

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(233)

CWP No. 14238 of 2019 (O&M)
Date of Decision : 10.11.2022

Santosh Kumari

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sumit Sangwan, Advocate for the petitioner.

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

Harsimran Singh Sethi J. (Oral)

CM-2635-CWP-2020

Present application has been filed for placing on record replication to the written statement filed on behalf of respondents No. 1 and 3.

Application is allowed and replication to the written statement filed on behalf of respondents No. 1 and 3 is taken on record.

CWP-14238-2019

In the present petition, the grievance of the petitioner is that though, she has not applied in the Freedom Fighter Category, but as certain posts of PGT (Mathematics), as advertised in the reserved category of Ex-serviceman remained vacant and those unfilled seats are to be filled from

Freedom Fighter Category, though the petitioner never applied in the said category of Freedom Fighter but she be considered for appointment against those posts as she fulfilled the eligibility for appointment in Freedom Fighter Category and appropriate direction be given to the respondents in this regard.

The facts leading to the filing of the present petition are that respondent No. 2 issued an Advertisement No. 4 of 2015 dated 28.06.2015 advertising 6874 posts of PGT in various subjects. The last date for applying was 21.09.2015. Out of 6874 posts, 1427 posts were to be filled in the discipline of Mathematics and out of 1427 posts, 62 posts each were reserved in the category of SBC as well as Ex-serviceman.

As per the averments made in the petition, petitioner applied in the category of SBC against 62 posts reserved. Petitioner appeared in the written examination and cleared the same to be called for interview but in the meantime, a challenge was raised with regard to the reservation of seats in favour of SBC category and keeping in view the various legal hurdles, the respondents ultimately decided that 62 posts reserved in the SBC category, will be filled up in the General Category.

Keeping in view the decision that SBC category was converted into General Category, the petitioner was considered eligible but she did not had enough marks to be selected in the General Category as, the last candidate selected in the General Category was having 150 marks, which the petitioner failed to secure so as to become eligible to be selected against the said category.

62 posts reserved for Ex-serviceman category could not be

filled up completely due to the non-availability of the eligible candidate and as per the advertisement, any post in the Ex-serviceman category remaining unfilled will be filled from the reserved category of Freedom Fighter in case anybody had applied for the same. Though, the petitioner never applied in the category of Freedom Fighter but as certain posts in the Ex-serviceman Category remained unfilled, petitioner is raising her claim qua the said post on the ground that she also fulfilled the criteria for the reserved category of Freedom Fighter hence, she be considered for appointment against the vacant seats in the Ex-serviceman Category, which are now to be filled in Freedom Fighter Category.

After notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that the petitioner initially applied in the reserved category of SBC, where after the posts reserved for SBC Category were converted to General Category and she failed to get selected keeping in view the marks secured by her as she had secured lesser marks than the last candidate to be selected in the General Category.

As per the reply, the petitioner never applied in the category of dependent of Freedom Fighter hence, the claim of the petitioner that she should be considered against the vacant posts of Ex-serviceman Category, which are required to be filled by the dependent of Freedom Fighter, is liable to be rejected as, a candidate while filling the form has to choose a category in which he/she is competing and the candidate was also required to upload the documents along with the application form showing their eligibility to compete in the reserved category in which they are claiming consideration. Hence, as the petitioner never applied under the dependent

of Freedom Fighter category as well as that the petitioner never appended any document to claim the benefit under the said category, now after the conduct of the examination, the petitioner cannot be allowed to claim that as she fulfilled the requirement for competing in the category of dependent of Freedom Fighter, she should be considered eligible without there being any request from the petitioner to the said effect while filling up the form and without uploading the required documents.

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

The facts, which have been narrated hereinbefore, are not in dispute. It is not in dispute that petitioner had applied against 62 posts reserved for SBC Category. It is also not in dispute that during the selection process, the seat reserved in the said reserved category of SBC were converted into General Category and the claim of the petitioner has been considered in the General Category for selection and appointment to the post of PGT (Mathematics). It is a conceded position that petitioner could not secure enough marks to be selected in the General Category as the petitioner has lesser marks than the last selected candidate in the General Category. Therefore, the petitioner has already exhausted the claim in the Category she was found eligible.

With regard to the prayer of the petitioner that she should be considered against the vacant post of the Ex-serviceman Category, which are to be filled from the dependent of Freedom Fighter, the same can only be done keeping in view the terms and conditions mentioned in the advertisement. As per the advertisement, a candidate applying in the

reserved category including the category of dependent of Freedom Fighter, is required to clearly mention the said category in the application form and the said candidate is also required to attach the certificate supporting the said claim along with the application form.

Learned counsel for the petitioner concedes the said fact that petitioner never applied in the category of dependent of Freedom Fighter and she never attached any document supporting her claim in the said category. The only claim is that as certain posts are lying vacant in the Category of Ex-serviceman, which are now to be filled from category of dependent of Freedom Fighter, despite not having applied in the Category of dependent of Freedom Fighter, merely because the petitioner fulfilled the requirement to compete in the category of dependent of Freedom Fighter, her claim should be considered.

No claim of a candidate can be considered in the category in which he/she has not applied for or is not competing even if he/she is eligible to claim any benefit of the same. In order to get benefit of any reserved category, the candidate is required to fulfill the terms and conditions of the advertisement such as filling of the application form depicting the application in a particular reserved category as well as uploading the documents require to show the eligibility to compete in the said reserved category. In the default of fulfilling the requirements of the terms and conditions of the advertisement as noticed here-in-before, no benefit can be given to a candidate to change his/her category and that too after the competition is over.

The question raised in this petition 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 also 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 EBPG 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 EBPG 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, once the petitioner did not apply in the category of dependent of Freedom Fighter and did not comply with the terms and conditions envisaged for competing in the category of dependent of Freedom Fighter, merely that the petitioner fulfilled the eligibility in the said category, will not make her entitled for the grant of benefit of

considering her against the vacant post of Ex-serviceman category, which are to be filled from the category of dependent of Freedom Fighter. The facts coupled with the law cited hereinbefore dis-entitle the petitioner to claim the benefit as being claimed in the present petition.

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

Writ petition stands dismissed.

November 10, 2022
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No