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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-65-2021 (O&M)

Date of decision: August 18, 2022

Hukam Chand

...Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Madan Pal, Advocate and
Mrs. Neeraj, Advocate for the petitioner.

Mr. R.D. Sharma, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing the impugned action of the respondents whereby the petitioner was not called for scrutiny of documents for the post of Junior Engineer (Horticulture) (Annexure P-10) pursuant to advertisement dated 27.06.2015 (Annexure P-1) scheduled for 07.01.2021 as per notice dated 31.12.2020.

2. Succinct factual background first. Pursuant to advertisement dated 27.06.2015 (Annexure P-1), petitioner applied for the post of Junior Engineer (Horticulture) under BCA category. He cleared the written examination, but was not called in the interview process. Final result dated 30.08.2017 (Annexure P-5) was issued. Petitioner approached respondent No.3-Haryana Staff Selection Commission by way of representation dated 24.12.2020 (Annexure P-9), but he was still not called for scrutiny of

documents. Candidates securing less marks than the petitioner were called for the interview.

3. Learned counsel for the petitioner submits that pursuant to order dated 06.01.2021 passed by this Court, petitioner appeared in the interview. Petitioner has secured 118 marks in the written examination, but the interview marks are not disclosed to him. The selected candidate in General category, namely Amit Kumar who secured 158 marks in the written examination and 10 marks in the interview, was issued appointment letter on the post in question, but he did not join as such. Reminders were also issued to him in this regard. He further submits that respondent No.2 is in the process of issuance of appointment letter to one Hemant Kumari, who secured 116 marks and was kept in waiting list. Petitioner secured more marks than the said candidate placed in the waiting list.

4. On the other hand, learned State counsel opposes the prayer of the petitioner. He submits that pursuant to order dated 06.01.2021 passed by this Court, documents of the petitioner were provisionally scrutinized on 07.01.2021 and he was found "Eligible". He further submits on the lines of short reply dated 10.11.2021 filed on behalf of respondent No.3, to contend that a candidate claiming reservation can be considered on the basis of his merit against General category only at the time of preparation of final result and not at earlier stages, if he submits all his documents as per his claim in the application form and there is no contravention of any terms and conditions of the advertisement and he does not seek any relaxation and fulfills all conditions of General category candidate. He submits that a candidate who applies under General category is required to deposit fee of

Rs.150/- while a candidate claiming reservation under BCA category is required to deposit concessional fee of Rs.35/-. He further submits that if a candidate proves his eligibility in the category applied for, only then he/ she can be considered against unreserved post otherwise candidate will apply under reserved category and will get concession and thereafter will claim to consider him/ her for the post which is not meant for reserved category. It will amount to injustice to those candidates who have applied under unreserved category and have paid requisite fee. In support of his contention, learned State counsel relies on **Deepa E.V. versus Union of India and others**, reported in **2017 AIR (Supreme Court) 1945**.

5. I have heard learned counsel for the parties and perused the record.

6. Reliance placed by the learned State counsel on the judgment *ibid* is completely misplaced, if not, misdirected to say the least. It is trite to say that every citizen in country is born equal unless he claims any special benefits on the basis of his caste and has a right under Article 16 of the Constitution of India to be considered in General category. The petitioner, no doubt, opted for BCA category, but did not avail any special age relaxation and/ or special additional marks under the category or having appeared before a separate interview Board and/ or a separate examination, and therefore, to contend that the petitioner is disentitled to be considered in General category merely because he belongs to Backward class, is completely out of place. Learned State counsel submits that the petitioner had in fact, availed concession of fee payable for the examination to be conducted and, therefore,

he cannot be treated in General category since fee payable in the General category is high up.

On a Court query, as discussed above, he submits that General category examination fee is Rs.150/- and for the Backward class category, it is Rs.35/-. If that be so, petitioner can be asked to pay the difference in the examination fee and subject to its payment, he ought to be considered in General category. Reference may be had to my detailed opinion given on the same controversy in **CWP-2667-2022 (O&M)** titled **Om Roj versus Haryana Staff Selection Commission and others**, decided on 28.04.2022. I need not labour all over again. For the sake of brevity, the relevant thereof is extracted herein below:-

“5. Having heard rival contentions, it is rather appalling to see the conduct of the respondents in denying the benefit of what is envisaged under Article 16 of the Constitution of India, which for their education is reproduced herein below:

“16. Equality of opportunity in matters of public employment :-

(1). There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2). No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State. (3). Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. (4). Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (5). Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the

affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.”

6. *It is the basic principle of reservation, which the respondents need to be aware and be careful in future, that first and foremost general category seats are to be filled from the merit list as per result and thereafter the reserved category seats are to be allocated as per the quota assigned thereto.*

7. *First and foremost, once the merit list is prepared of the general or open category and if any candidate, who has applied under reserved category and not considered eligible, but obtained higher marks than the last selected candidate in general category, even then he has a right of selection and appointment under general category. In the present case, concededly the petitioner had though applied under EWS category and as per declaration of result he scored more marks than the last selected candidate in general category. Petitioner, even if not given the benefit of EWS reservation, he was/is eligible to be considered in General Category as he got more marks i.e. 79 marks as against the last selected candidate in general category, who has scored 70 marks.*

8. *It is rather preposterous to argue, as is being canvassed by learned State counsel that if in the scrutiny round, a candidate is found not eligible for the reservation sought by him, then he shall not be considered even in the open (General) Category. The same goes against the very content and intent of Article 16 of the Constitution.*

9. *No doubt, reservation is envisaged on the basis of backward class under Sub Article (4), but in case a candidate is not found entitled to the reservation, by no stretch of imagination Article 16 is to be interpreted so as to mean that right of a candidate to be considered in open general category is taken away. If that were to be done, same would be also violative of Article 14 of the Constitution of India, apart from Article 16(1) itself.*

10. *In fact, what has been opined by me as above is trite in view of the repeated pronouncements from time to time. Reference may be had to a Supreme Court judgment dated 18.12.2020 in case titled as “Saurav Yadav and others Vs. State of Uttar Pradesh and others” in W.P. (C) No.237 of 2020. Relevant part thereof is reproduced hereinbelow:-*

“22. The Principle that candidates belonging to any of the vertical reservation categories are entitled to be selected in “Open or General Category” is well settled. It is also well accepted that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories for vertical reservation that they belong.”

“27.1 XXXX XXX

.....If we go by the first view, the claim of reserved category candidates if they are more meritorious, has to be considered, in which case the candidate at Serial No. 86 will be required to be accommodated. Resultantly, the candidate at Serial No.88 must give way.

XXX XXX

28 The second view, based on adoption of a different principle at the stage of horizontal reservation as against one accepted to be a settled principle for vertical reservation, may thus lead to situations where a less meritorious candidate, not belonging to any of the reserved categories, may get selected in preference to a more meritorious candidate coming from a reserved category.

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32 The second view will thus not only lead to irrational results where more meritorious candidates may possibly get sidelined as indicated above but will, of necessity, result in acceptance of a postulate that Open/General seats are reserved for candidates other than those coming from vertical reservation categories. Such view will be completely opposed to the long line of decisions of this Court.

33 We, therefore, do not approve the second view and reject it.

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54 The open category is not a ‘quota’, but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria, there is no quota for men. If we are to accept the second view. The result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit.

XXX XXX

58 I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the State’s argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in its merit, regardless of whether reservation benefit of either type is available to her or him.”

7. As an upshot of the discussion above, it is held that the petitioner is entitled to consideration of his claim against a vacancy in General Category on the basis of his merit in the said category.

8. Accordingly, writ petition is allowed to the extent that respondents are directed to consider the candidature of the petitioner in general category in accordance with the marks obtained by him and proceed further in accordance with law. Petitioner's candidature will be considered, subject of course to availability of post as on today; in case he is selected but post is not available, he shall be given the benefit for the vacancy in future; petitioner shall not be entitled to monetary benefits on the principle of 'No Work No Pay' and he shall be given due credence *qua* his seniority and other consequential benefits w.e.f. the same date when his counter-parts were appointed.

(ARUN MONGA)
JUDGE

August 18, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No