

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

**CWP No.30035 of 2017 (O&M)
Date of Decision:03.03.2020**

Mukesh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Jagbir Malik, Advocate with
Smt. Santosh Malik, Advocate for the petitioner.

Mr. Shivendra Swaroop, AAG, Haryana.

Mr. Kanwal Goyal, Advocate for respondent No.3.

TEJINDER SINGH DHINDSA J.(Oral)

Petitioner is aggrieved of the action of the respondent authorities in having denied to him selection and appointment to the post of Assistant Professor (College Cadre) in the subject of Chemistry under the EBP (General) i.e. Economically Backward Persons of General Category.

Facts of the case lie in a narrow compass.

Pursuant to a requisition received from the Department of Higher Education Haryana, the Haryana Public Service Commission issued advertisement dated 16.02.2016 inviting applications for recruitment of 1647 temporary posts of Assistant Professors (College Cadre) HES-II in different subjects. 150 posts were of Assistant Professors in the subject of Chemistry. Out of these 7 were reserved for the EBP (General Category). The closing date for submission of applications online was stipulated as

15.03.2016. Petitioner staking himself to be fully eligible as per terms and conditions of the advertisement applied for the post of Assistant Professor in Chemistry on 24.02.2016 under the EBP (General) Category. The application of the petitioner was scrutinized and he was assigned Roll No.2557 and was issued an admit card. Pursuant thereto petitioner participated in the written examination and as per result declared was even short-listed for the interview in the category that he had applied.

Apparently, the interview process (schedule) was delayed and the interview actually took place on 03.01.2018. It is at the stage of interview that the respondent-commission considered the candidature of the petitioner under the General Category instead of EBP (General) Category.

Result of the petitioner pursuant to his participation in the interview for the post in question has been furnished by counsel representing the respondent-Haryana Public Service Commission. Perusal of the same would reveal that petitioner has secured a total of 77.71 marks. It has been conceded in Court that the cut-off marks for the EBP (General) Category for the post of Assistant Professor (College Cadre) Chemistry stands at 71.66. In other words petitioner has secured more marks than the last selected candidate for post in question in the EBP (General) Category.

The precise case projected on behalf of the petitioner is that since the petitioner had submitted his application online prior to the closing date stipulated in the advertisement and had applied in the EBP (General) Category and was also armed with a certificate dated 17.02.2014 issued by the Competent Authority as per instructions issued by the State Government on the subject of reservation, his candidature ought to have

been considered under the reserved EBP (General Category).

Per contra learned counsel representing the respondent-commission would justify the denial of consideration to the petitioner under the EBP (General) category on the basis that on the date of interview i.e.03.01.2018 the petitioner himself had furnished a letter dated 17.01.2017 (Annexure P-1 alongwith the writ petition) and which would clearly demonstrate that the petitioner had secured employment under the Oil Industrial Gas Corporation Limited on a basic pay of Rs.24900/- .w.e.f. 21.12.2016. Counsel for the Commission has referred to the advertisement dated 16.02.2016 and whereunder as per Clause 6 governing reservation it had been made clear that reservation in different categories is to be covered in accordance with the orders/instructions issued by the Haryana Government from time to time. In furtherance thereof counsel for the commission has adverted to notification dated 23.01.2013 (Annexure R2/1) issued by the Haryana Government Welfare of Scheduled Castes and Backward Cases Department to assert that a candidate to be eligible under the EBP (General) Category has to fulfil a criteria whereby total annual income of the family of the applicant should not cumulatively exceed Rs. 2,50,000/- per annum from all sources including agricultural income. It has been submitted that to the same effect was a subsequent notification dated 27.09.2013 at Annexure R2/2. Heavy reliance has also been placed upon communication dated 15.07.2014 at Annexure R2/3 issued by the General Administration Department, Government of Haryana, General Services-III Branch to assert that the criteria for “consideration” as Economically Backward Persons in the General Castes Category would be as follows:-

i. *'Family' for the purpose of the applicant seeking reservation as 'Economically Backward' is defined as follows:-*

- (a) *Head of Family and his/her spouse;*
- (b) *Dependant children and their spouses;*
- (c) *Unmarried dependent brothers and sisters.*

ii. *The total annual income of the family of the applicant should not cumulatively exceed Rs.2,50,000/- per annum from all sources including agricultural income”*

Submission advanced on behalf of the commission is that the expression “*Consideration*” as finding a mention in the notifications dated 23.01.2013 (Annexure R2/1), 27.09.2013 (Annexure R2/2) and letter dated 15.07.2014 (Annexure R2/3) would be relatable to the date of interview i.e. 03.01.2018. It is contended that as on such date of consideration i.e. 03.12.2018 the certificate dated 17.02.2014 relied upon by the petitioner to stake his claim under the EBP (General) Category had lost its validity inasmuch as he had already secured employment under ONGC w.e.f. 21.12.2016 on a fixed basic pay of Rs. 24900/- per month and thereby exceeding the basic bench mark of Rs.2,50,000/- annual income.

Mr. Shivendra Swaroop, learned State counsel upon instructions from Mr. Gagan Deep, Assistant Office of DGHE, Panchkula informs the Court that pursuant to the final result having been declared all the seven posts of Assistant Professor (College Cadre) in the subject of Chemistry under the EBP (General) Category have already been filled up. He clarifies that in the appointment letters that have been issued to the seven appointees a clear stipulation stands inserted that such appointment would

be subject to the outcome of pending writ petitions.

Having heard counsel of the parties at length, this Court is of the considered view that the action of the respondent-commission in having denied to the petitioner consideration for appointment to the post in question against the EBP (General) Category, cannot sustain.

It is by now well settled that the cut of date by reference to which the eligibility requirement must be satisfied by a candidate seeking public employment is the date appointed by the rules and if not, then, such date as may be appointed for the purpose in the advertisement calling for applications and even if there be no such date fixed in the advertisement, then, the eligibility would be with reference to the last date by which the applications have to be received by the recruitment authority/ agency. A reference in this regard may be made to the judgement of the Hon'ble Supreme Court rendered in the case of ***Bhupinder Pal Singh & others Vs. State of Punjab, 2000 (2) SCT 826.***

Adverting to the facts of the present case it has gone uncontroverted that the last date for submission of application forms as per advertisement was 15.03.2016. There was a clear and categoric stipulation in the advertisement that the eligibility of candidates would be determined as on the closing date i.e. 15.03.2016. Petitioner had applied for the post in question under the EBP (General) Category. As on the closing date which would be treated as the crucial date for determination of eligibility, the certificate possessed by the petitioner dated 17.02.2014 issued by the competent authority declaring him to be belonging to the EBP (General) Category, held good.

The submission advanced on behalf of the Commission that the

relevant date in the facts of the case would be 03.01.2018 i.e. the date of interview is not well founded. Although much emphasis was laid on the word “**Consideration**” as finding a mention in the notifications/letter appended alongwith the written statement at Annexure R2/1, R2/2 and R2/3 but in the considered view of this Court such term of “consideration” was relatable to the criteria applicable for a candidate to fall in the Economically Backward Person in the General Category and not in relation to the consideration for purpose of selection and appointment to the post. Even otherwise acceptance of the stand taken on behalf of the Commission and to reckon the date of consideration to be 3rd of January 2018 i.e. the date of interview for purpose of eligibility of a candidate may result in disastrous consequences. As per advertisement the closing date for submission of application was stipulated i.e. 15.03.2016. Further categoric stipulation was that eligibility of the candidates with regard to the qualification would be determined as on 15.03.2016. It goes without saying that there has to be certainty of the date in any process of selection to determine eligibility of a candidate. The date of selection is invariably uncertain. If the date of selection were to be taken as the relevant date to determine eligibility of a candidate it would leave open a scope for malpractice and manipulation. The date of selection may be so fixed or manipulated so as to entertain some applicants and to reject others, arbitrarily.

Stand on behalf of the commission to take the date of interview i.e. 03.01.2018 as the date of consideration and to determine eligibility of the petitioner under the category under which he had applied would also not fulfil the test of fairness. In the present case advertisement was issued

on 16.02.2016 carrying a closing date of 15.03.2016. Petitioner had applied prior to the closing date under the EBP (General) Category. For no fault of the petitioner the selection process got prolonged and the interview was ultimately held on 03.01.2018. In other words for the petitioner to stake his claim under the EBP (General) Category to which he concededly belonged as on the last date of application form i.e. 15.03.2016 the Commission wishes him to stay unemployed so as to earn himself a chance for consideration for the post in question. Such stand is patently unfair and unjust.

The eligibility of the petitioner for the post in question and in the category for which he had applied stood crystallized as on the closing date for submission of application form i.e. 15.03.2016. Counsel for the commission has not been able to deny the claim of the petitioner that as on such date i.e. on 15.03.2016 the petitioner held a valid certificate declaring him to be belonging to the EBP (General) category. Admittedly petitioner in the selection process i.e written test and interview taken together has secured more marks than the last selected candidates in the EBP (General) Category. Under such circumstances, petitioner is vested with the right to be granted appointment to the post in question against one of the advertised post of Assistant Professor (College Cadre) in the subject of Chemistry in the EBP (General) Category pursuant to advertisement dated 16.02.2016. It is accordingly directed that the Commission would recommend the petitioner for appointment to the post in question against the EBP Category and which in turn would be acted upon by the State Government.

There is, however, one more aspect that would require to be

addressed. Issuing appointment letter to the petitioner would normally entail the ouster of the last candidate in merit who had been appointed to the post in question under the EBP (General) Category. However, under the peculiar facts and circumstances of the case such candidate who would now face ouster would be extremely prejudiced as he/she had also participated in the selection process and has not secured appointment on account of any mis-representation. To overcome such piquant situation and while directing the petitioner to be appointed to the post of Assistant Professor (College Cadre) in the subject of Chemistry under the EBP (General) Category, State Government is called upon to explore the possibility of creating a supernumerary post so as to adjust last candidate selected in order of merit under the category in question.

Writ petition is allowed in the aforesaid terms.

The appointment of the petitioner would relate back to the date when other candidates under the same category were issued appointment letters. Petitioner would also be entitled to all consequential benefits but would not be paid actual arrears of salary for the period he has not worked on the post.

(TEJINDER SINGH DHINDSA)
JUDGE

March 03, 2020

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No