

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

119

CWP No.20429 of 2021 (O&M)
DATE OF DECISION : 6th OCTOBER, 2021

Naveen Mahlyan

.... Petitioner

Versus

Union of India and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

* * * *

RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing of result dated 03.09.2021 (Annexure P-8) vide which name of the petitioner was deleted from main select list and was placed in the waiting list of Scheduled Caste candidates, further, the petitioner is seeking the writ of mandamus quashing the result declared for SC candidates, with a further prayer to direct the respondents to consider the result dated 31.08.2021 (Annexure P-5) vide which the petitioner was declared successful and was placed in the main selection list of selected candidates in the category of scheduled caste.

The facts, as stated in the present petition, are that respondent No.2 had advertised various posts of non teaching staff vide advertisement dated 20.05.2020 (Annexure P-1), which included the post

of Junior Assistant. The petitioner also applied for the said post under Scheduled Caste category. The petitioner participated in the written test and the same was qualified by him. After the written test, even skill test was conducted. The petitioner participated in that also. The result of the selection was declared and the petitioner was shown to be in the main select list issued on 31.08.2021. However, on the very next day, the revised result was declared by respondent Nos.1 to 3; in which the petitioner was shifted from the main select list to the waiting list at serial no.1; prepared for the Scheduled Castes category. Aggrieved against that revision of the result and shifting of the petitioner from the main select list to the waiting list, the petitioner preferred a representation to respondent Nos.1 to 3. The respondents-Institute had declined that representation and informed the petitioner that the petitioner had secured 33.75 marks in the process of selection. There was another candidate, the respondent No.4, who had secured the same marks in the category of the petitioner. Hence, applying the tie-breaking rule; prescribed in the rules applicable to the respondents/Institute, the respondent No.4, who is elder in age; has been put at a rank higher than the petitioner. As a result, the petitioner had to be shifted from the main select list to the waiting list. Aggrieved against this action of respondent Nos.1 to 3, the present petition has been preferred.

Arguing the case, learned counsel for the petitioner has submitted that any tie-breaking rule was not mentioned in the advertisement. Otherwise also, the advertisement did not contain any stipulation that in case two or more candidates secured equal marks, then the preference shall be given to the person elder in age. Accordingly,

once respondent Nos.1 to 3 themselves had placed the petitioner at the rank higher than the other candidate who had secured equal marks to the petitioner, then they are precluded from revising the result. The petitioner should have been retained in the main select list and should have been given appointment. It is also submitted by the counsel for the petitioner that, subsequently, respondent Nos.1 to 3 had advertised one more post in SC category. Therefore, the petitioner could have been considered against that post; as well.

Having heard the counsel for the petitioner and having perused the case file, this Court does not find any substance in the argument of counsel for the petitioner. It is not even disputed that the petitioner is having 33.75 marks and the other candidate i.e. respondent No.4, who has now been brought in the main list in place of the petitioner, had also secured 33.75 marks. Even this is not disputed by the petitioner that respondent No.4 is elder in age; as per the undisputed date of birth of the petitioner; and that of the respondent No.4. Therefore, if respondent Nos.1 to 3 has revised the result by placing respondent No.4 higher in rank as compared to the petitioner, then no fault could be found with the action of respondent Nos.1 to 3. The respondent Nos.1 to 3 have applied their tie-breaking rule to resolve the situation. The said rule is reproduced herein below:

“If overall marks of two or more candidates are equal, tie breaking principle will be applied to decide inter se merit among candidates having the same overall marks. Accordingly, the candidate senior in age is to be ranked higher.”

A perusal of the above said tie-breaking rule clearly shows that in case of two or more candidates securing same merit, senior in age is to be ranked higher in merit. Hence, the action of respondent Nos.1 to 3 is perfectly in consonance with the said rules. Needless to say that the said rule is not under challenge in this petition. Moreover, unless any other criteria is specifically provided for, the age based criteria is most universally accepted criteria. Therefore, no fault could be found with it.

Although, the counsel for the petitioner has submitted that the said tie-breaking rule was not mentioned in the advertisement, therefore, the same cannot be applied; so as to cause prejudice to the petitioner, however, even this argument of the counsel for the petitioner is without any substance. The advertisement is meant to provide information necessary for the competing candidates. The process of selection, relevant to the advertisement comes to end with preparation of the merit list; in accordance with the criteria laid down for selection. In case, more than two persons secured same level of merit in the selection process, the solution for that impasse may not necessarily be mentioned in the advertisement. The criteria for resolving this impasse is a matter of discretion of the appointing department. The only requirement is that the choosing out of the persons having equal merit should not be arbitrary and it should be in accordance with the criteria which has to be uniformly applied to call the candidates. In the present case, the tie-breaking rule did exist even on the date of advertisement; it existed on the date when the result was declared; and it also existed on the date when the revised result was declared by respondent Nos.1 to 3. Merely because the inadvertent mistake of ignoring the tie-breaking rule was committed by

respondent Nos.1 to 3 in the first instance; would not create any estoppel against this rule; so as to prevent the respondents from revising the result; by applying the tie-breaking rule mentioned hereinabove.

Another argument of the counsel for the petitioner; that the petitioner could have been considered against the post subsequently advertised by respondent Nos.1 to 3; is also to be noted only to be rejected. The petitioner was a candidate in the previous process of selection. It is not even disputed that all the posts which were advertised in category of Schedule Castes in the previous process of recruitment already stands filled up as per the merit determined in that process of selection. No posts had even fallen vacant subsequently out of those posts. Therefore, the right of the petitioner, if any, qua his selection in the previous process of selection stood exhausted moment that process was completed by offering appointment against all advertised posts to the selected candidates. The petitioner cannot stake any claim against a post advertised in subsequent process of selection; simply on the basis of his merit or rank in the previous process of selection.

In view of the above, findings no merit in the present petition, the same is dismissed.

6th OCTOBER, 2021
'sandeep'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*