

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.247

Date of Decision: 25.07.2022

1) CWP-641-2019

Deepak Kumar

.... Petitioner

Versus

State of Haryana and another

... Respondents

2) CWP-1486-2019

Seema Sethi

.... Petitioner

Versus

State of Haryana and others

... Respondents

3) CWP-10425-2019

Ratan Kumar

.... Petitioner

Versus

State of Haryana and others

... Respondents

4) CWP-10435-2019

Dayanand

.... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tejpal Singh Dhull, Advocate
for the petitioner in CWP-641-2019.

Mr. Rajat Mor, Advocate
for the petitioner in CWP-1486-2019.

Mr. J.S.Virk, Advocate
for the petitioner in CWP-10435-2019.

None for the petitioner in CWP-10435-2019.

Mr. R.S.Budhwar, Addl. A.G.Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

By this common order, four writ petitions, the details of which have been given in the heading, are being disposed of as all these writ petitions involve similar question of law.

For the facility of this order, the facts are being taken from CWP No.641 of 2019.

In the present petition, the prayer of the petitioner is that though he had applied for consideration of his claim against the post of PGT (Chemistry) as advertised vide advertisement dated 28.06.2015 in the General Category but the claim of the petitioner be also considered against the 4 vacant posts, which are lying vacant in the EBPGCC, for which the petitioner fulfilled the required criteria.

Learned counsel for the petitioner argues that in the present case, 442 posts of PGT (Chemistry) were advertised for entire Haryana except the district of Mewat, vide advertisement dated 28.06.2018, a copy of which has been appended as Annexure P-1 with the petition. The last date for applying for the same was 21.09.2018. The petitioner applied for the said post in the General Category. The petitioner was also issued admit card under the General Category and the petitioner competed for the said post but could not be selected in General Category keeping in view the marks secured by the him.

After the declaration of the result, it was found by the petitioner that all posts in the reserved category of EBPGCC could not be filled up and remained vacant and the petitioner is laying his claim on the said post on the ground that the petitioner also fulfills the eligibility as envisaged for the

said post and therefore, the petitioner be considered for appointment against said vacancy, which had remained vacant in the category of EBP GCC.

After notice of motion, the respondents have filed reply, wherein the respondents have mentioned that as per the advertisement, the candidates were required to fill form online and no offline form was to be accepted and further as per the conditions of the advertisement, the candidate can only apply in one category, which category can not be changed subsequently. As per the respondents, after the completion of the selection, the petitioner cannot be allowed to change his category, so as to suit him to consider his claim against four posts of PGT (Chemistry) in the category of EBP GCC, which could not be filled up, and which now will be filled up by a fresh selection.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question which arises for determination is whether the claim of a candidate for the change of category can be considered and that too after the selection process is almost over. In the present case, it is a conceded fact that the petitioner only applied for consideration of his claim under the general category, which consideration was given to the petitioner in the category in which he had applied for. It is also a conceded position that as per the conditions of the advertisement, no form could be accepted manually and no category in which a candidate has applied, was allowed to be changed after the form was filled up online.

That being so, the prayer of the petitioner that after the selection process is over, the petitioner should also be considered for the four posts of PGT (Chemistry) against the EBP GCC category, which have

remained vacant only on the ground that the petitioner also fulfilled the qualification for appointment under the said category, can not be allowed. The terms and conditions of the advertisement are sacrosanct and are held to be law, unless and until, the same are contrary to the rules governing the service. In the present case, the claim is being made on emotional ground that four posts are vacant in the category of EBP GCC and one of the vacant post should be given to the petitioner merely on the ground that the petitioner is also fulfilling the required eligibility criteria for competing against the same though, the petitioner never raised his claim to be considered against those posts while filling up the application form.

The said question has already been considered by a Coordinate Bench of this Court and the similar prayer has been declined while passing order in CWP No.15119 of 2016 decided on 22.05.2018 titled as Shashi versus State of Haryana and others. In the said case also, similar prayer was made which was declined by the Coordinate Bench of this Court keeping in view the settled principles of law as laid down by Hon'ble Supreme Court of India in the case of J &K Public Service Commission versus Israr Ahmad and others (2005) 12 SCC 498. The relevant paragraphs of the said judgment are as under:-

“xxx xxx xxx xxx

5. *Learned counsel for the Commission submits that as the last date for submitting the application was 16th March, 1999 and the respondent did not produce the certificate claiming reservation nor did he indicate in the application that he belongs to that category. It was submitted that several other applications of similar nature were rejected by the Commission and the respondent's application also was treated alike and the*

Division Bench erred in coming to the conclusion that he was entitled to get reservation. Counsel for the respondent on the other hand pointed out that though the first respondent did not avail the benefit of reservation when he submitted the application for the preliminary examination he had submitted the application for the main examination in which he had clearly shown that he was entitled to get reservation as per SRO 126 of 1994 dated 20th June, 1994 and he had also produced the certificate along with the application for the main examination. It is submitted that he had claimed the reservation for the main examination and he should have been treated as a reserved candidate in the main examination.

6. *We have considered the rival contentions advanced by both the parties. The contention of the first respondent can not be accepted as he has not applied for the selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The act that he has not availed the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he can not avail the reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he can not later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at later stage would make*

him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal.

7. *No costs.”*

Learned counsel for the petitioner has not been able to point out that the claim of the petitioner is covered against him keeping in view the decision of this Court in **Shashi's case (supra)**.

Keeping in view the above, the prayer of the petitioner to substitute his category against four vacant posts of PGT (Chemistry) lying vacant in the category of Economically Backward Person in General Castes can not be considered and therefore, all the aforesaid writ petitions are accordingly dismissed.

A photocopy of this order be placed on the connected files.

(HARSIMRAN SINGH SETHI)
JUDGE

25.07.2022
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No