

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.25195 of 2018 (O&M)

Date of decision:30.08.2019

Neelam

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

AMIT RAWAL J. (Oral)

C.M.No.10165 of 2019

The application is allowed, subject to all just exceptions.

Replication is taken on record.

CWP No.25195 of 2018

Prayer in present writ petition is for quashing of action of respondent no.2 rejecting the candidature of petitioner for the post of PGT Computer Science in ESM (Dependent) General Category and result dated 22.09.2018 (Annexure P-5).

The facts which emanate from the writ petition are that in pursuance to advertisement caused by Haryana Staff Selection Commission, various posts including 446 posts of PGT Computer Science in Category No.1 were advertised out of which 22 posts were reserved for ESM Category, petitioner belonging to ESM (Dependent) General Category

applied for the aforementioned post, though she did not have the certificate at the relevant point of time. Written examination was conducted on 06.03.2016 against roll no.50111180. As per the result declared on 16.04.2017, petitioner was called for scrutiny of documents and she appeared on 13.09.2018 for scrutiny of documents which were seen and found correct except eligibility certificate. In the meanwhile, petitioner was able to obtain the aforesaid certificate dated 17.09.2018 which was diarized having no.7692 dated 18.09.2018. The date of interview was 22.09.2018 and petitioner was provisionally interviewed as per the order dated 03.10.2018. Petitioner secured 118 marks in ESM category whereas cut off marks was 88, therefore, she is eligible for the said post.

Mr. Sumit Sangwan, learned counsel appearing on behalf of the petitioner submitted that plea of respondents in not complying with the terms and conditions of the advertisement is not sustainable in view of the judgment rendered by the Hon'ble Supreme Court in **Ram Kumar Gijroya Vs. Delhi Subordinate Service Selection Board and another 2016(4) SCC 754** wherein candidature of candidate belonging to OBC Category has been rejected for want of certificates. The aforementioned judgment has been followed by Full Bench of Allahabad High Court in **Gaurav Sharma Vs. Sate of U.P. Through Secretary and others 2017(3) SCT 497**.

Per contra, Mr. Gaurav Jindal, Additional Advocate General, Haryana submitted that terms and conditions of the advertisement are sacrosanct. Once the petitioner failed to upload the certificate, same cannot

be permitted to be produced at the later stage. In support of aforementioned contention relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **J&K Public Service Commission Vs. Israr Ahmad and others 2005(12) SCC 498** and urged this Court for dismissal of writ petition.

In rebuttal, Mr.Sumit Sangwan, learned counsel appearing on behalf of the petitioner submitted that facts in the judgment rendered in J&K Public Service Commission (supra) are with regard to change of category as reservation was granted to residents of backward area in the line of actual control benefit of which was not taken by the candidates in the main examination.

I have heard learned counsel for the parties, appraised paper book and of view that there is force and merit in the submissions of Mr. Sangwan. The petition deserves to be allowed for the simple reason as facts as narrated above are not in dispute. The order of this Court granting permission for provisional interview is dated 03.10.2018 whereas ESM Certificate issued is dated 18.09.2018. Reply of the respondents does not dispute existence or validity of the aforementioned certificate. The petitioner had filled in the application form ESM Category and accordingly was issued roll number and cleared examination with flying colours. The controversy with regard to issuance of certificate with regard to OBC category came to be debated upon by the Hon'ble Supreme Court in Ram Kumar Gijroya's case (supra) in paragraphs 6 and 16 which read thus:-

“6. The learned single Judge disposed of the writ petition

vide judgment and order dated 24.11.2010, placing reliance on the judgment in the case of Pushpa (supra), wherein the controversy centred around the same advertisement/Notification issued by the same respondent. The learned single Judge observed that the only ground for declining the applications filed by the appellants was that the O.B.C. certificates had been issued and submitted after the cut off date and therefore they were not eligible for appointment to the post. The learned single Judge further held that the respondent did not cite any other authority to distinguish the decision in Pushpa's case (supra) from the facts of the present case. Consequently, the learned single Judge disposed of the writ petition and directed the respondent to reconsider the application of the appellant and the other aggrieved candidates against the O.B.C. category within a period of one month.

16. *In our considered view, the decision rendered in the case of Pushpa (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court*

after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored.

The argument of Mr.Sangwan, is able to cut ice as the grievance of the petitioner has rightly been rejected in J&K Public Service Commission's case (supra) as he wanted to change the category at the time of main examination. However, the facts narrated in aforementioned case are totally different from the present case.

Writ petition is allowed. Respondents are directed to recommend the case of petitioner to department/respondent no.1 and further directed to comply with the recommendations in accordance with law by releasing all consequential benefits, if permissible in law.

(AMIT RAWAL)
JUDGE

August 30, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No