

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

(108+222)

**CM-13092-CWP-2023 in/and
CWP-15851-2019
Date of Decision : August 28, 2023**

Ravi Kumar

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

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As prayed for, the application is allowed.

Replication to the written statement separately filed on behalf of respondents No. 1 to 3 as well as on behalf of respondent No.6 alongwith Annexures P-19 to P-23 are taken on record.

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1. Present petition has been filed raising a claim that the petitioner, who had applied in the category of Eligible Sports Person (SC), if not found eligible, is entitled for consideration under the reserved category of Scheduled Caste keeping in view the facts and circumstances mentioned in the petition.

2. As per the petition, the petitioner had applied in pursuance to the Advertisement dated 25.08.2018 (Annexure P-1) for appointment to

18218 posts of Group D to be filled in various Departments of the Government of Haryana. The petitioner had applied in the category of Eligible Sports Person (SC). The petitioner was allowed to compete for the said post and the petitioner appeared in the written examination and had secured 56 marks. Thereafter, keeping in view the fact that the petitioner was entitled for 10 marks under the Socio Economic Criteria adopted by the Commission, his total score became 66.

3. It may be noticed that on the basis of the marks secured by the petitioner, he was selected in the category of Eligible Sports Person (SC) and was issued appointment order. In pursuance to the appointment order, the petitioner joined.

4. After the joining of the service of the petitioner, the respondents realized that the petitioner has wrongly been selected in the category of Eligible Sports Persons as the petitioner has not attached the required Gradation Certificate to be eligible to be considered under the category of Eligible Sports Person and keeping in view the said fact, the respondents passed the impugned order on 25.03.2019 (Annexure P-13) canceling the candidature of appointment of the petitioner, which action of the respondents is under challenge in the present petition.

5. While issuing notice of motion, the petitioner was allowed to join and continue in service on the ground that even if the petitioner is not eligible in the category of Eligible Sports Person (SC) but as in the main category of Scheduled Caste, the last candidate selected has secured 60 marks and the petitioner has secured more marks than the last selected candidate in the reserved category, the petitioner should be allowed to join. In pursuance to the said order, the petitioner has already been allowed to join the service and discharging the same for the last more than four years.

6. Learned counsel for the petitioner argues that though in the present petition, there is a challenge to the order dated 25.03.2019 (Annexure P-13) passed by the respondents in not granting the petitioner appointment in the category of Eligible Sports Person on the ground of not having the required gradation certificate but even otherwise, as the petitioner belongs to reserved category of scheduled caste and has secured 66 marks whereas, the last selected candidate in the scheduled caste category has secured 60 marks, the petitioner is entitled for appointment to the post in question in the main category of scheduled caste even if the petitioner is not eligible to be appointed under the category of Eligible Sports Person (SC).

7. Learned counsel for the respondents submits that as per the reply filed, once the petitioner had applied only in the Eligible Sports Person category, he cannot be considered in the reserved category of scheduled caste even if, any candidate lower in merit than the petitioner has been appointed in the Scheduled Caste category.

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

9. As noticed hereinbefore, the petitioner is not claiming the benefit of appointment under the Eligible Sports Person category keeping in view the fact that he had not attached the required gradation certificate so as to claim the eligibility under the said category and prima facie, the selection of the petitioner under the ESP category has been done wrongly which was rightly been withdrawn by the respondents vide order dated 25.03.2019 (Annexure P-13).

10. Further, the question with regard to the grant of appointment under the reserved category of scheduled caste, it is a conceded position that

the petitioner belongs to the reserved category of Scheduled Caste. Once, the petitioner is not found eligible for appointment under the category of ESP (Scheduled Caste), the respondents were under an obligation to consider his candidature under the main category i.e. scheduled caste category especially when the candidates lower in merit than the petitioner are being appointed.

11. Learned counsel for the petitioner has cited that keeping in view the judgment of the Coordinate Bench of this Court in ***CWP No.21732 of 2010 titled Braham Dutt vs. State of Haryana and others decided on 27.09.2013***, the petitioners' claim in the scheduled caste category is liable to be considered.

12. Learned counsel for the respondents submits that in case any such representation is made by the petitioner claiming selection/appointment under the scheduled caste category, the same will be decided within a period of eight weeks by passing an appropriate speaking order from the receipt of any such representation and the claim of the petitioner will be considered on the basis of the facts as well as settled principle of law, being relied upon by the petitioners.

13. At this stage, learned counsel for the petitioner submits that the Coordinate Bench while issuing notice of motion had directed that the petitioner be appointed and in pursuance to the said order dated 31.05.2019, the petitioner is already working and till the representation of the petitioner is decided, the petitioner be allowed to continue in service.

14. Once, the petitioner is raising a claim for selection/appointment in the reserved category of scheduled caste on the ground that he is higher in merit than the last candidate selected and the respondents have undertaken to consider his claim in the reserve category of Scheduled Caste,

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it will be interest of justice that the petitioner is allowed to continue till his representation is decided by the respondents with regard to his claim for selection/appointment under the scheduled caste category, hence, it is directed that petitioner be allowed to continue in service till his representation is decided.

15. The present petition is disposed of in above terms.

August 28, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No