

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

CWP No. 21872 of 2018 (O&M)

Reserved on:02.03.2020

Date of Decision: 22.05.2020

Vinay Sharma

.....petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Vijay Pal, Advocate for the petitioner.

Mr. Shivendra Swaroop, AAG, Haryana.

TEJINDER SINGH DHINDSA J.

CM No.5430 of 2019

CM is allowed as prayed for. The accompanying documents at Annexures A-1 to A-3 are taken on record.

CM disposed of.

Main case

Petitioner seeks a mandamus directing the Haryana Staff Selection Commission to consider his candidature for the post of PGT (Chemistry) under the Economically Backward Person in General Caste Category (hereinafter to be referred to as the EBPG Category).

Counsel submits that petitioner had applied for the post in question in terms of submitting the online application form in response to advertisement dated 28.06.2015 (Annexure P-1) issued by the Haryana Staff Selection Commission. However, in the application the petitioner on account of an inadvertent error mentioned his category as General whereas the petitioner already possessed a certificate of the EBPG Category dated 08.08.2013 (Annexure P-8) which was much prior to the date of the

advertisement. Counsel has argued that under such circumstances petitioner cannot be denied the benefit of reservation provided for the EBPB Category and the *bona fide* error committed by the petitioner at the stage of submission of online application form ought to be permitted to be corrected. Counsel argues that such an error should have been permitted to be corrected at the stage of scrutiny of documents and since the petitioner was already in possession of the requisite certificate of belonging to the EBPB Category dated 08.08.2013 and which was prior to the date of issuance of the advertisement, there is no fraud or misrepresentation on the part of the petitioner. Heavy reliance is placed by counsel upon judgment passed by the Coordinate Bench in **CWP No.14863 of 2017 (Sarla Vs. State of Haryana and others)** decided on 31.10.2018 (Annexure A-2) and wherein the claim of the petitioner therein namely Sarla for being considered under the EBPB Category was allowed even though in the application form Backward Class Category had been mentioned. Counsel further contends that the judgment rendered by the Writ Court in **Sarla's case (supra)** stands affirmed by virtue of dismissal of **Letters Patent Appeal No.320 of 2019 (Haryana Staff Selection Commission Vs. Sarla and others)** decided on 22.02.2019 (Annexure A-3).

Counsel representing the respondents-Haryana Staff Selection Commission has opposed the prayer made in the petition by submitting that the petitioner had applied for the post of PGT (Chemistry) under General Category and had also appeared in the written examination as a General Category candidate. As per advertisement there is no provision for change of category and the petitioner having taken his chance as a General Category Candidate cannot now be permitted to have his candidature considered under the reserved EBPB Category. Counsel has prayed for

dismissal of the writ petition.

Counsel for the parties have been heard and pleadings on record have been perused.

The admitted facts of the case are that the Haryana Staff Selection Commission issued advertisement dated 28.06.2015 (Annexure P-1) inviting online applications for recruitment of various posts of PGT-H.E.S-II (Group-B) Services including 442 posts of PGT (Chemistry). Out of these 170 posts were unreserved and a 5% reservation i.e. 17 posts were earmarked for the EBPG Category. The method of selection included a written test to be conducted. It was provided in the advertisement that a candidate whether he belongs to the general or the reserved category can submit only one online application form for the particular category. It was also specifically stipulated in the advertisement that scanned copies of the BCA/BCB/SC/PHC/SBC/EBPG Certificate as may be applicable and issued by the competent authority be uploaded alongwith the application form.

Admittedly, petitioner submitted the application form under the General Category. It is not the pleaded case of the petitioner that the requisite scanned copy of the EBPG Certificate issued by the competent authority had been uploaded alongwith the application form. Under the advertisement there is no provision for change of category. The petitioner ought to have been very circumspect while filling the application. Even though petitioner may have been in possession of the EBPG Certificate prior to the closing date mentioned in the advertisement but he cannot be permitted to take benefit of the same as he had applied under the General Category. Had the petitioner uploaded the scanned copy of the EBPG Certificate the case may have been different. Petitioner having taken his

chance in the General Category and having also appeared in the written examination on the basis of an Admit Card clearly mentioning his category as General, he cannot now be permitted to turn around and to be considered under the reserved EBPB Category. Clearly the petitioner had submitted his application form mentioning his category as General against the 170 posts of PGT (Chemistry) which were unreserved. After having participated in the written examination as a General Category Candidate and having failed to secure sufficient merit position he now wants to change his category and have his candidature considered under the reserved EBPB Category. This Court would have no hesitation in observing that the facts of the present case are not that of a *bona fide* mistake being sought to be rectified but it is essentially a claim for change of category. The same is not permissible. The Hon'ble Supreme Court in the case of **J & K Public Service Commission Versus Israr Ahmed and others 2005 (12) SCC 498** had clearly held that once a candidate has chosen a particular category he cannot change the same at a latter date.

The judgment rendered by the Coordinate Bench in **Sarla's case (supra)** cannot enure to the benefit of the petitioner. Such judgment is distinguishable on the following three counts:-

i). In the case of Sarla (supra) the petitioner therein had applied for the post of Supervisor (Female) pursuant to an advertisement issued by the concerned department and in which the closing date for submission of applications form was 01.03.2017. Petitioner therein had mentioned her category as BCB whereas she belonged to the EBPB Category. Such error committed at the stage of submitting online applications forms was sought to be rectified by virtue of having made a representation almost immediately i.e. on 27.03.2017 as against the closing date for submission of

application forms, i.e. 01.03.2017. In the present case, however, the closing date in the advertisement issued by the Haryana Staff Selection Commission was 21.09.2015. It is the pleaded case of the petitioner himself that he became aware of the mistake of mentioning the wrong category at the time it was submitted online by availing the services of a cyber cafe. Thereafter he was issued an admit card to facilitate his participation in the written examination in the month of May 2016 and in which his category was mentioned as General. Even though a feeble attempt has been made to impress upon this Court that the respondent commission was approached and an oral assurance had been held out that the mistake would be corrected at the stage of scrutiny of document yet there is not escape from the fact that the representation that was submitted by the petitioner first in point of time to seek the correction and change of category was dated 14.08.2018 (Annexure P-7) This court is convinced that a belated claim is sought to be set up. As has already been held the petitioner took a chance against the General Category against 170 posts of PGT (Chemistry) and having failed to secure the requisite merit bench mark, he has woken up after a period of more than 2 years to seek a change of category. Delay in the facts of the present case would be sufficient to non suit the petitioner.

ii) It may also be apposite to take note that in the case of **Sarla (supra)**, Letters Patent Bench while affirming the decision of the Writ Court and while dismissing Letters Patent Appeal No.320 of 2019 at Annexure A-3 has clearly noticed that the petitioner therein had submitted the certificate certifying that she belongs to the EBPG category alongwith the application form. In the present case the petitioner not only mentioned his category to be General in the online application form but had chosen not

to upload the EBPG certificate alongwith the application form as was the requirement under the advertisement.

iii) It would also be pertinent to take note that the mistake as regards mentioning of category in the case of **Sarla (supra)** was permitted on share compassion and sympathy. The Division Bench observed that the petitioner namely Sarla was a poor widow, resident of a village and was working as an Anganwari Worker while submitting an application for the post of Supervisor (Female). However, in the present case the petitioner possesses the qualifications of B.Ed as also M.Sc. (Chemistry). Petitioner is an educated person and it would be construed that he had read each and every term and condition of the advertisement and had understood the same. The candidature of the petitioner for the post of PGT (Chemistry) would have to be considered strictly as per the terms and conditions of the advertisement. Petitioner had clearly indicated in his online application form that he belonged to the General Category. He had chosen not even to upload the scanned copy of the EBPG Certificate alongwith the online application form as was the requirement under the advertisement. Under such circumstances petitioner cannot claim any parity on the strength of the judgment rendered in the case of **Sarla (supra)**.

For the reasons record above, this Court does not find any merit in the instant writ petition.

Petition dismissed.

Pending application, if any, shall also stands disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

Dated:22.05.2020

shweta

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No