CWP No.6506 of 2010 claiming that selection had been upheld and since her writ had been allowed, she should be appointed.

Civil Writ Petition No.6506 of 2010 was permitted to be withdrawn vide order dated 06.05.2014 with liberty to move an appropriate application in CWP No.8379 of 1996. The order reads thus:-

“Counsel for the petitioner, after arguing for some time, prays for withdrawal of the present petition with liberty to file an appropriate application in the writ petition, which was preferred by the petitioner, i.e., CWP No.8379 of 1996 titled as Santra Devi Vs. State of Haryana and others, decided on

06.11.2009.

Dismissed as withdrawn with the liberty aforesaid.”

It is in these circumstances, the present review application has been filed by the petitioner and listed before the Full Bench explaining delay as her counsel (was hospitalized) owing to the contraction of serious disease and ultimately died in 2016, but, in fact, his date of death came to the knowledge only in the month of June, 2017, therefore, review application could not be filed within period of limitation.

This Court while considering the aforementioned submissions, issued notice in the applications for review and as well the application seeking condonation of delay of 2788 days.

Respondent Nos.1 and 2 filed the reply, averring, that requisition of 20 posts for the selection of Lecturer Sanskrit (Female) through direct recruitment, was sent to the Subordinate Service Selection Board, Haryana, now Haryana Staff Selection Commission, Panchkula and in response thereto, two advertisements, one dated 22.01.1995 and another dated 10.10.1995 were issued. Thereafter, the Subordinate Service Selection Board on declaration of result recommended the names of 20 candidates on 18.03.1996 including 3 candidates for BC(A) and BC(B) category. In view of the selection process, candidates appearing against Roll Nos.563, 552 and 571 were issued appointment letters.

Her claim was hopelessly barred as she could not obtain qualifying marks.

Applicant-petitioner filed rejoinder to the reply reiterating the stand taken in the review application and that the record was not being produced despite directions issued in CWP No.6506 of 2010 on 05.07.2013.

Respondent No.3 filed a separate reply along with Annexures R3/1 and R3/2, i.e., copy of written statement and affidavit dated 20.10.2011 and supported the findings of this Court in judgment dated 06.11.2009 by averring that there is no error apparent on record. The pith and substance of the reply revealed that the review petitioner did not disclose the marks obtained by the last selected candidate and in the first advertisement, there was no post reserved for Backward Class category. The petitioner had been interviewed twice under both the Roll numbers.

Applicant-review petitioner, appearing in person, submitted the following submissions:-

- (i) Predicament of the applicant/petitioner is writ large as qualifying marks for general category were 66, therefore, the commission was liable to offer appointment to her. Once the respondents clubbed the selection of two advertisements, applicant-petitioner as abundant precaution applied in pursuance to the second advertisement in Backward Class Category. It was not open for the respondents not to consider her name in the Backward Class Category, therefore, there is an abdication in performance of the duty;
- (ii) She was not interviewed on 02.12.1995 owing to refusal by Selection Committee as she had already been interviewed in pursuance to first Advertisement, i.e., 12.10.1995 and record of interview was not being produced;
- (iii) Once the vacancies notified vide both advertisements were clubbed, her claim should have been considered in Backward Class Category;
- (iv) As per result, both roll numbers did not find mention;
- (v) Perusal of result revealed that for B.C.Category 66 and General Category 67 marks were cut off;
- (vi) On receipt of intimation vide letter Annexure P-15 with Writ Petition Nos.8379 of 1996 and Annexure P-7 of 6506 of

2010, against roll number 398, she obtained 66 marks;

(vii) After decision of Full Bench dated 06.11.2009, on remand whereby selection was upheld, applicant-petitioner, through counsel, sent legal notice dated 11.01.2010 for consideration of her claim against available vacancy of Female Backward Class Category, but same remained undecided.

Per contra, Mr. Ankur Mittal, learned Additional Advocate General, Haryana submitted that the respondents had conducted the combined recruitment of both the advertisements. Applicant-petitioner submitted an application in the name of Santra Devi daughter of Ram Niwas while appearing in interview against Roll No.398 in general category and again in the name of Santra Devi wife of Virender Singh against Roll No.655. In the first interview in general category, she obtained 66 marks and in second 63 marks in BC-B category against last selected candidate marks, i.e., 68 in general and 66 in BC-B category. Her candidature was considered against both the categories and she was interviewed twice, but she could not make the grade in the selection list.

We have heard the applicant-petitioner in person, learned State Counsel, perused the record of CWP No.8379 of 1996, review application and as well as averments in CWP No.6506 of 2010.

None of the grounds and submissions aforementioned do bring the case within realm of error apparent on record for simple reason that the review petitioner, as per averments in Paras 5 and 10 of CWP No.6506 of 2010, extracted below, applied under both advertisements vide Roll Nos.398 and 655 respectively. Her marks obtained, i.e., 66 in response to first advertisement could not be considered against Backward Class Category, reserved in second advertisement as there was no post reserved

for Backward Class Category:-

“5. That the petitioner applied in response to the said advertisement and received interview letter dated 22.09.1995 bearing Roll No.398. The date of interview was fixed as 12.10.1995.

10. That the petitioner as an abundant caution had also applied in response to the subsequent advertisement dated 10.10.1995 in the category of Backward Class. In response to the said application, the petitioner received communication bearing memo No.16.11.1995, a copy of which is appended hereto as Annexure P-5. A perusal of the same would reveal that the petitioner was assigned Roll No.655, however, the subject of the said letter mentioned both the advertisements. The petitioner was required to bring the certificate of her category on the date of interview. The date of interview as assigned was 02.12.1995 at Canal Rest House, Hisar.”

In any case, petitioner against both advertisements, *ibid*, could not make merit list as she obtained 66 marks against Roll No.398 and 63 in BC-B Category, whereas last selected candidate in both categories obtained, i.e., 68 in General and 66 in BC-B. Merely because the respondents are not able to produce the record of interview of 1995 having destroyed the same on 30.07.2010 in view of the decision dated 06.11.2009 as per practice and in view of its resolution, the petitioner cannot, thus, take benefit of the same. The same stand had also been taken by the respondents in CWP No.6506 of 2010 (Annexure R-3/2).

There is no scope of interference in reviewing the order passed

Order be communicated to the petitioner as she is appearing in person.

May 21st, 2019
ramesh

Yes/No
Yes/No