

CWP No.8821 of 2023

[1]

2023:PHHC:062272

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

115

CWP No.8821 of 2023

Date of decision:01.05.2023

Ashish Sihag

... Petitioner

Vs.

Haryana Staff Selection Commission

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Jasbir Singh Mor, Advocate
for the petitioner.

Mr. Pankaj Middha, Addl.A.G., Haryana
for the respondent.

SUVIR SEHGAL, J. (Oral)

1. By way of present petition filed under Articles 226/227 of the Constitution of India, petitioner has *inter alia* sought issuance of a writ in the nature of mandamus directing the respondent to correct the category of the petitioner as EWS (Economically Weaker Section) from General Category.
2. Brief facts may be noticed. Vide notification dated 10.09.2021, (Annexure P-5), Government of Haryana introduced a Common Eligibility Test (CET) to be conducted by Haryana Staff Selection Commission for recruitment to Group-C and D posts. There was a requirement for mandatory registration with the Commission. Petitioner got himself registered on the portal of the commission (Annexure P-6) in the General category. Vide advertisement bearing CET 01-2022 (Annexure P-7), Commission informed the desirous candidates about the holding of CET and online applications

were invited from them on or before 08.07.2022. This date was subsequently extended to 10.07.2022. Petitioner filled the application form and appeared in the eligibility test. As per the result declared on 10.01.2023, (Annexure P-10), petitioner secured 46.7993126 marks and was declared not qualified in the General category.

3. Counsel for the petitioner contends that the petitioner, who was desirous of being appointed as a Veterinary Livestock Development Assistant (VLDA) belongs to EWS category. Although, counsel submits that the petitioner possesses EWS certificate for the year 2019-2020 (Annexure P-1), but due to COVID, subsequent certificates were not issued and when he was given a certificate for the year 2021-2022 on 27.09.2021, (Annexure P-2), he submitted representation dated 05.04.2023 as well as a notice of demand of justice on 06.04.2023 (Annexures P-13 and P-14), but they have not been attended to. He submits that in the meantime by advertisement No.3/2023 (Annexure P-12), Commission has issued notice informing the successful candidates that written examination/skill test is to be held and they should apply for the same. Counsel submits that if the petitioner is permitted to change his category to EWS, he will be considered as eligible as the minimum requisite marks for an EWS candidate have been prescribed as 40%. He has placed reliance upon the judgment of Hon'ble Supreme Court in **Ram Kumar Gijroya vs Delhi Subordinate Services Selection Board and Another (2016) 4 SCC 754** as well a judgment of a Division Bench of this Court in **CWP No.23185 of 2014 titled as Usha Dhillon vs State of Haryana and others, decided on 15.12.2014**

(Annexure P-16) to urge that any mistake committed at the time of online submission of application form is *bonafide* and the same deserves to be corrected.

4. On basis of advance copy having been served upon the Commission, learned State counsel has assisted the Court after getting instructions. He has argued that no change in category can be permitted at this late stage. Reliance has been placed by him upon instructions mentioned in the advertisement as well as upon the judgments passed by the Hon'ble Supreme Court and this Court.

5. I have considered the respective submissions made by counsel for the parties and examined the material placed on record.

6. Conceded position is that the petitioner had got himself registered, applied and appeared for eligibility test as a General category candidate. Even though he claims to have acquired the EWS certificate in September, 2021, the same would not come to his aid. There is a categorical condition in the advertisement that category once filled in cannot be permitted to be changed. Condition is reproduced as under.

“10.8 Candidates are advised to fill their application form carefully and correctly such as Name, Father's/Mother's name, Date of Birth, Marital Status, Category, Qualification, marks obtained, passing year, photo, Signature, socio-economic criteria details, fee & other details etc. Candidates are advised to check the spellings as per documents. No request for change of any particular on the online application

form shall be entertained by the Haryana Staff Selection Commission after submission of application form. Candidate will be responsible for any mistake in the data of application form and fees paid by him/her.” (emphasis added)

7. Still further, Condition No.7.3 in the advertisement (Annexure P-7) provides as under

“7.3 Crucial date for claim of SC/BCA/BCB/EWS/PwD/BSM/ESP status or any other benefit where not specified, otherwise, will be the cut-off date.”

8. It is evident from the above that not only the change of category after the submission of the application form is barred but the candidate must possess the requisite certificate before the cut-off date. Both these conditions would prevent the petitioner from seeking a change in the category at this late stage. Furthermore, Condition No.15.2 requires the mandatory uploading of the scanned copy of the EWS certificate, which naturally has not been done by the petitioner.

9. It is well settled that if a candidate applies under a specific category he cannot be permitted to change his category during the selection or midway during the recruitment process. Hon’ble Supreme Court in **J&K Public Service Commission Vs. Israr Ahmad and others (2005)12 SCC 498**, has held 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 alongwith 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.”

10. Similar view has been taken by Division Benches of this Court in LPA No.380 of 2022 titled as ‘**Suman Khatri vs Haryana Public Service Commission and others**’, decided on 12.05.2022 and LPA No.226 of 2022 titled as ‘**Sweety Nagar vs State of Haryana and Another**’, decided on 23.08.2022. The judgments relied upon by the counsel for the

petitioner are clearly distinguishable on facts.

11. In view of the above discussion, there is no merit in the writ petition, which is hereby dismissed.

May 01, 2023

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes