

(1)

CWP-10839-2017 &
CWP-23187-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 20th January, 2020

CWP No.10839 of 2017 (O&M)

Amritpal Singh & another

...Petitioners

Versus

State of Punjab & others

...Respondents

(2)

CWP No.23187 of 2017 (O&M)

Sourav Walia

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Parminder Singh-I, Advocate,
for the petitioners in CWP-10839-2017.

Mr. Sukhdev Kamboj, Advocate
for the petitioner in CWP-23187-2017.

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to dispose of two writ petitions i.e.
CWP No.10839 of 2017, titled as 'Amritpal Singh & another Versus State of
Punjab & others' and CWP No.23187 of 2017, titled as 'Sourav Walia
Versus State of Punjab & others', wherein, the general question which
requires to be considered and decided is whether a candidate belonging to
the reserved category, who has filled-up the sub category wrongly in the

CWP-10839-2017 &
CWP-23187-2017

application, despite having obtained more marks than the last selected candidate in the general category, can be denied consideration against the open seats?.

The facts are being taken from CWP-10839-2017, titled as 'Amritpal Singh & another Versus State of Punjab & others'.

2. An advertisement was issued on 24.11.2016 (Annexure P-1) for filling-up 1263 posts of Multipurpose Health Worker, category-wise bifurcation of which is (1) General Category 631 posts, (2) Scheduled Castes 253 posts, (3) Backward Class 126 posts, (4) Ex. Servicemen 89 posts, (5) Ex. Servicemen (S.C.) 50 posts, (6). Ex. Serivcemen (B.C.) 25 posts, (7) Sportsmen – Nil (8) Handicapped 38 posts, (9) Sportsmen (S.C.) 13 posts and (10) Freedom Fighter 13 posts.

3. Petitioners in CWP No.10839 of 2017 belong to the Scheduled Caste Majhabhi Sikh category and they had applied for the said post but while filling-up the application forms, have wrongly mentioned the category as Scheduled Caste Ramdasia Sikh & others as the sub caste and in CWP No.23187 of 2017, petitioner belongs to Scheduled Caste but wrongly filled Scheduled Caste (ESM)) (M&B) category. These were the mistakes as far as petitioners are concerned in the filling-up of the application forms but it is not in dispute that they otherwise belonged to the scheduled caste category. After the holding of the written test, merit list was declared, where petitioners in CWP No.10839 of 2017 have obtained 424 and 420 marks respectively, whereas petitioner in CWP No.23187 of 2017 had obtained 444 marks.

4. Petitioners' counsel assert that their candidature could not have

been outrightly rejected at the time of scrutiny merely because of the filling-up of the wrong sub category in the application forms despite the fact that they had obtained more marks than the last selected and appointed candidate in general category, who had obtained 414 marks. It is asserted that in case the petitioners, because of the wrong filling-up of sub category, are denied the benefit of reservation but still, their candidature could not have been rejected for consideration against the open/general category vacancies advertised. In this regard, reliance has been placed upon the judgment of this Court in CWP No. 25003 of 2017, titled as 'Monika Vs. State of Punjab & others;', decided on 06.03.2018, wherein it was so held.

5. On the other hand, learned counsel for the State could not dispute the factual assertions of the counsel for the petitioners, however, he states that as per the application forms, wherein they had opted for a specific category, they were assigned the particular codes and their claim was considered against that specific codes only but when at the time of scrutiny, it was found that the category, under which they have applied, was not the same as that of the certificates possessed by them, the respondents had no option but to reject the candidature of the petitioners outrightly. In respect of this reasoning, he has placed reliance upon Clause 4 of the advertisement. He, therefore, contends that the candidature of the petitioners has rightly been rejected. He, however, could not dispute the fact that the petitioners have obtained higher marks than the last selected and appointed general category candidate.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings and

records of the case.

7. The facts as narrated above are not in dispute. The basic question which requires to be answered is 'whether merely because a candidate had applied for a reserved category post and by mistake fills-up wrong sub category would entitle the respondents to reject the application outrightly?' The answer to the said question would be 'No' for the simple reason that there is nothing mentioned in the advertisement, which would entitle the respondents for rejecting such an application. Clause 4 of the advertisement dated 24.11.2016 (Annexure P-1), on which reliance has been placed by the counsel for the State reads as follows:-

“4. In case of reserved category, applicant must enclose certificate of concerned reserved category. In case the applicant does not enclose the certificate, his application shall be rejected. For each reserved category, the certificate shall be got issued by competent officer.”

8. A perusal of the same would indicate that in case a candidate does not enclose the certificate of the reserved category, it is only then the candidature would be rejected. It is not the case of the respondents that the petitioners did not enclose their certificates of reserved category but the stand of the respondents is that they had filled wrong sub category in the application forms. The certificates of the petitioners regarding they belonging to the scheduled castes category has not been denied. Thus, Clause 4 of the advertisement, on which reliance has been placed by the State is not applicable to the case in hand.

9. The next aspect, which requires to be now looked into is;

“Whether a candidate belonging to a reserved category, who has filled-up his application for a particular reserved category but marks a wrong sub-category, can he be denied the consideration against the open category seat, which is mentioned as general category?

Answer to this question has to be given in the negative to the extent that the candidature outrightly cannot be rejected merely because a candidate belongs to a particular category. As per the constitutional provisions and the intent and purpose for which reservation has been provided therein, it is not as if the benefit of the reservation goes to the discredit or disadvantage of a reserved category candidate. The petitioners, admittedly, belong to the scheduled castes category and even if, they are not granted the benefit of reservation because of wrong filling of the sub category, their consideration against the general open seats cannot be denied to them especially when they have been found to have obtained more marks than the last selected and appointed general category candidate. If such an action of the respondents is permitted to be perpetuated, that would amount to violation of Article 14 of the Constitution of India as irrespective of the category to which the candidate belongs, he has right for consideration against the open/general category posts advertised.

10. It may be added here that the respondents have acted against their own circular/instructions dated 11.09.2015 issued by the State of Punjab. In the said circular/instructions, it has been provided that the candidate belonging to the reserved category on the basis of his merit, if falls within the zone of appointment in the general category, would be appointed in the general category. The action of the respondents, therefore,

(6)

CWP-10839-2017 &
CWP-23187-2017

denying consideration of the petitioners in the open/general category posts, which were advertised, cannot sustain in the light of the undisputed fact that the petitioners have have obtained 424, 420 and 444 marks, which are higher than the last selected and appointed candidate in the general category, who has scored 414 marks.

11. In view of the above, both these writ petitions are allowed. Direction is issued to the respondents to issue appointment letters to the petitioners within a period of six weeks from today. Petitioners shall also be entitled to all consequential notional benefits from the date persons lower in merit than the petitioners were issued appointment letters. Financial benefits shall, however, accrue to the petitioners 38 months prior to today.

CM-18097-CWP-2018

In the light of the disposal of the main writ petition, no order is required to be passed in this application as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

20th January, 2020
Harish

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