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2023:PHHC:166163

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5289-2019
DECIDED ON: 14.11.2023

SONU RAM

.....PETITIONER

VERSUS

STATE OF HARYANA & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Akhil Saini, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Article 226/227 of the Constitution of India has been invoked to issue a writ in the nature of Mandamus to direct the respondents to make the correction of category in the application form of the petitioner from General Caste category to Economically Backward Person in General Caste category with a further prayer to incorporate the name of the petitioner in the merit list of General category of Economically Backward Person in General Caste.

2. Learned counsel for the petitioner contends that the respondent No.2 on 20.02.2016 advertised the 2426 posts of Shift Attendant in the UHBVNL/HVPNL/DHBVNL of State of Haryana including 269 posts of EBPG category (Annexure P-1) and the last date to apply for the said post was 04.04.2016.

Petitioner being the eligible Candidate, applied for the said post under the general category and annexed all the Educational qualification certificates with his application form (Annexure P-2).

3. He further submits that it was due to the clerical mistake of the cyber cafe, the category of the petitioner was wrongly mentioned in the online submission of application form mentioned as General Category instead of Economically Backward Person in General Caste category. The copy of certificate issued under said category is Annexure P-3. When the petitioner came to know about the clerical mistake committed by the cyber cafe, petitioner then by moving an application(Annexure-P4) approached the respondent no.2 and requested them to make the necessary correction. Moreover he urges that the EBPG certificate of the petitioner was issued by the competent authority much before the issuance of publication of said advertisement.

4. The petitioner was issued roll No.1301645060 under General Category instead of actual category of the petitioner on 16.05.2016 (Annexure P-5)by the respondent no.2. He again approached the respondents no.2 by moving an application (Annexure P-6) dated nil but no heed was paid to his grievance. On 29.05.2016, the written examination was conducted by the respondent no. 2 and petitioner appeared in the examination. As per the calculation of the petitioner he attempted 26 correct answers and in that manner he secured 52 marks. Copy of OMR Sheet and question paper are annexed as Annexure P-7 and Annexure P-8.

5. Finally the result of the written examination was declared on 30.04.2017and the name of the petitioner was not included in the list . The copy of result is annexed as(Annexure P-9). And as per the cut off list the last selected candidate under the EBPG has secured 50 Marks and petitioner has secured 52 marks making him more eligible than the last selected candidate. Then the

petitioner again approached the respondent no.2 to make the requisite correction in the application form and the respondent no.2 gave him assurance that if the petitioner found eligible then his name will be included in the list of successful candidates. Thereafter, the interview of the successful candidate was conducted by the respondent no.2 but the petitioner till date has not been granted any relief.

6. On the other hand, learned State counsel vehemently opposes the prayer made by the petitioner and contends that the respondent-Commission had declared the result of written examination on 30.04.2017 and issued a notice for scrutiny of documents from 05.05.2017 to 11.05.2017, subject to fulfillment of their eligibility conditions as per advertisement and service rules vide notice dated 30.04.2017.

7. It is further submitted that the petitioner has secured 50 marks under the general category. And the last selected candidate under the general category who has been called for the interview has secured 70 marks thus the last candidate being more meritorious and eligible has been rightly called and petitioner has secured less marks thus has not been called.

8. As regards to the another contention of the petitioner regarding the change of the category from General Caste category to Economically Backward Person in General Caste category the advocate appearing on behalf of the board submits that petitioner submitted his application form in the year 2016. Thereafter, vide notice dated 30.04.2017, the commission declared the result of the written examination and called the shortlisted candidates for scrutiny of documents. He filed present petition in the year 2019 and as per Legal Maxim “**Vigilant bus Non Dormientibus Jura Subveniunt**” means the law assists only those who are vigilant and not those who sleep over their rights. As the petitioner filled present writ

petition after three years from his stated grievance. Furthermore the petitioner has not mentioned anything about the delay in filling the present writ petition.

9. Heard respective counsel for the parties.

10. The main grouse of the petitioner is regarding the change of category from the General Caste category to Economically Backward Person in General Caste category. Regarding this very contention the relevant point that needs to be considered is that petitioner applied for the post of shift attendant vide advertisement dated 20.02.2016 and inadvertently due to clerical mistake the category of the petitioner got filled as general category whereas petitioner wanted to submit his application under EPBG-General when he got to know this he approached the respondent department by moving an application (Annexure-P4) and representation (Annexure P-6) dated nil which doubts the case of the petitioner. Moreover tentative result was declared on 30.04.2017 and thereafter final result on 08.03.2019 and petitioner filed this writ petition in the year 2019 and no explanation has been put forth by the petitioner that as to why he kept silent for a period of three years meaning thereby that the petitioner is not approaching this court with clean hands.

11. Furthermore, the petitioner is estopped by his own conduct as he has mentioned 'General' against the relevant column of category while filling the online application form and now he is bound by terms and conditions of advertisement and undertaking given by him and petitioner cannot be considered against EBPG category at this stage as the final result for the post in question has already been declared on 08.03.2019 and recommendations has been made to the concerned departments.

12. In view of the above submissions made and in light of the judgement of the Apex Court passed in *J & K Public Service Commission Vs. Israr Ahmad (2005) 12 SCC 498* wherein it has been held that:-

"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 has 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 not 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."

13. Petition stands dismissed being devoid of merits.

(SANDEEP MOUDGIL)
JUDGE

14.11.2023
Meenu

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