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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANIDGARH

CM-10933-CWP-2022 in/and
CWP-8266-2021 (O&M)
Date of decision: 29.07.2022

RINKU SHARMA

...Petitioner

versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.K.Kaushik, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

CM-10933-CWP-2022

For the reasons stated in the application, the same is allowed.

Replication is taken on record, subject to all just exceptions.

Main case (O&M)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing respondent No.3 to consider the candidature of the petitioner for appointment to the post of Tracer, claiming there is still a vacant post in the Economically Backward Persons in General Castes (EBPGC) category, to which she belongs.

2. I have heard learned counsel for the parties and gone through the case file.

3. In the return filed by the respondents, a candid stand has been taken that though the petitioner is in the waiting list, but another candidate having higher marks than the petitioner is above the petitioner. Without thus

considering his right to be appointed on the post in question, petitioner cannot be offered the same.

4. Per contra, learned counsel for the petitioner has drawn my attention to Annexure P-4 to submit that said candidate who is above the petitioner has already declined to join. Therefore, in the order of merit, petitioner being the next, has to be necessarily offered the post.

5. Learned State counsel submits that in any case, no fresh appointments can be made, at this stage, in view of the EPBGC category being under challenge before the Apex Court.

6. Confronted learned counsel for the petitioner submits that the respondents are blowing hot and cold. They are indulging in hostile discrimination qua petitioner, as some of the candidates, even despite the pending *lis* in Supreme Court, have been issued appointment letters, subject, of course, to the final outcome of decision to be rendered by Supreme court. But the petitioner is not being accorded similar benefit.

7. In fact, what is being canvassed by learned counsel for the petitioner is in conformity with the stand taken in Para-6 of the reply filed by the Haryana Staff Selection Commission, which is reproduced herein below:-

“6. That the main contention of the petitioner in this present writ petition is to direct the respondent No.3 (Engineer-in-chief, Irrigation & Water Resources Department, Haryana) to consider the candidature of the petitioner for appointment to the post of Tracer against the vacant post of EBPB category, being coming in the selection zone from the waiting list of EBPB category, by virtue of final result dated 18.12.2020 (Annexure P-6) in pursuant to advertisement no.07/2015 dated 10.07.2015, category no.2 (Annexure P-1).

In this regard, it is submitted here that the Respondent-Commission has considered the candidature of the petitioner and the Respondent-Commission has also recommended the name of the petitioner in EBPB waiting list along with other selected candidates of main & Waiting list on

dated 24.08.2018 to the concerned department for appointment vide letter no. HSSC/Conf./Recomm/2018/776 dated 24.08.2018 and all the required essential procedure which was followed by the Respondent-Commission with due diligence and care for the post in question. Further the procedure of joining of the petitioner and other selected candidates are now in the domain of the respondent No.3 i.e. Irrigation & Water resources Department, Haryana and the Commission has been left with no further role to attribute in the joining process of the petitioner for the post in question.

The relevant part of the recommendation letter is reproduced below;

- 1. I am directed to invite your attention on the subject noted above and to say that on the basis of written examination and interview/Viva voce, the Commission has finalized the selection of 19 posts of EBPB category as per Government Instruction No.22/10/2013-1GSIII dated 01.06.2018 and in compliance of Hon'ble High Court order dated 18.05.2018 passed in CM No.3905-2018 in CWP No.18514 of 2016 with the direction that however, a specific condition shall be included in their appointment letters that the said appointment would be subject to the outcome of the proceeding pending before the Hon'ble Supreme Court in the appeal filed by the State of Gujarat on a similar issue (copy enclose at Annexure "A") for the post of Tracer against Advt. No.7/2015, Category No.02 (EBPB category). A condition to this effect will be incorporated in the appointment letter. The full particulars of the selected candidate are given, in order of merit, in Annexure "B" (Page 1 to 3).*
- 2. The validity period of the list shall be one year from the date of issuance of this letter in accordance with the Chief Secretary to Govt., Haryana instructions dated 07.10.1998.*
- 3. It is further intimated that the selected candidates have not been medically examined and no special enquiry into their antecedents has been made. The documents pertaining to their Educational Qualifications, age, Caste/category, experiences and universities etc. as claimed by them in the application form may please be got checked/ verified from the issuing authorities, before they are allowed to join their duties. A copy of the appointment letter issued to the candidates may also be endorsed to the Commission.*
- 4. The original application forms with all enclosures of 23 (18 selected + 05 waiting) candidates for the post of Tracer against Advt. No.07/201, Category No.02 are sent herewith for further necessary action at your end. One application from with enclosure bearing Roll No.7150230481 has already been sent to your department vide this office letter no.HSSC/Conf./Recomm/2018/421 dated 03.05.2018.*

The copy of Recommendation letter dated 24.08.2018 is annexed as Annexure R-2/1.”

8. In view of the aforesaid, there is nothing much to adjudicate for this Court. Writ petition is disposed of with the expectation that respondents shall accord similar benefit to the petitioner, as accorded to the other similarly situated candidates, subject of course, to her otherwise being eligible as per merit list for appointment, in accordance with law. Appropriate decision be taken within a period of 2 months from today.

9. In case, favorable order is passed, petitioner shall be put at the bottom of the seniority-list and shall not be entitled to any monetary benefits for the period, she remained out of job.

(ARUN MONGA)
JUDGE

July 29, 2022
Vandana

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