

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(217)

CWP No. 30245 of 2018
Date of Decision : 29.11.2022

Gurpreet Kaur

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner.

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

Harsimran Singh Sethi J. (Oral)

In the present petition, the grievance being raised by the petitioner is that though she belongs to the reserved category of BC-A but she is being considered in the general category for consideration of her claim for selection and consequent appointment to the post of PGT (Mathematics) as advertised vide Advertisement No. 4/2015.

As per the petitioner, the respondents issued an Advertisement No. 4/2015 inviting application for selection to the post of PGT (Mathematics). As per the petitioner, though she wanted to apply in the BC-A category but she applied in the General Category for the said post. Petitioner was issued Roll Number, which clearly depicted that she is being considered in General Category. Petitioner appeared in the written

examination and her Roll Number also appeared in the General Category. Petitioner was called for interview and at the time of the interview, the petitioner for the first time, made a representation that she intended to compete in the category of BC-A but had wrongly applied in the General Category and, therefore, her category be changed. Respondents did not decide the said representation and ultimately, the petitioner served the respondents a legal notice directing them to change her category for considering her claim for the post of PGT (Mathematics) from General Category to BC-A. As nothing was done, the petitioner filed the present petition with a prayer that respondents be directed to change her category from General Category to BC-A and, thereafter, consider her claim for selection and appointment to the post of PGT (Mathematics).

After notice of motion, the respondents have filed the reply. In the reply, the respondents have controverted the claim of the petitioner. As per the respondents, the Advertisement was issued by the respondents on 28.06.2015 and the last date for filling up the form was 21.09.2015. As per the respondents, the petitioner applied in the General Category and the fact that the petitioner intended to apply in the reserved category of BC-A but inadvertently applied in the General Category, is incorrect for the reason that the petitioner did not attach any certificate showing the proof that she belongs to the reserved category of BC-A. Further, as per the respondents, the certificate of BC-A, which the petitioner submitted even at the time of interview was dated 09.06.2016, which is much after the last date of filling up the application form, which show that on the date when the petitioner filled up her application form, she did not had the requisite certificate to

prove that she belongs to the reserved category of BC-A.

I have heard learned counsel for the respondents and have gone through the record with his able assistance.

It is a settled principle of law that a candidate, who applies in a particular category, is entitled to compete in the said category. In the present case, the conceded facts are that the petitioner applied in the General Category for competing against the post of PGT (Mathematics) in pursuance to the Advertisement No. 4/2015 (Annexure P-1). That being so, petitioner cannot claim that since she belongs to the reserved category of BC-A, she should be considered in that category and that too only when the selection process was at fag end.

Further, the plea of the petitioner that she wanted to compete in the BC-A category but was prevented by the circumstances from applying in the reserved category of BC-A hence, the petitioner be considered in the reserved category of BC-A. The said prayer is to be seen on the basis of the facts of the present case. The last date of filling up the form in pursuance to Advertisement No. 4/2015 dated 28.06.2015 (Annexure P-1) was 21.09.2015. It was duly mentioned in the Advertisement that in case a candidate is seeking benefit of reservation, the certificate on the basis of which reservation is being claimed, has to be uploaded along with the application form.

In the present case, it is a conceded fact that on the date when the petitioner filled up the application form, she did not had the certificate proving that she is entitled to claim benefit of reservation under the BC-A category. The said certificate was issued to the petitioner on 09.06.2016 i.e.

after 9 months of the last date for filling up the application form, therefore, the averment that the petitioner intended to fill the application form in the BC-A category but wrongly filled General Category is an after thought.

Further, after the petitioner filled up the form, she was issued Roll Number, which depicted the fact that the petitioner's candidature was to be considered against posts for General Category. It is only at the time of interview keeping in view the marks secured by the last candidate in the General Category as well as marks secured by a candidate competing in BC-A category, the petitioner being hopeful of succeeding in BC-A category, filed representation. In case, grievance of the petitioner was genuine that she inadvertently filled up the form in General Category instead of BC-A category, at the time of receiving the Roll Number itself, the petitioner would have represented the respondents to change her category, which admittedly, the petitioner only did at the time of interview when the selection process was at the fag end.

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 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.”

A bare perusal of the above would show that a candidate cannot be allowed to change his/her category after competing. Furthermore, the benefit of BC-A category cannot be given to the petitioner in the absence of documents being attached by the petitioner along with the application form despite clear instructions in the advertisement. 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 29, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes