

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.11531 of 2018(O&M)
DECIDED ON : 24.02.2020

1. Manjeet Kaur

...Petitioner

versus

State of Punjab and others.

...Respondents

CWP No.27348 of 2016

2. Manjeet Kaur

...Petitioner

versus

State of Punjab and others.

...Respondents

3.

COCP No. 2999 of 2017

Manjeet Kaur

...Petitioner

versus

Dr. Nirmaljit Singh Kalsi and others.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr.Kshitij Sharma, Advocate for the petitioner.

Mr. Rajesh Bhardwaj, Sr. DAG, Punjab.

GIRISH AGNIHOTRI, J. (ORAL)

This common order shall dispose of aforesaid two writ petitions
i.e. CWP Nos. 11531 of 2018 and 27348 of 2016 and a contempt petition
i.e. COCP No.2999 of 2017 since identical questions of law and facts are
involved in the same. For the sake of convenience, the facts are being taken
from CWP No.11531 of 2018.

Present petition has been filed by the petitioner-Manjeet Kaur,

inter alia, with the prayer to quash the order dated 11.07.2017 (Annexure P-11) whereby the representation of the petitioner has been rejected. Vide order dated 11.07.2017 (Annexure P-11) the official respondents have rejected the representation whereby the petitioner claimed to change the category in her online application form dated 6/7.9.2016 to the post of Sub-Inspector, in District Police Cadre (Female) i.e. from General Category to Ex-serviceman Category. The petitioner has made one of the prayer that the case of the petitioner deserves to be considered for appointment as Sub-Inspector (Female) under Ex-serviceman category in pursuance to her request dated 16.12.2016.

This Court for the reasons to be recorded hereunder finds merit in the submissions/prayers of the petitioner and allow the writ petition.

The brief facts which needs to be noted are that the respondents had advertised 225 vacancies of Female Sub-Inspectors on 01.09.2016. Out of 225 vacancies, 16 vacancies were kept under ESM General and 113 vacancies were for General Category. The last date of submission of the application form was 21.09.2016. In the advertisement under para 4, it was pointed out that the Selection process shall consist of various stages. For ready reference, the same is reproduced hereunder:-

“4. SELECTION PROCESS

The Selection Process shall consist of various stages as below:-

(a) Physical Trials (consisting of Substance Abuse (Drug Addiction) Test, Physical Screening Test (PST) and Physical Measurement Test)

(b) Written Test-100 Marks

(c) Interview-cum-Personality Test-15 Marks.”

Firstly, the Physical Test as mentioned above was over by 28.10.2016.

Learned State counsel has pointed out that only those who cleared the physical test were called for the written test.

Secondly, the written test was conducted on 06.11.2016 but till December 2016, the Selection Body as well as the candidates were under the impression that interview shall also be conducted. To support this fact, learned counsel for the petitioner has placed reliance on documents Annexure P-6(Colly) which is screenshot taken by the petitioner. The learned counsel for the petitioner submits that when the petitioner or any one would click on this screen shot at 'Public Notice dated 20.12.2016', a different page would open on the site which is Annexure P-6. From this it can be seen that it was at that stage that it was reflected by the Selection Body that holding of an interview would not add any additional value to the fairness, transparency and objectivity quotient of the recruitment process. In other words, it is the case of the petitioner that it was only on 20.12.2016 that it was made known to everyone who would go online that Competent Authority has taken a decision to do away with/cancel the holding of interviews. At this stage, therefore, when the third stage of selection process was waived off on 20.12.2016, learned counsel for the petitioner submits that before the said date i.e. on 16.12.2016 the petitioner had applied by way of representation for making correction in the application form i.e. to treat her candidature/her application under Ex-Serviceman General Category rather than General Category.

Learned counsel for the petitioner further submits that this fact

has not been disputed by the respondents. Learned counsel then lastly submits that the only ground of rejection of her request as mentioned in the order dated 11.07.2017 (Annexure P-11) is that 'the petitioner submitted application for changing her category after the declaration of the final result. Hence her case is distinguishable from the case decided by the Hon'ble Rajasthan High Court.'

At this stage, learned counsel for the petitioner has placed reliance on judgment dated 03.03.2015 passed in CWP No.26580 of 2014 titled as 'Kirandeep Kaur Vs. State of Punjab and others'. For ready reference, paras 10, 12 and 13 of the judgment are reproduced hereunder:-

*“10. It is not in dispute in the light of Certificates **Annexures P-1 and P-5** that the petitioner belongs to Freedom Fighter Category. It is also not in dispute that the petitioner has secured 65 Marks and respondent No.4/Manmeet Kaur selected against the solitary post in the Freedom Fighter Category has secured 63 Marks. The dispute is that there was an alleged inadvertent mistake by the petitioner at the time of submission of her online application form, where she failed to mention consideration in the Freedom Fighter Category as well, whereas the stand of the respondents is that the petitioner has to be considered only in the General Category to which she had applied. It is also not in dispute that the candidates were required to submit their documents in support of their eligibility in the “category/categories” at the time of conducting of the tests (Physical Measurement and Physical Test) of the Selection Process, which admittedly in the present case, had been conducted after a period of nine months from the date of submission of application forms.*

12. Applying the ratio of the aforesaid judgments, to the facts in the present case, a crystal clear case for issuing directions for consideration of the case of the petitioner in the Category of Freedom Fighter is made out. It is not disputed that the maternal grand-father of the petitioner-Sh. Sohan Singh was

awarded a "Tamra Patra", being Freedom Fighter as reflected from the Certificate dated 15.08.1972 (P-1). It is also not in dispute that the petitioner is the maternal granddaughter of the Freedom Fighter-Sh. Sohan Singh and thus belonging to the Category of Freedom Fighters. It also cannot be accepted by a prudent mind that the petitioner would not offer the photocopy of the Certificate dated 27.12.2013 (P-5) of her belonging to the Freedom Fighter Category at the time of conduct of Physical Fitness Test, as contemplated by the terms of the Prospectus/Instructions. Therefore, the insistence of the respondents to consider the petitioner only in the General Category as per her Online Application Form is not appreciable and held unreasonable, moreso, when no prejudice to any other candidate is being caused as admittedly respondent No.4/Manmeet Kaur also secures selection and appointment in the ex-serviceman Category against the vacant posts. Therefore, the said action is declared arbitrary and illegal. In such circumstances, this Court is of the opinion that the petitioner is entitled to be considered in the Category of Freedom Fighters as well.

13. Accordingly, the present writ petition is allowed with a direction to the official respondents to consider the petitioner for selection and appointment on the basis of her merit secured in the Freedom Fighter Category, with all consequential benefits except arrears of salary, if any. It is further directed that respondent No.4/Manmeet Kaur would be entitled to be considered for selection and offer appointment/adjustment on the basis of her merit in the ex-serviceman Category. The needful exercise shall be conducted within two weeks from the receipt of certified copy of this order."

Learned counsel for the petitioner then submits that LPA No.3661 of 2016 against the aforementioned judgment has also been dismissed. Learned counsel on this issue also placed reliance on another judgment of the Co-ordinate Bench dated 19.10.2019 passed in CWP No.5375 of 2015 titled as 'Savita Vs. State of Haryana and others'. Relevant

extracts i.e. Paras 7 to 10 of the same are reproduced as under:-

*“[7] Learned counsel for the petitioner relies upon the decision of a coordinate bench of this Court in CWP No.14863 of 2017 in case titled as ‘**Sarla versus State of Haryana and others**’, in which the candidature of the petitioner was cancelled on the ground that while filling the online form, she had declared her category as ‘BCB’ whereas she belonged to the ‘EBPG’ Category. The coordinate bench while taking note of the fact that the petitioner was given a certificate in support of her category much before the last date of submission of application from and it not being a case that the petitioner therein intentionally had tried to change her category from ‘BCB’ to ‘EBPG’ held the mistake to be a clerical mistake. The coordinate bench while holding that it was not the case of the respondents that the certificate relied upon by the petitioner was not valid besides incorrect details had been filled up due to inadvertence, as also that there was no provision on the website of the Commission for allowing correction in the online application form, allowed the writ petition and directed the respondents therein to consider the case of the petitioner under the ex-serviceman Category.*

*[8] The aforementioned decision was upheld by Hon’ble, the Division Bench in LPA No.320 of 2019 in case titled as ‘**Haryana Staff Selection Committee through its Secretary versus Sarla and others**’ vide orders dated 22.02.2019. Relevant extract of the same is reproduced 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 cafes providing the net services. Being himself/herself not computer and net savvy the candidate has to depend upon the operator in the cyber cafe 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.

6. In the case in hand, the respondent-petitioner is a poor widow lady and is resident of village Karora, District Kaithal, where she was working as an Anganwari Worker. It is pleaded in the writ petition that online application form was submitted by her through computer centre in the village. In view of the aforesaid facts and circumstances we find no illegality in the view taken by the learned Single Judge allowing the claim of the respondent-petitioner.

7. After hearing learned counsel for the appellant we are also not persuaded to take a different view in the matter than the taken by the learned Single Judge. Appeal thus accordingly stands dismissed.”

[9] In the instant case also, the petitioner filled up the online form through a cyber cafe and claims that the inadvertent omissions occurred on account of inexperience in operating computers while filling up the online form in a cyber café. Besides the certificates relied upon by the petitioner, details of which were permitted to be incorporated by the Interviewing Committee at the time of scrutiny of documents are of a date much prior to the last date for applying for the post in response to advertisement Annexure P/8.

*[10] In the circumstances, the writ petition is **allowed**. The respondents are directed to determine the merit of the petitioner as per the details, which were allowed to be incorporated in the hard copy of online application form by the Interviewing Committee on 22.07.2013 at the time of scrutiny/verification of documents before conduct of interview and to declare her result as per merit and take such further action as may be warranted in the facts and circumstances of*

the case, as expeditiously as possible, preferably within a period of three months from the date of receipt of certified copy of this order.”

In continuation of the above, the petitioner initially filed writ petition i.e. CWP No.27348 of 2016. This Court passed the following order on 23.12.2016:-

“Present : Mr. Kshitij Sharma, advocate for the petitioner.

** * **

Learned counsel for the petitioner submits that the petitioner belongs to ex-serviceman category but inadvertently while filing an application on-line, it was mentioned as general category. A representation was made to the respondents to correct the same but nothing has been done so far.

*Learned counsel for the petitioner has relied upon the judgment of Rajasthan High Court in case **Prakash Godara vs The State of Rajasthan and others 2016 SCC OnLine Raj 1927** in support of his arguments.*

Notice of motion.

On the asking of the Court, Mr. Rupam Aggarwal, D.A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent-State.

Adjourned to 08.03.2017.

*Meanwhile, respondents No.2 and 3 are directed to consider the case of the petitioner as made out in the representation and in accordance with **Prakash Godara's** case (Supra) and in case, on the basis of documents produced, the petitioner is found to be entitled for consideration against exservicemen/dependent ex-serviceman (female) category, the same be considered. In case, the petitioner is not found to be entitled then she be heard personally, if think it necessary.*

However, in case, any adverse order is to be passed then speaking order should be passed. Till the decision of the case of the petitioner, the post under ex-serviceman/dependent ex-serviceman (female) be not

converted to other category. Learned State counsel is directed to place on record the status report after doing the necessary exercise.

Learned counsel for the petitioner is directed to supply five copies of the writ petition to learned State counsel during course of the day.

(DAYA CHAUDHARY)
JUDGE

December 23, 2016
gurpreet”

It is evident from above that this Court had directed that “*till the decision of the case of the petitioner, the post under ex-serviceman/dependent ex-serviceman(female) be not converted to other category.*”

This Court finds that in compliance of the aforementioned directions of the Court, the vacancies which were stated to be 16 for Ex-serviceman General (Female) Category, could not be converted from ex-serviceman general category to Ex-serviceman General (Male) category.

Learned counsel for the petitioner has further submitted that out of 16 posts reserved for Ex-serviceman (Female) category only 5 Ex-serviceman (Female) category candidates or Dependent of ex-serviceman Category candidates were available and 11 vacancies were still lying vacant. Therefore, in view of above, the respondents were duty-bound not to convert and not to fill up the said 11 vacancies of ex-serviceman (Female) category to ex-serviceman (Male) category.

Learned counsel for the petitioner further contends that from table at para 2 of the advertisement it is not very clear as to if the category of lineal descendants of ex-serviceman are also included in the Ex-serviceman General category. To support this, learned counsel has made

reference to para 8 of the advertisement that for the category of Ex-

serviceman candidates no fees to be submitted however, the lineal descendants of Ex-serviceman will have to pay the application fees, as applicable to their category. He refers to clause 7, which is reproduced hereunder:-

“(vii) The candidate will have to fill up the Application form and submit the same online itself, complete in all respects. The photograph, signature and age relaxation certificate will also have to be uploaded by the candidate in the online Application.”

On the basis of the above, learned counsel submits that from the said clause it is evident that candidates were not required to upload the lineal descendants certificate online.

Learned counsel for the petitioner by making reference to the pleadings at para 4 (b) submits that for the said pleaded reasons the mistake in mentioning the category as General rather than ex-serviceman General has occurred. Relevant para of the same is reproduced hereinunder:-

*“b. **Secondly**, the petitioner has very limited computer proficiency and no experience at all of filling up online forms, and did not fill her up own form and rather approached Simran Cyber Cafe, Patti to fill the form for her. The option of lineal descendant of E.S.M (As existent on the website) was not even known to the petitioner, and hence the petitioner fell into bonafide error as a result and did not apply under that head.”*

The State in its reply filed on behalf of respondents No.1 to 3 dated 25.01.2019 in the light of the memo dated 26.12.2016 (Annexure R-4) submits that the 11 unfilled vacancies of Sub-Inspector (Female) are allowed to be filled from Ex-serviceman General (Male) as per eligibility/seniority. It has been stated herein that further upcoming vacancies of Ex.-serviceman General (Male) will be filled up by Ex-serviceman General (Female) as per rules on priority basis.

This Court finds that in view of order passed by this Court dated 23.12.2016, firstly the said memo dated 26.12.2016 (Annexure R-4) could not be issued. The order dated 23.12.2016 was passed in Court in presence of the State counsel after acceptance of notice.

Consequently, even if in records the said memo was issued on 26.12.2016 yet the consequential effect ought to have been stopped by the respondents after receiving the intimation regarding the order passed by this Court dated 23.12.2016.

Thirdly, the process of offering appointment, completion of other formalities also takes a lot of time and therefore, the competent authority ought to have honoured the directions of this Court and should have stopped further process of conversion even if memo dated 26.12.2016 had been issued. Therefore, this Court in view of the above, deems it appropriate to direct respondents to consider the petitioner in Ex-serviceman (Female) General Category and a direction is given to the official respondents to consider the petitioner for selection and appointment on the basis of her merit secured in ex-serviceman General (Female) Category with all consequential benefits of appointment from due date, fixation of salary and consider her candidature against one of the posts of Sub-Inspector Ex-serviceman General (Female) category. For this purpose, the Competent Authority is directed to consider the fact that vide memo dated 26.12.2016 it was directed that upcoming vacancy of Ex-serviceman General (Male) will be filled up by Ex-serviceman General (Female) as per rules on priority basis.

At this stage, this Court also deems it appropriate to record that the reasoning given by the respondents in para 1 of the reply on merits submitted in the affidavit of Amneet Kondal, IPS, Assistant Inspector

General of Police, Personnel-II, CPO, Punjab, Chandigarh, on behalf of respondents No.1 to 3 to be not justified.

As recorded above, there was nothing that stopped the respondents from either stopping the further process after 04.01.2017 and/or seek a clarification from this Court.

In the present case, it is found that no steps have been taken by the competent authority however since the matter has remained pending before this Court since 2016 to till date. This Court deems it appropriate to drop the contempt proceedings, however, by recording that the authorities were duty-bound to comply with the directions of this Court dated 23.12.2016 in its true letter and spirit.

From the above, it is apparent that the petitioner's case deserves to be considered for making typographical correction in the application form/change in category from General Category to Ex-serviceman General.

The writ petition is accordingly allowed with directions to the respondents to change the category of the petitioner in her online form submitted for the post of Sub-Inspector in District Police Cadre (Female) from General Category to Ex-serviceman General (Female) category.

Rule discharge.

(GIRISH AGNIHOTRI)
JUDGE

February 24, 2020

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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO