

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-12794-2021

Date of decision: 30.11.2022

NEERAJ

...Petitioner

VS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Gaurav Tyagi, Advocate,
For the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondents to consider and accept the application form of the petitioner for the post of Staff Nurse under Category No.10 and Sub-Category PwD (Persons with Disabilities) under Health Department instead of category No.19 (General Category) under Employees State Insurance Health Care.

2. What emerges for adjudication is the short controversy i.e.,(a) Whether the petitioner can be allowed to opt for change of category, as has been the ground of principal opposition by the respondents and (b) Whether it is indeed it is a case inadvertent exercise of option to click the category while filling up the online application and corrections of inadvertent errors.

3. In this context, my order dated 15.07.2021 is of some significance vide which notice of motion was issued. The same reads as below:

“Notice of motion.

Learned State counsel, on advance service, joins proceedings and accepts notice on behalf of the respondent-State of Haryana and seeks time to get instructions.

Adjourned to 13.08.2021.

The written examination for the advertised post of Staff Nurse is slated to be held on 26.07.2021. The petitioner pleads that she had inadvertently clicked category No.19, instead of category No.10, while filling up the online option in the application form. When the said mistake came to her knowledge, immediately thereafter, she approached the competent authority. However, she is not being allowed to change her category. Notwithstanding, that no prejudice would be caused to anyone since the written examination is yet to be held. In the premise, the petitioner shall be allowed to participate in the written examination on provisional basis by considering her option under category 10 read with sub-category for Persons with Disabilities.

However, in case the result is declared during pendency of the petition, the same shall be placed on the Court file, in a sealed cover, on or before the next date of hearing.”

4. *Apropos, it was expected of the respondents to be conscious of the observations made hereinabove while dealing with the case and filing return. Perusal of the return reflects that not only is there a stoic silence maintained by the Commission but on the other hand, the defence taken is completely on the lines of beaten track saying that as prescribed in the application form, the category once opted cannot be allowed to be changed.*

5. For better appreciation, para 7 of the written statement wherein it is so stated is reproduced hereinbelow:-

7. *That the contention of the petitioner in this writ petition is to consider and accept the application form of the petitioner (Annexure P-2) under Category no.10 for the post of staff Nurse and sub category PwD (Persons with disabilities) under Health Department instead of Category No. 19 for the post of staff Nurse (General category) under Employee State Insurance Health Care, which has been inadvertently submitted by the petitioner in her application form.*

In this regard, it is submitted that it is clearly written in the advertisement that no change in the application form will be entertained by the Respondent Commission at any stage once the online application form is submitted. Moreover, it is pertinent to mention here that the Disability Certificate (Annexure R-3/1)

which is attached by the petitioner with this writ petition is of after cut-off date i.e. 21.12.2020 and the last date of online submission of application form was 09.10.2019, therefore the same cannot be considered according to the terms and conditions of the advertisement.

Further it is pertinent to mention that the petitioner is an educated person and she is supposed to be vigilant while filling the application form. She must have gone through all the important and general instructions before filling the application form and if she is unable to fill her application form properly then how can she be suitable for such post like staff nurse as the person have to be very cautious at every stage in health department. Therefore, the petition of the petitioner is likely to be dismissed on the said grounds. Such lackness on part of a candidate who is aspirant for the post of Staff Nurse cannot be negligent at all. The person who does not even know the category under which she has to apply no serious services can be expected from her and giving her any chance would amount to injustice to the patients and their health.”

6. In the aforesaid background adverting first to the second ground i.e. Whether it is indeed a case of option of change of category and/or inadvertence in exercise of option to click the category while filling up the online application and correction of inadvertent error.

7. The answer to part (b) of the question posed in para 2 above is not far to seek in view of the fact that petitioner immediately on realizing the mistake, had represented to the Commission for carrying out the necessary corrective measures. Notwithstanding, neither the Commission took any steps nor it intimated the petitioner as to why corrective measures were not being undertaken. On the other hand, it would be safe to assume that at a very nascent stage of the selection process when applications were being processed and finalized and the eligibility was being determined, it would have been far too prophetic on the part of the Commission to predict that the petitioner already knew her result and she opted for category No. 10 as she would not have made it in the same and that only if she opted for category

No.19 she would be successful. At that stage, petitioner had not even taken the written examination and was not even aware of her performance and/or result as to whether the cut-off marks would be higher or lower in the category 19 vis-à-vis category 10. Only perhaps with the far sight of Nostradamus, if at all she could have predicted the same.

8. Be that as it may, it is safe to assume that the mistake committed was purely inadvertent, since petitioner did not have a computer of her own and was dependent on a kiosk in the rural area, where she is residing and third party was filling up the online application form. As regards her disability, it is also not controverted that the same is not genuine. In any case, it is nobody's case that petitioner became deaf and dumb after the cut-off date.

9. Adverting now to part (a) of the question whether the petitioner can be allowed to opt for change of category, as has been the ground of principal opposition by the respondents

10. In view of the answer to part (b) of the question in favour of the petitioner, I have no hesitation to hold that it is not a case of option for change of category. Petitioner belongs to category No.10, being deaf and dumb. There is no reason as to why she would opt for category No.19, where she would have been rendered, in any case, completely ineligible. Petitioner was fully well aware of such harsh stakes and it defies complete logic that knowing the same she would still opt for category No.19, which admittedly is meant for General Category under Employees State Insurance Health Care, to which petitioner does not belong.

11. Learned counsel for the petitioner relies on a Division Bench judgment dated 22.02.2019 rendered by this Court in LPA-320-2019 titled “**Haryana Staff Selection Commission through its Secretary vs. Sarla and others**”, wherein Krishna Murari, C.J.(as his Lordship then was in this Court) speaking for the Bench held as below:

5. We cannot lose 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 online he has to be dependent upon the cyber cafes 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.”

12. On the other hand, learned State counsel relies on Apex Court judgment dated 29.08.2019 passed in Civil Appeal No.6696 of 2009 titled “**Rajasthan High Court Jodhpur and another Vs. Neetu Harsh and another**”, and “**J&K Public Service Commission Vs. Israr Ahmad**” reported in (2005) 12 SCC 498, judgment dated 22.05.2018 passed by this Court in CWP No.15119-2016, titled “**Shashi Vs. State of Haryana and others**”, and another judgment dated 22.05.2020 rendered in CWP No.21872-2018, titled “**Vinay Sharma Vs. State of Haryana and others.**”

13. As regards the judgments relied upon by the learned State counsel for the contention that the category cannot be changed, having seen the same, I am of the view that none of this is applicable in the present case. I

may hasten to add here that there is no quibble about the proposition of law

that category cannot be changed. However, in view of my discussion above to the effect that this is not a case of option for change of category, but for correction of mere inadvertence. Reliance placed by learned State counsel on the judgments *ibid* is thus misplaced.

14. As an upshot of the discussion, the writ petition is allowed. Since vide interim order dated 10.05.2022, one post of Staff Nurse was kept vacant in the category under which the petitioner had applied, it is expected of the respondents to process the case of the petitioner in category No.10 and if found meritorious, she be accorded the benefit of her performance and necessary consequential steps be taken *qua* the same including issuance of appointment letter. If appointed, the petitioner will not be entitled to any part monetary benefits, however, she will be given notional seniority and the slot on the seniority list as per her performance in the merit list. Needful exercise be carried out within a period of 2 months from today.

15. Allowed in the aforesaid terms.

16. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

November 30, 2022

Vandana

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