

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

CWP No.27479 of 2016 (O&M)

DATE OF DECISION: 05.10.2020

Gurpreet Kaur

.....Petitioner

versus

Haryana Staff Selection Commission

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sapan Dhir, Advocate for the petitioner

Mr. Hitesh Pandit, Addl. AG Haryana for the respondent

ALKA SARIN, J.:

Heard through video conferencing.

This civil writ petition under Articles 226/227 of the Constitution of India has been filed making *inter-alia* the following prayer: “to issue a writ in the nature of mandamus directing the respondents that to permit/allow the petitioner to participate in the interview for the post of PGT Punjabi, which is going to be held on 28.12.2016, by considering the candidature of the petitioner under Economically Backward Person in General Category (EBPG), as the petitioner secured higher marks than the last selected person who called for interview of the aforesaid post”.

The facts in brief are that the petitioner has educational

qualifications of Matric, 10+2, B.A., M.A. Punjabi, B. Ed. and M. Ed. She is an Economically Backward Person in General Caste Category (EBPG) for which a certificate dated 11.01.2014 (Annexure P-1) stands issued in her favour. On 28.06.2015 the respondent advertised the filling up of various teaching posts including 179 posts of PGT Punjabi. A copy of the advertisement has been annexed as Annexure P-2. Out of the 179 posts for PGT Punjabi, 7 were reserved for candidates belonging to the EBPG category. The petitioner applied for the post in question by submitting the online application form (Annexure P-3). The written examination was conducted on 03.03.2016 in which the petitioner scored 92 marks. On 30.11.2016 the respondent issued a public notice (Annexure P-4) calling the successful candidates, from the top of the merit list, for scrutiny of documents. The petitioner's documents were scrutinized on 06.12.2016 when she allegedly also showed the EBPG certificate (Annexure P-1). However, in the notice dated 22.12.2016 (Annexure P-5) issued by the respondent calling the candidates for the interview, the Roll Number of the petitioner was missing. On making enquiries the petitioner learnt that her application form had been considered in the General Category and not in the EBPG Category. A representation dated 23.12.2016 (Annexure P-6) was submitted to the respondent stating that a mistake had been committed by the computer operator of the rural area to which the petitioner belonged and that this mistake was not in her knowledge during the entire process. The petitioner also pointed out that only 5 candidates had been called for the interview in the EBPG Category and the last candidate called in this category was less meritorious as compared to the petitioner.

The present writ petition was filed on 27.12.2016 and listed on 28.12.2016 when the following order was passed :

“Notice of motion for 10.01.2017.

Mr. Ankur Mittal, Addl.A.G., Haryana, who is present in Court, accepts notice on behalf of the respondent.

Learned counsel for the petitioner undertakes to supply two copies of the petition to learned State counsel during the course of the day.

In the meanwhile, the petitioner shall be provisionally interviewed for the post of PGT (Punjabi) scheduled to be held on 28.12.2016. However, such appearance in the interview would not create any equitable or other right in favour of the petitioner. The result of the petitioner shall also not be declared without the leave of the Court.

A copy of this order be given to learned State counsel under the signatures of the Bench Secretary”.

Thereafter, vide order dated 16.11.2017 one post of PGT Punjabi was ordered not to be filled.

The respondent has filed a short reply stating that in her application form (Annexure P-3) the petitioner has filled her caste/category as General and, further, in the admit card (Annexure R-1), which was downloaded at the time of the written/screening test held on 03.03.2016, the caste/category of the petitioner was mentioned as General. The petitioner put her signatures at three places and the form

was attested by a Gazetted Officer. In the short reply it is also stated that at the time of scrutiny of documents on 06.12.2016 the petitioner signed the requisite form and the attendance sheet wherein her category was mentioned as General. According to the respondent, the petitioner was aware from day one that she had mentioned her category as General and raised no hue and cry for change of her category. The petitioner cannot be permitted to change her category mid-stream as that would adversely affect the interests of some selected candidates.

No rejoinder was filed on behalf of the petitioner to the short reply filed by the respondent.

Learned counsel for the petitioner has relied upon the decisions by this Court and the other High Courts in **‘Usha Dhillon vs. State of Haryana & Ors.’** [2015(2) PLR 412]; **‘State of Rajasthan & Anr. vs. Datar Singh’** [2014(3) SCT 552]; **‘Sarla vs. State of Haryana & Ors.’** [2019(1) PLR 573]; **‘Kiran Bala vs. State of Punjab & Ors.’** [2014(3) SCT 803], **‘Vishnu Bargavi S. vs. The Director, NEET Exam’** [2016(7) MLJ 590]; and **‘Harinder Singh vs. Punjab State Power Corporation Ltd.’** [2015(4) SCT 226].

The learned counsel for the respondent has relied upon the decisions by the Supreme Court in **‘J&K Public Service Commission vs. Israr Ahmed & Ors.’** [2005(12) SCC 498]; **‘Rajasthan High Court vs. Neetu Harsh’** [2019 SCC OnLine SC 1119] and by this Court in **‘Shashi vs. State of Haryana & Ors.’** [CWP No.15119 of 2016 decided on 22.05.2018].

The facts as emanating from the record show that the respondent issued an advertisement dated 28.06.2015 (Annexure P- 2)

inviting online applications for recruitment to various posts of PGT-H.E.S-II (Group-B Services) including 179 posts of PGT Punjabi. Out of these, 80 posts were unreserved and a 5% reservation i.e. 7 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 belonging to the General or a Reserved Category, can submit only one online application form for the particular category. The advertisement (Annexure P-2) also mentioned in bold and capital font **“DOCUMENTS TO BE UPLOADED WITH APPLICATION FORM”** whereunder in clause (iv) it was stated *“Scanned Copy of BCA/BCB/SC/PHC/SBC/EBPG Certificate issued by the competent authority”*. Thus, if any candidate was applying under any of the mentioned reserved categories, he/she was supposed to upload the scanned copies of the relevant certificate(s) with the application form.

The petitioner, who is well educated and holds a number of educational qualifications, applied and her application form filled online (Annexure P-3) clearly mentions her category as General. She applied under the General Category, for had she applied or intended to apply under the EBPG Category she would have mentioned so in the application form and also uploaded the scanned copy of the relevant certificate as was required as per the advertisement (Annexure P-2). There is nothing on record to show that the petitioner uploaded the scanned copy of the EBPG Certificate with her application form. This would show that the petitioner knowingly applied in the General Category, her application form also being without the scanned copy of the EBPG Certificate. Had the petitioner filled in her category as General

and still uploaded her EBPB Certificate, her contention that a mistake occurred while choosing the category may have found favour. The petitioner, a well educated candidate, would be presumed to have read and understood the contents of the advertisement (Annexure P-2). However, she did not even comply with the other requirements as mentioned in the advertisement (Annexure P-2) viz. not uploading the EBPB Certificate when her application form was filled online.

Further, as per the advertisement (Annexure P-2) the last date for submission of the online applications was 21.09.2015. It is also mentioned in the same advertisement that *“The hard copy of application form along with all required documents must be brought at the time of verification/scrutiny-cum-interview”*. Thus, from atleast 21.09.2015 the petitioner was in possession of the hard copy of her online application form, which runs into just two pages, since the same was needed later for verification and scrutiny. This Court finds it hard to accept that from September, 2015 till December, 2016 the petitioner did not discover that her category mentioned in the two-page application form was General while all this time the printed application form was in her possession.

It is also stated by the respondent in its short reply that in the admit card (Annexure R-1), which was downloaded for the written/screening test held on 13.03.2016, the caste/category of the petitioner was mentioned as General. The admit card was supposed to be printed by the candidate himself/herself. Thus, even at this stage the petitioner was aware that she was in the race as a candidate from the General Category. According to the respondent the petitioner had put her

signatures at three places and the form was attested by a Gazetted Officer. Even at the time of scrutiny of documents on 06.12.2016 the petitioner signed the requisite form and the attendance sheet wherein her category was mentioned as General. The petitioner had to carry her printed application form alongwith her at the time of scrutiny of documents. The category of the petitioner in this printed application form was General.

Considering all these factors, this Court is not convinced that there was a mistake at the level of the computer operator while filling the online application form as has been contended on behalf of the petitioner. Rather, the petitioner took a conscientious decision to apply in the General Category. The petitioner never uploaded her EBPB Certificate with her application form. The hard copy of the application form was with the petitioner from atleast 21.09.2015 wherein her category is clearly stated as being General. Her admit card also mentioned her category as General. She carried her printed application form at the time of scrutiny of documents. Thus, till the date of the interview after scrutiny of documents the petitioner was satisfied with her being considered in the General Category. However, when the petitioner did not figure in the interview list of the General Category, being lower in merit, she raised a bogey about her application form being considered wrongly in the General Category instead of the EBPB Category. The Court cannot lose sight of the fact that for 7 posts in the EBPB Category the respondent called only 5 candidates for the interview, the last candidate having less marks than the petitioner. It was then that the petitioner staked a claim to the EBPB Category knowing that if it was

accepted she would be considered for the post since she was having more marks than the last candidate in this category.

This Court is convinced that the present case is not that of a bonafide mistake being sought to be corrected subsequently but is infact a claim for change of category – from General to EBPg. This change of category is not permissible as also held by the Supreme Court in the matter of **J&K Public Service Commission (supra)** wherein it was held that once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make a fresh claim. The same principle was followed in **Shashi vs. State of Haryana & Ors. (supra)**, in ‘**Sumit Kumar vs. Haryana Staff Selection Commission**’ [2019 SCC OnLine P&H 2396] and also in ‘**Vinay Sharma vs. State of Haryana & Ors.**’ [2020 SCC OnLine P&H 620]. Infact, the facts in **Vinay Sharma’s case (supra)** are similar to the present case and the said matter relates to the same selection as the present case.

The decisions cited by the counsel for the petitioner are distinguishable both on facts and law. In ‘*Usha Dhillon vs. State of Haryana & Ors.*’, the mistake in choosing the category was discovered on the same day as filling in the online form and brought to the notice of HPSC. A written application was submitted within two days of submitting the online application form which was several days prior to the last date for submitting the application forms. The Court found that the error by the petitioner therein was bonafide and granted her relief. As has been discussed above, the mistake, if any, by the present petitioner, was not bonafide and she was content till the time of interview for being

considered as a candidate from the General Category. For almost 15 months she was in possession of documents which clearly displayed her as a candidate from the General Category.

In '*State of Rajasthan vs. Datar Singh*', some candidates had incorrectly filled in the application form while others had been issued admit cards for a category for which the candidates were not qualified. Some of these candidates were differently-abled while some were from tribal areas. It was the first time that the State had prescribed the mode of filling in application forms through on-line mode. It was in the special set of circumstances that relief was granted to the candidates by the Rajasthan High Court.

In '*Sarla vs. State Haryana*', the last date for submission of applications forms was 01.03.2017. The petitioner therein had mentioned her category as BCB whereas she belonged to the EBPG Category. This error committed at the stage of submitting online applications form was sought to be rectified by submitting a representation almost immediately i.e. on 27.03.2017. Further, the Letters Patent Bench, while affirming the decision of the Writ Court and while dismissing Letters Patent Appeal No.320 of 2019, 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 her category to be General in the online application form but had chosen not to upload the EBPG Certificate. It may also be mentioned here that the petitioner in the *Sarla's* case was a poor widow, resident of a village and was working as an Anganwari Worker. However, in the

present case the petitioner possesses the qualifications of Matric, 10+2, B.A., M.A. Punjabi, B. Ed. and M. Ed. The petitioner is an educated person and it would be construed that she had read each and every term and condition of the advertisement and had understood the same. There is no parity between the *Sarla's* case and the case in hand.

In '*Kiran Bala vs. State of Punjab & Ors.*', the petitioner therein had applied in a reserved category but had been considered in the general category because she had not attached the requisite certificate. This case has no bearing on the facts of the present case.

In '*Vishnu Bargavi S. vs. The Director, NEET Exam*', the Madras High Court clearly stated that "It is made clear that this direction is issued taking into consideration the peculiar facts and circumstances involved in this case and it need not be taken as a precedent". Moreover, the said matter related to admission to a course and not for an employment with the Government.

In '*Harinder Singh vs. Punjab State Power Corporation Ltd.*', the petitioner therein, after giving the correct category to which he belonged (SC Mazhbi Balmiki), ticked the category of Sports Persons also. The Court found that this was inadvertent. In the said case the petitioner therein was at No.2 amongst all candidates selected and it was held that his appointment was not to be made against any particular category but, being at No.2 in the merit list, he was to be inducted in the merit list as a General Category candidate. Thus, the situation was not *pari materia* with the present case where the petitioner wants to be considered in a reserved category instead of the General Category. The

petitioner in the present case has not made it to the final merit list in the General Category. The appointment ordered in *Harinder Singh's* case was also subject to the decision in some other matter.

In the light of the above discussion, this Court finds no merit in the present writ petition and the same is dismissed. All interim orders passed stand vacated.

**(ALKA SARIN)
JUDGE**

05.10.2020

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NOTE:

**Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO**