

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-6639-2018

Date of decision: 31.05.2022

ALTAF HUSSAIN

...Petitioner

versus

STATE OF HARYANA & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mohammad Arshad, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing respondents No.2 and 3 to consider his candidature under BC(A) category instead of BC (B) for the post of Heavy Vehicle Driver as the petitioner belongs to Faquir caste which comes under BC(A) category.

2. On 06.02.2020, following order was passed by my learned sister Ritu Bahri, J. who was then in seisin:-

“Petitioner has participated in the selection process for the post of Heavy Vehicle Driver. Final result has been declared on 03.06.2019. Petitioner belongs to BCB category. Last candidate under the BCB category has secured 114 marks.

Petitioner's result has been produced in Court. A perusal of this result shows that petitioner has secured 112 marks in the written examination and 16 in viva voce, total 128 marks. Marks obtained by the petitioner are higher than the last candidate selected. Last candidate under the BCA category has secured 104 marks.

The result is being returned back.

Learned State counsel seeks time to assist the Court.

Adjourned to 29.06.2020.”

3. Concededly, the petitioner has thus scored more marks than last selected candidates in both the categories, be it BCA or BCB. Even if he is

held to be rightly ineligible in BCB there is nothing on record to show as to how he is ineligible for BCA category. Neither has his candidature been rejected in BCA category as is borne out from stand taken in para 3 of written statement stating that “*petitioner was called for scrutiny of documents with other candidates vide notice Annexure P-5, where the petitioner was declared not eligible due to mismatch of his category at the time of scrutiny of documents and hence was not shortlisted for interview.*” It is thus simply a case of mismatch of what he opted online with click of mouse versus what was appended as a proof of his backward class credentials.

4. Reliance placed by learned State counsel on the Division Bench judgment dated 14.10.2019 rendered in LPA No.1454 of 2019 titled “***Haryana Staff Selection Commission Vs. Preety Poswal***”, is misplaced as is borne out from para 6 thereof itself since in that case a candidate had scored lesser marks in the written examination than the last selected candidate in the same category therefore, in the circumstances it was held that petitioner therein was not entitled to participate in the interview. Interview was carried out on provisional basis under the orders of this Court but the same did not result in change of his marks in the written examination which remained the same as on the cut-off date, therefore to suggest or argue as being canvassed by learned State counsel that on the cut-off date petitioner shall not be eligible under his own category, is completely out of context.

5. In the aforesaid premise, writ petition is disposed of with an expectation that the respondents shall consider the candidature of the petitioner in BCA as per his performance/merit in the category subject to fulfillment of eligibility conditions and if found entitled then issue

appointment letter in accordance with law, within 30 days from today, subject to availability of vacancy, failing which he shall be adjusted against next future vacancy as and when available. He shall be entitled to seniority with effect from the same date his counter-parts were recruited but no monetary benefits.

(ARUN MONGA)
JUDGE

May 31, 2022
Vandana

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