

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

206

CWP-10114-2020

Date of decision: 22.02.2021

PRERNA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Anurag Goyal, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

Ms. Harpriya Khaneka, Advocate for respondent No.2.

Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for respondent No.3, 4, 6 to 8.

Mr. Keshav P. Singh, Advocate for respondent No.5.

ANIL KSHETARPAL, J. (Oral)

The petitioner has filed this writ petition seeking the following
substantive reliefs:-

iv) a writ in the nature of certiorari quashing the impugned result dated 02.07.2019 (Annexure P9) vis-a-vis the respondents No.3 to 8 by denying the selection and appointment to the petitioner, having secured same marks which the candidates i.e. respondent No.3 to 8 have secured 71.37 marks.

v) further a writ in the nature of mandamus directing the respondents to re-shuffle the result by way of following a rational procedure to select the best candidate by re-determining their merit (may be on the basis of marks obtained by the candidates in the qualifying examination) and to adjust/select the petitioner vis-a-vis 8 posts, which could not be advertised, despite being made available in the general category vide instructions issued by the Government dated 05.06.2019 (Annexure P9), as the advertisement contains in itself stipulation with regard to variation in number of posts.

She applied for appointment pursuant to a recruitment notice dated 08.03.2019 inviting applications for filling up 524 posts of Assistant Professor (college cadre) in Higher Education Department, Haryana. Out of 524 posts, 102 posts were in the subject of Commerce. As per the advertisement, there are 62 posts for general category. The petitioner belongs to general category. She appeared in the written test and thereafter, in the interview. Ultimately, it was found that there are 8 candidates who have secured same marks i.e 71.37. Thus, there was a tie amongst 8 candidates. In the peculiar situation, on 02.07.2019 the Haryana Public Service Commission took a decision that in case of a tie of total marks amongst the candidates, the elder in age will be considered higher in the order of merit.

This Court has heard learned counsel for the parties and with their able assistance perused the paper book.

Learned counsel for the petitioner contends that in the absence of any service rules or regulations or instructions, the Haryana Public Service Commission had no jurisdiction to take such a decision. He further submits that this decision had been taken on 02.07.2019, the date, the result was declared. He further submits that since certain posts remain unfilled therefore, directions be issued to convert unfilled vacancies to the general category.

On the other hand, learned counsel for the respondents have submitted that in view of the peculiar situation created due to a tie in the marks, the Haryana Public Service Commission has taken a conscious

decision which unless found to be arbitrary, the Court should not interfere with. They further submitted that the High Court should not issue a writ directing the respondents to fill the unfilled vacancies reserved for other categories from the candidates of general category in the absence of any such rules or instructions. Learned counsel for the respondents have also drawn the attention of the Court to a decision of the Court in CWP No.13041 of 2011 (**Dr. Krishan Kumar VS. State of Haryana and others**) decided on 13.09.2011.

This Bench has considered the submissions of learned counsel for the petitioner, however, finds no merit therein. In the present case, the Haryana Public Service Commission has taken a conscious decision in view of the peculiar situation. Such decision is in accordance with the normal practice adopted by all the commissions and selection bodies. In Krishan Kumar (supra), the Court has noticed that the procedure adopted by the Commission in case of a tie by placing the candidate older in age, higher in merit is not arbitrary. This Bench is also of the same view.

Second argument of learned counsel for the petitioner is with reference to the instructions dated 05.06.2019 (Annexure P9). It has been provided that in case the department had withheld the posts of economically backward class persons in the general caste category, such posts may be released and requisition for such posts may be sent to the appropriate recruiting agency treating such withheld posts to be under general/unreserved category. It may be noted here that the petitioner has not pleaded that there were any withheld posts of economically backward class

persons in the general caste category. In the absence of any such pleadings, no writ can be issued. However, the respondent-State is directed to examine this matter and pass a speaking order on this aspect of the matter within a period of 30 days from the date of receipt of the certified copy of this order.

With these observations, the writ is disposed of.

22.02.2021

(ANIL KSHETARPAL)
JUDGE

ashok

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No