

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

**CWP-27795-2018
Date of decision: 21.01.2020**

Ankush Kumar**...Petitioner(s)****V/s.****State of Haryana and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE RITU BAHRI.**

Present: Mr. S.K.Nehra, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

RITU BAHRI, J. (Oral).

The petitioner had applied for the post of Clerk under the SC and Physically Handicapped (OH) category. As per advertisement dated 24.11.2015 (Annexure P-1), 4425 posts of Clerk were advertised and thereafter corrigendum dated 03.05.2016 was issued (Annexure P-1A) whereby the posts were increased to 6126. Thereafter vide another corrigendum dated 18.05.2016, the posts of Clerks were increased to 6134 out of which 1159 posts were reserved for SC category and 63 posts were reserved for PHC (OH) category (Annexure P-1/B). The petitioner applied in the SC category as well as physically handicapped (OH) category. The final result was declared on 14.03.2018 (Annexure P-8). As per the result the last selected candidate under the SC category has secured 152 marks and in the SC waiting list, the last selected candidate has secured 151 marks.

After notice of motion to this petition, on 12.03.2019 the result of the petitioner was produced in Court and he has secured 152 marks under

the SC-OH category. The petitioner was issued admit card under the SC-OH category and the last selected candidate under the SC-OH category has secured 158 marks. The petitioner did not make a cut under the SC-OH category and that is why he was not selected in this category.

The grievance of the petitioner is that he had mentioned in his application form (Annexure P-2) his main category as SC (vide certificate No. 47 issuing authority Tehsildar and date of issue 02.04.2004).

Learned counsel for the petitioner has referred to the Supreme Court judgment passed in **Anil Kumar Gupta V/s. State of Uttar Pradesh and others** 1995(4) S.C.T. 403 to contend that reservation for physically handicapped persons, ESM, dependents of freedom fighters is the horizontal reservation and the reservation under the SC category, ST category and other backward class category is called vertical reservation. The candidates belonging to horizontal reservation will cut across vertical reservation. He further contends that the petitioner though did not make a cut under the OH category he has a right to be considered under the SC category as he had secured 152 marks at par with the last selected candidate under the SC category and the petitioner cannot be denied the benefit of being SC candidate.

Learned counsel for the petitioner has further referred to judgment passed by the Division Bench of this Court in **CWP No. 18738 of 2009** titled as **Ajit Singh V/s. State of Haryana and others** (Annexure P-11) to contend that physically handicapped candidates have to be given benefit of reservation under the horizontal category. If the physically handicapped candidate also falls within vertical reserved category, then he

has to be given preference from the candidates of the vertical reserved category.

As per the corrigendum dated 18.05.2016 (Annexure P-1/B), the total posts for SC category are 1159 and total posts for PHC OH category are 63. The selection has to be made as per the merit and the last selected candidate under the PHC OH category has secured 158 marks.

For all intents and purposes, the petitioner could not get appointment under the 63 posts reserved for PHC OH category. But at the same time, as per the Division Bench judgment passed in *Ajit Singh's case (supra)*, he has right to be considered under his main category i.e. SC.

Since the petitioner has secured 152 marks at par with the last selected candidate, writ petition is allowed and the respondents are directed to give appointment to the petitioner under the SC category on notional basis without any financial benefits within a period of one month from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

21.01.2020
Divyanshi

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