

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

CWP No. 4033 of 2017 (O&M)
Date of Decision : 16.11.2022

Sudhir Kumar Sharma

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aditya Yadav, Advocate for the petitioner.

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

Harsimran Singh Sethi J. (Oral)

CM-3370-CWP-2017

Present application has been filed seeking amendment in the prayer clause.

In view of the averments made in the application, which is duly supported by an affidavit, the same is allowed.

CWP No. 4033 of 2017

The present petition has been filed with a prayer that the petitioner, who actually belongs to BC-A category, be considered under the said category for appointment to the post of TGT (English) as advertised vide Advertisement No. 9/2015 instead of the category of Scheduled Caste, wherein the respondents have considered his claim and petitioner has not

been selected keeping in view the merit obtained therein.

As per the facts mentioned in the petition, the respondent-department advertised 1035 posts of TGT(English) vide Advertisement No. 9/2015 dated 23.07.2015 (Annexure P-1). The last date for filling up the application form was 21.09.2015. As per the averments made, the petitioner had filed an application for being considered under BC-A category. As per the advertisement, there were total 341 posts, which were to be filled in Mewat Cadre and out of the said 341 posts, 45 posts were to be filled from the category of BC-A.

As per the advertisement, the recruitment was to be made on the basis of the written test, for which the petitioner was issued Roll No. as well as Admit Card and keeping in view the said Admit Card, the petitioner appeared in the recruitment test, which was held on 20.12.2015. As per the allegations of the petitioner, despite the fact that petitioner had applied under the BC-A category for being considered for appointment to the post of TGT(English) in Mewat Cadre as advertised vide Advertisement No. 9/2015 but, the petitioner was issued Roll No. under the reserved category of Scheduled Caste and claim of the petitioner was being considered under the Scheduled Caste category instead of the correct category in which the petitioner intended to compete i.e. BC-A. Hence, the petitioner approached the respondents for the correction of his category from Scheduled Caste to BC-A.

The result of the recruitment test was declared by the respondents on 19.02.2017 and the petitioner was found meritorious enough to be called for interview in the reserved category of Scheduled Caste.

After the said development, the petitioner again approached the respondents for correction of his category from Scheduled Caste to BC-A.

During verification of the documents, the respondents found that the petitioner was not eligible in the category in which he was competing hence, as the petitioner did not had the requisite document to compete under the reserved category of Scheduled Caste, the petitioner was not allowed to proceed further in the recruitment process, which action of the respondents is under challenge in the present petition.

As per the petitioner, he was entitled to compete under the reserved category of BC-A hence, the prayer of the petitioner is for issuance of appropriate direction to consider his claim in the said category and select and consequently appoint him keeping in view his merit.

After notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that the claim that the petitioner intended to compete in BC-A category and he had wrongly applied in the reserved category of Scheduled Caste is an after thought and the prayer of the petitioner that he should be allowed to compete in BC-A category, may kindly be declined. As per the reply, the petitioner had filled the application form, wherein, he had filled his category as Scheduled Caste. The respondents attached the application form of the petitioner to support the said averment. The respondents further submitted that the Roll Number was issued to the petitioner being a candidate belonging to reserved category of Scheduled Caste and further even during the scrutiny, the petitioner was being considered as a candidate belonging to the reserved category of Scheduled Caste. It has further been mentioned by the respondents that no

certificate of BC-A category was ever attached by the petitioner along with the application form so as to support the averment that mentioning of his category as Scheduled Caste was a typographical error whereas, the documents attached by the petitioner were of BC-A category hence, in the absence of any document or certificate attached along with the application form showing that the petitioner intended to compete in the reserved category of BC-A, the prayer of the petitioner for considering him in the BC-A category instead of Scheduled Caste may kindly be declined.

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

The prayer of the petitioner is for considering him in the BC-A category instead of the Scheduled Caste Category for competing for selection/appointment to the post of TGT(English). Learned counsel for the petitioner conceded the fact that while filling the form, the petitioner had mentioned his category as Scheduled Caste. Not only this, learned counsel also conceded the fact that no document showing that the petitioner belongs to the reserved category of BC-A, was ever attached by the petitioner along with the application form. That being so, the claim of the petitioner is to be considered for the change of the category keeping in view the terms and conditions of the advertisement, a copy of which has been appended as Annexure P-1. As per the terms and conditions of the advertisement, under the heading “document to be uploaded with the application form”, a scanned copy of the certificate showing that the candidate belongs to the reserved category in which he/she is applying, duly issued by the competent authority has to be uploaded. It is a conceded position that the petitioner never

uploaded any document showing that he belong to the reserved category of BC-A. In the absence of the document being uploaded, no benefit of the same can be given to the petitioner when the petitioner and the respondent-Commission are disputing other facts. The intention, as being projected by the petitioner that he intended to compete in the reserved category of BC-A instead of Scheduled Caste is not being proved from the conduct of the petitioner, wherein, it is conceded that the petitioner never attached any document claiming the benefit under the reserved category of BC-A. Hence, the assertion of the petitioner that he intended to compete in the reserved category of BC-A instead of Scheduled Caste, cannot be accepted.

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 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 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.”

A bare perusal of the above would show that a candidate cannot be allowed to change his category after competing. Furthermore, the benefit of BC-A category cannot be given to the petitioner in the absence of such claim in the application form and without there being any document being attached by the petitioner along with the application form to support the said claim. Therefore, the prayer of the petitioner as raised in the present petition is not sustainable and cannot be accepted and is liable to be rejected.

Dismissed.

November 16, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No