

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

224 (02 cases)

(1) CWP-8194-2019

Dheeraj Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

(2) CWP-10336-2019

Dheeraj Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

225

(3) CWP-12726-2019

Ram Bir

...Petitioner

Versus

**Haryana Staff Selection Commission
through its Secretary**

...Respondent

Date of Decision :09.11.2022

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Chander Pal Tiwana, Advocate for the petitioner
in CWPs-8194 & 10336-2019.

Mr. J.P. Sharma, Advocate for the petitioner
in CWP-12726-2019.

Mr. Sandeep Singh Mann, Addl. A.G. Haryana.

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Harsimran Singh Sethi, J. (Oral)

By this common order, above mentioned three writ petitions are being disposed off as all the writ petitions involve the same question of law.

For the purpose of this order, facts are being taken from CWP-10336-2019 titled as **Dheeraj Kumar vs. State of Haryana and others.**

The grievance of the petitioner is that the petitioner competed for selection to the post of PGT (English) in pursuance to the advertisement No.4/2015 dated 28.06.2015 and had enough marks in the written examination to be called for interview but the name of the petitioner is not being considered, which action of the respondents is totally arbitrary and illegal.

The facts leading to the filing of these writ petitions are that the respondent-Commission issued an advertisement No.4/2015, by which, 649 posts of PGT (English) were advertised. In the said advertisement, essential qualification for competing and consequent appointment were mentioned and the last date for filling up the application form was 21.09.2015. As per the advertisement, the posts were bifurcated in various reserved categories and the candidates were required to apply in a particular category of their choice. As per the terms and conditions of the advertisement, online application form was to be submitted and in case any candidate was applying in reserved category, the said candidate was required to upload the proof/certificate of the said reserved category to become eligible in which category, he/she is claiming consideration and consequent appointment

along with application form. The petitioner applied in the general category for the post in question before the last date of submission of online application form.

Petitioner appeared in the written examination, which was held on 27.03.2016 and the result of the said examination was declared on 19.01.2017 and on the basis of the marks obtained by the candidates in the said written examination, the candidates were called for scrutiny of documents, which was to be held from 04.02.2017 to 09.02.2017. Petitioner appeared in the said scrutiny of documents on 07.02.2017. Thereafter, the respondent-Commission issued a notice dated 04.02.2018 calling the candidates for interview. The said notice did not find mention of petitioner's roll number, which grievance is raised in the present writ petition that despite clearing the written examination, the petitioner has not been called for interview by the respondent-Commission. Further grievance of the petitioner is that the marks for experience have not been added in the result of the written examination to adjudge the eligibility of the petitioner to be called for interview and further that the petitioner is also eligible for competing for selection and consequent appointment in the EBPGC category hence, in case the petitioner is not meritorious enough to be considered for appointment in the general category, he should have been considered for appointment in the said reserved EBPGC category.

Learned counsel for the petitioner in CWP-12726-2019 submits that though, the petitioner is a dependent of an ex-serviceman and intended to compete in the said category but inadvertently while filling up the online application form, the petitioner could not mention the said category and

applied in the general category therefore, the said inadvertent act on the part of the petitioner needs to be rectified and the petitioner needs to be considered in the category of dependent of ex-serviceman for selection and consequent appointment.

Upon notice of motion, respondents have filed reply wherein, it has been submitted that the petitioner had applied in the general category in which his candidature has been considered and he has secured 98 marks in the written examination, which marks were much less than the last selected candidate in the said category, who was short listed to be called for interview hence, the petitioner, who had less marks than the cut off fixed, cannot be called for interview.

With regard to the claim of the petitioner for the grant of marks for experience even while short listing the candidates to be called for interview, respondents have clearly stated that marks for experience are to be counted while making final selection whereas, short listing of the candidates to be called for interview was to be done on the basis of marks secured by the candidates in the written examination and as conceded by the petitioner, the petitioner did not have enough marks in the written examination to be called for interview therefore, he was not called for interview and the claim of the petitioner to include the marks for experience to the score of the written examination, will be contrary to the criteria fixed for evaluating the candidates. As per the criteria, all the candidates have been evaluated as per the same criteria.

With regard to the claim of the petitioner to consider him in the category of EBPGC, the respondents have mentioned that the petitioner

after going through the eligibility conditions as envisaged in the advertisement in question, applied in the general category. Respondent have further stated that as per the terms and conditions of the advertisement in case the benefit of reservation is being sought by the candidate, the certificate on the basis of which the benefit of reservation is being claimed is to be uploaded along with the application form before the last date of submission of the said application form. Respondents have further submitted that even certificate of EBPGC, which is being relied upon by the petitioner is dated 15.02.2017, which is after the last date of submission of application form i.e. 21.09.2015 and, therefore, even otherwise, the petitioner could not have been selected for appointment in the EBPGC category as the petitioner was not eligible to be considered till the last date of completing the application process and more so he had even not applied in the said reserved category hence, the claim of the petitioner may kindly be rejected, keeping in view the terms and conditions of the advertisement.

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

It is a conceded position that keeping in view the terms and conditions of the advertisement, the petitioner chose to compete in the general category and the claim of the petitioner has been considered by the respondents in the category in which the petitioner claimed consideration. Once the petitioner has decided to compete in the general category, no grievance can be raised by the petitioner that he is not being considered eligible in the category of EBPGC, in which category concededly the petitioner never applied.

With regard to the contention of the learned counsel for the petitioner that the petitioner should have been called for interview in the general category, keeping in view the marks secured by him in the written examination and by adding the marks for experience for which, he is entitled for, the said contention cannot be accepted as the short listing of the candidates is to be done on the basis of the marks secured by the candidates in the written examination and it is only thereafter, in order to evaluate the total marks, at the time of final selection, the marks secured by the short listed candidates in the interview and other aspects including the experience are to be considered. Once, the criteria envisaged for short listing the candidates on the basis of written examination has been fixed by the advertisement, claim of the petitioner that the said short listing should have been done after adding the marks for experience will amount to overriding the conditions envisaged in the advertisement. The terms and conditions of the advertisement are sacrosanct and selection is to be made on the basis of the terms and conditions of the advertisement and the Courts have no power to undo the said conditions if the same are being followed in respect of all the candidates who are competing in the said selection process. Hence, prayer of the petitioner that marks for experience should have been added in written examination so as to adjudge the eligibility of the petitioner for being short listed for interview, cannot be accepted.

The last claim of the petitioner is that though, he might not be able to secure enough marks in the written examination in general category to be short listed to be called for interview, but he is entitled to be considered in the reserved EBPGC category.

The said claim is also to be considered on the basis of the terms and conditions of the advertisement in question. As per the terms and conditions of the advertisement, it is a conceded position that in case any candidate is claiming consideration and consequent appointment in the reserved category, the candidate is required to upload the proof/certificate to support the said claim while uploading the online application form. The reserved category is to be clearly mentioned in the online application form in order to claim consideration to the reserved category and consequent appointment. In the present case, consideration is being claimed in the reserved category of EBPGC and that too after declaration of the result on coming to know that two posts in reserved EBPGC category could not be filled up.

The question raised in these petitions has already been answered by Hon'ble Supreme Court of India in **Civil Appeal No.6696-2009** tilted as **Rajasthan High Court Jodhpur and another vs. Neetu Harsh and another** decided on 29.08.2019 holding that a candidate, who has competed in the general category throughout cannot claim benefit of reservation after competing in the said category. Relevant paragraph of the judgment is as under:-

“We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of 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 cannot avail of 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 cannot 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 a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.”

The question whether the candidate who has not claimed the benefit of reservation can claim the same subsequently on declaration of result, has already been considered by a Coordinate Bench of this Court in **CWP-15119-2016** titled as **Shashi vs. State of Haryana and others** decided on 22.05.2018 wherein, it has been held that a candidate, who has applied in a particular category, cannot change the same at a later date.

Relevant paragraph of the judgment is as under:-

“Perusal of the advertisement (Annexure P-1) clearly shows that a candidate can apply only once for a particular category of post advertised. It also makes it clear that no offline form is to be accepted. Another condition included in the advertisement is that incomplete application form would be rejected. Thus, a candidate is required to be very circumspect while filling the application. Although the petitioner may have obtained the EBPB certificate before the extended date of submitting applications, but chose not to apply under the same and once she failed to qualify now. She cannot take benefit thereof as she had applied under the general category. Had she applied for the EBPB category and had failed to attach the certificate alongwith the application, the case may have been different. The Division Bench judgment of this Court in **Usha Dhillon (supra)** does not support the case of the petitioner as in the said case the computer had committed a mistake and the same was permitted to be corrected. The judgment of the Supreme Court in **J&K Public Service Commission (supra)** makes it clear that once a candidate has chosen a particular category, he can not change the same at a later date.”

Keeping in view the above, the claim of the petitioner for

switching his claim from general category to reserved category after declaration of result is not maintainable especially, when the petitioner chose not to claim the said benefit while filling up online application form by attaching the relevant documents.

Learned counsel appearing for the petitioner in CWP-12726-2019 argues that the petitioner inadvertently applied in the general category whereas, the petitioner intended to compete in the reserved category of ex-serviceman being dependent upon ex-serviceman.

The said argument needs to be tested on the basis of the facts and circumstances, which have come on record so as to ascertain whether filling up of application form by the petitioner to be considered in general category was inadvertent or not.

Learned counsel for the petitioner has conceded that as per the application form filled by the petitioner, the petitioner had applied in respect of the post in the general category. It is also conceded that after filling up of application form, the petitioner was issued admit card (roll number) wherein, it was duly mentioned that the petitioner is being considered for appointment against the post in the general category and without raising any objection, the petitioner competed in the selection process. Nothing has come on record to show that after coming to know the fact that the claim of the petitioner is being considered in general category, keeping in view the facts mentioned in the admit card (roll number), the petitioner ever raised any objection with the authorities concerned that the said application form was filled up inadvertently and he should be considered in the reserved category of ex-serviceman being dependent upon ex-serviceman. Learned

counsel for the petitioner has conceded the fact that it was only when the selection process was near completion, the petitioner raised the said grievance pleading inadvertent filling up of application form in the general category instead of category of ex-serviceman being dependant upon ex-serviceman.

Learned counsel for the petitioner also cites judgment in **LPA No.656-2021** titled as **Sunita Rani vs. Haryana Staff Selection Commission** decided on 12.05.2022. The said judgment is not applicable upon the case of the petitioner for the reason that this Court has already declined the claim of the petitioner that he inadvertently filled up the application form in the general category rather than reserved category being dependent of ex-serviceman being not genuine and therefore, the judgment in Sunita Rani's case (supra) is not applicable in the facts and circumstances of the present case.

Keeping in view the facts and circumstances noted hereinbefore, no ground for interference by this Court is made out.

Writ petitions stand dismissed.

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

November 09, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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