

270 (3rd case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2667-2022 (O&M)

Date of decision: April 28, 2022

Om Roj

...Petitioner

Vs.

Haryana Staff Selection Commission and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate,
For the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing respondent No.1 to consider the claim of the petitioner for selection and appointment as Veterinary Livestock Development Assistant (VLDA) against general category for having obtained higher marks (79) than the last selected candidate in general category.

2. Succinct facts First. Petitioner, an EWS category candidate, applied for the post of VLDA under EWS category and appeared in the written examination. As per final result, last selected candidate in general category obtained 70 marks. Last selected candidate in EWS obtained 58 marks. However, the petitioner with 79 marks has not been selected in either of the categories. Petitioner submitted written representation, but to no avail. Hence, the instant petition.

3. Learned Senior counsel submits that undisputedly, once the petitioner had obtained 79 marks i.e. more than the last selected candidate in

General Category, who had secured 70 marks, he ought to have been considered first under General Category. He contends that even if the EWS Category certificate of the petitioner is held to be not valid, he still has a right of consideration under General Category.

4. Learned Deputy Advocate General contends per contra. She argues that the petitioner had since applied under EWS reserved category and cannot, therefore, be considered for general category. His EWS certificate was found invalid, rendering him ineligible for said category. He could not, therefore, be considered for selection either in EWS reserved category or general category.

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 or 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.

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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.”*

11. To summarize, it is re-emphasized that the respondents would do better in future to follow the aforesaid principles enunciated by the Supreme Court of India. In the event, it is the same selection, pursuant to the same very advertisement, then first and foremost all the candidates according to their merit are to be adjusted in open General Category. It is only after all the general category seats are filled up, that the other various vertical categories of reservation shall then open up for the reserved category candidates. Needless to say, in accordance with the merit list. The contrary conduct of the respondents, perhaps is deliberate to indulge in favouritism, and is strongly deprecated.

12. In the parting, I would like to express my disagreement with the over emphatic reliance placed by learned counsel for the State on an Apex Court’s judgment rendered in “*Union of India Versus Dalbir Singh and others*” reported as **2009 (4) SCT 636** which, to say the least, has not only been completely misquoted in course of arguments, but is even otherwise, totally out of context, inasmuch as, it is noted in the judgment itself in paras 8 and 13 as below:

“8. *They had also stated that, to fill up the vacancies of Mazdoors, an advertisement had been issued separately for general and OBC categories and pursuant to such advertisement, the applicant had applied against OBC category and not under general category and, therefore, his name was not considered under general category.*

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13. *From the pleadings, it appears to us, that the appellants had prepared two sets of lists. The first one being the list of those candidates who had staked their claim in the general merit and the*

second list contains those candidates who had opted for consideration of their case under OBC category. The respondent at no point of time had taken exception to the procedure adopted by the appellants in preparing the select list. In our opinion, having opted to consider his case only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because, he has scored better percentage of marks than the last selected candidate in the general merit.”

It was in the aforesaid peculiar context that the Apex Court held that once a candidate had opted for and participated in selection pursuant to “separate advertisement” meant for “separate categories” in “separate selection process” having “separate merit list”, he cannot stake his claim on the basis of his merit for consideration in the general category merely because he obtained more marks than the last selected candidate in the separate selection of general category.

Per contra, in the present case, the selection process was not separate for the general category candidates vis-à-vis the EWS reserved category, but it was a common single process for all categories. Therefore, the aforesaid judgement relied upon by the learned state counsel is not applicable here in.

13. 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. Accordingly writ petition is allowed to that extent and 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.

14. Needful be done within 30 days of petitioner approaching the respondents along with copy of the instant order/judgment.

(ARUN MONGA)
JUDGE

April 28, 2022

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No