

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

234

LPA-656-2021

Date of decision : 12.05.2022

Sunita Rani

....Appellant

V/s

Haryana Staff Selection Commission

....Respondent

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Gitanjali Chhabra, Advocate for
Mr. Raman B. Garg, Advocate for the appellants.
Mr. Hitesh Pandit, Additional Advocate General, Haryana.

G.S. SANDHAWALIA, J. (ORAL)

Present appeal arises out of order passed by the learned Single Judge
in CWP-32259-2018 decided on 22.01.2021.

The appellant is aggrieved by the said decision whereby his prayer
to consider his candidature for the post of TGT Physical Education against
advertisement No.3/2015 dated 28.06.2015 (category No.2) in Economically
Backward Person in General Castes Category (EBPGC) as per certificate,
Annexure P-2, was declined. The reason for denying was on account of the fact
that the writ petitioner had not even secured the marks equal to the candidate last
selected and appointed in general category and therefore, was not liable to be
considered against the reserved category. No certificate of the eligibility qua the
reserved category having been originally claimed or furnished by the writ
petitioner, was the reason why the writ petition was dismissed.

Admittedly, the cut-off date for the said post, as per the above said
advertisement was 21.09.2015. The certificate of the writ petitioner issued by the
competent authority for the said category is dated 06.02.2014 (Annexure P-2).

Only on account of the fact that the writ petitioner had applied in general category as per online form, Annexure P-3, she had not been considered in the said reserved category which was also the reason given by the learned Single Judge while dismissing the writ petition.

On 09.11.2021, the following order was passed by this Court:-

“In view of the order dated 21.09.2021, notice of motion is issued.

Mr. Hitesh Pandit, Addl. A.G., Haryana accepts notice on behalf of the respondent and prays for time to find out as to whether there are any vacancies available in the category of Economically Backward Person category in General Category against the 60 posts advertised as per Advertisement (Annexure P-1) for filling up the posts of TGT Physical Education posts. Apparently the petitioner had the requisite certificate dated 06.02.2014 (Annexure P-2), which was prepared before the cut off date of 21.09.2015, but she still had applied only in the general category (Annexure P-3), which is the reason the learned Single Judge refused to grant any relief.

List on 14.12.2021.”

Pursuant to the aforesaid order, affidavit dated 11.05.2022 of Secretary (Legal), Haryana Staff Selection Commission has been filed wherein it has been admitted that 46 posts in EBPG category remained vacant due to non-availability of the suitable candidates. It is not disputed that as per the aforesaid advertisement, there were 60 posts of TGT Physical Education in the Economically Backward Person category, as noticed earlier.

In such circumstances, we are of the considered opinion that no other candidate would be adversely affected even if the State now, offer's appointment to the appellant against the post in question. We are fortified to pass the above said order in view of the judgment of the Coordinate Bench passed in LPA No.320 of 2019 titled as *Haryana Staff Selection Commission*

through its Secretary vs. Sarla and others, decided on 22.02.2019. The relevant portion reads as under:-

“4. The case set up by the respondent-petitioner was that as soon as the mistake committed in filling up online form came to her knowledge she immediately made a representation dated 27.04.2017 before respondent No.2 requesting for necessary correction in the application form. She was assured that at the time of verification of the documents she will be allowed to carry out necessary corrections and was permitted to appear in the written test. However, subsequently when she appeared for verification of documents on 03.07.2017 she was not allowed to participate in the interview and her candidature was cancelled.

5. We cannot loose sight of the fact that in view of the prevailing socio economic condition in our country, every citizen is neither net savvy nor has a computer or laptop readily available for use. In these circumstances, when such a candidate has to submit an application on-line he has to dependent upon the cyber cafés providing the net services. Being himself/herself not computer and net savvy the candidate has to depend upon the operator in the cyber café to fill in online form and in such a circumstance if any mistake occurs it would be wholly unrealistic and arbitrary to make such a candidate suffer. It is also to be taken note of that if an incorrect entry is made due to human error, there is no provision on the website of the Commission allowing correction in the online application form. In these circumstances, if a mistake is committed, there being no provision for carrying out correction, even if it is noticed subsequently, a poor candidate is to suffer for no fault.”

Counsel for the State has tried to convince us that the appellant had not applied in that category and, therefore, was bound by the terms of the advertisement. There is no dispute qua the said proposition. The order is being passed in peculiar facts and circumstances on account of the fact that 60 posts in the category of Economically Backward Person in General Castes were advertised

as per advertisement (Annexure P-1) for filling up the posts of TGT Physical Education. The fact remains that in spite of the said advertisement, 46 posts in the said category still remain vacant due to non availability of the suitable candidates. It will, thus, be in the interest of justice if the offer of appointment is given to a candidate, who is duly qualified and is left out only on the basis of a mistake while filling up the online form. Had the appellant got the necessary certificate after the cut-off date, it would have put her on a different pedestal.

Accordingly, the order of the learned Single Judge is set-aside. A direction is issued to consider the case of the appellant for appointment against the said post. She will be granted all the notional benefits of seniority from the date of the last appointed candidate in her category but she is not entitled to any other financial benefits.

The appeal is disposed of in the aforesaid terms.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

May 12, 2022
Ajay

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