

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101+210)

CWP No. 30451 of 2018 (O&M)
Date of Decision : 23.11.2022

Monika Yadav

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sachmeet Singh Randhawa, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-18253-CWP-2022

Present application has been filed for placing on record
additional affidavit of the petitioner.

Application is allowed and additional affidavit of the petitioner
is taken on record.

CWP-30451-2018

In the present petition, the grievance being raised by the
petitioner is that her claim for appointment to the post of PGT (Chemistry)
has been considered in BCB Category whereas, the petitioner was fully
eligible for the benefit under the Ex-serviceman Category also hence, as the
petitioner has more marks than the last selected candidate in the Ex-

serviceman Category for appointment to the post of PGT (Chemistry), she be selected in the said category and be appointed as PGT (Chemistry).

The facts leading to the filing of the present petition are that respondent-department issued an advertisement for appointment to the posts of PGTs in various subjects as advertised vide Advertisement No. 4/2015 dated 28.06.2015 (Annexure P-1). The last date for submission of the application form was 21.09.2015. Keeping in view the certain grievances raised by the candidates of not being able to fill up the application form online, the Commission extended the last date up to 12.10.2015.

Petitioner claims that the petitioner, whose father was an Ex-serviceman, was entitled for the benefit under the Ex-serviceman Category but as the petitioner did not had the relevant certificate to prove the eligibility as the dependent of Ex-serviceman, she applied for the post of PGT(Chemistry) under the BCB Category only. Keeping in view the application, the petitioner was issued the Roll Number, which was also in the BCB Category and petitioner appeared in the recruitment test as a BCB Category candidate. Petitioner was called for scrutiny of the documents after appearing in the recruitment test and the claim of the petitioner was being considered in the BCB Category only keeping in view the application form filled up.

After the petitioner could not obtain enough merit to get selected under the BCB Category, the petitioner raised a grievance that as she, up to the date of interview, had already been issued eligibility certificate as a dependent of Ex-serviceman, the category of the petitioner for consideration for selection and consequent appointment be treated as

Ex-serviceman instead of BCB Category. The said prayer of the petitioner has not been accepted by the respondents, which has led to the filing of the present petition.

After notice of motion, the respondents have filed the reply, wherein, the respondents have stated that the petitioner applied in BCB Category for the post of PGT (Chemistry) in which category, the claim of the petitioner was considered all along. The respondents have attached attendance sheet for the scrutiny of the documents, wherein the name of the petitioner was also mentioned in BCB Category and no such grievance was raised by the petitioner at the time of the scrutiny of the documents that the petitioner ever intended to compete in the reserved category of Ex-serviceman but was being wrongly considered in the BCB Category. As per the respondents, the petitioner never attached any document proving her eligibility in the reserved category of Ex-serviceman as, the candidates, who were claiming the benefit under a particular reserved category, were required to upload the scanned copy of the certificate issued by the competent authority to support his/her claim with the application form but the petitioner never uploaded any document proving that she belonged to Reserved Category of Ex-serviceman hence, at the fag end of the selection, the category of the petitioner cannot be changed keeping in view the terms and conditions of the advertisement.

There is no replication to the written statement filed on behalf of the respondents.

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

In paragraph 5 of the writ petition, the petitioner has conceded a fact that up to the last date of the application form, as the petitioner did not had the eligibility certificate certifying that she is a dependent of Ex-serviceman, she had applied in the reserved category of BCB. That being so, it is a conceded position that the petitioner did not had the eligibility to apply under the category of Ex-serviceman up to the last date of application form. It is a conceded position that even up to the date of scrutiny of documents, the petitioner did not had any certificate issued by the competent authority certifying her to be dependent upon Ex-serviceman. It is only on the date of the interview, the petitioner claims that she had a valid certificate declaring her as a dependent upon Ex-serviceman.

Under these circumstances, once on the last date of application form, the petitioner herself has conceded that she did not had a valid certificate from the competent authority describing her to be a dependent upon Ex-serviceman, no benefit as being claimed in the present petition that her candidature be considered in the Ex-serviceman Category for selection and appointment to the post of PGT (Chemistry) can be accepted.

Further, as per the terms and conditions of the advertisement, certain documents were to be uploaded along with the application form. As per Note-2 to the part dealing with “Procedure/Instructions for Filling of Application Form”, of the said advertisement, a scanned copy of valid eligibility certificate issued by the respective Zila Sainik Board is to be uploaded in case, a candidate is claiming to be dependent upon Ex-serviceman. Once, there is a condition of uploading of a certificate of dependency upon Ex-serviceman to become eligible to be considered under

the Ex-serviceman Category and concededly, the petitioner has not fulfilled the said condition due to the fact that there was no certificate issued in her favour certifying her to be dependent by the competent authority up to the last date of filling application form hence, the petitioner cannot claim the benefit in the reserved category of Ex-serviceman not only on the ground that she never applied under the said category but even on the ground that the petitioner did not fulfill the requisite criteria as prescribed under the advertisement for claiming the benefit of reservation being a dependent of Ex-serviceman. Hence, the claim of the petitioner is contrary to the terms and conditions of the advertisement, which are sacroscant, hence claim of the petitioner cannot be accepted.

The question of law that whether a candidate can be allowed to change the General Category has already been settled by the 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 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/her category after competing. Furthermore, the benefit of Ex-serviceman category cannot be given to the petitioner in the absence of such claim in the application form and without there being any document 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 23, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No