

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

LPA-1199-2019
Reserved on 15.03.2023
Date of Decision: 24.03.2023

Haryana Staff Selection Commission

. . . . Appellant

Vs.

Subhash Chand and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

Present: Mr.Hitesh Pandit, Addl. A.G., Haryana.

Mr.Madan Pal, Advocate, for respondent No.1.

M.S. RAMACHANDRA RAO, J.

This Letters Patent Appeal is preferred against the judgment dt.10.12.2018 in CWP-25782-2018 passed by the learned Single Judge.

Respondent No.1 had filled the post of PGT (Political Science) pursuant to an advertisement dt.28.06.2015 issued by the appellant/Haryana Staff Selection Commission [for short 'the Commission].

The last date for submission of online application was 12.10.2015 vide corrigendum dt.19.09.2015 for the said advertisement.

While making the said application, respondent No.1 had claimed reservation under the Special Backward Classes [SBC] category, though he also claims to be eligible under the Economically Backward Person in General Caste [EBPGC] category.

Respondent No.1 was called for scrutiny of documents to be held on 29.08.2018 and at that time he produced an EBPGC certificate issued by the Welfare of Scheduled Castes and Backward Classes Department dt.05.06.2017.

On the ground that the advertisement contained a condition that the said certificate should also have been issued prior to the last date of submission of online application forms i.e. 12.10.2015, the respondent No.1 was not given the appointment letter.

CWP-25782-2018

Respondent No.1 therefore, filed Writ Petition CWP-25782-2018 seeking direction to the appellant/Commission to consider him in the category of EBPGC for the post of PGT (Political Science).

When the matter was listed before the learned Single Judge, result of respondent No.1 was produced by the appellant/Commission which indicated that respondent No.1 had secured 106 marks in the written examination and 12 marks in *viva voce* i.e. total 118 marks.

Since the cut off mark for the last candidate in EBPGC category was 102 marks (though it was 129 marks for the other General category candidates), on the ground that respondent No.1 got more marks than the last candidate in the EBPGC category, and also on the ground that 11 posts in the said category were lying vacant, and since he possessed a certificate dt.05.06.2017 certifying that he belongs to the EBPGC category, the Writ Petition was allowed and the appellant/Commission was directed to issue appointment letter to respondent No.1 by considering him as a candidate under the said category.

The learned Single Judge did not discuss any other aspect in the order.

Challenging the said order this LPA is filed.

Counsel for the appellant/Commission contended that the order of the learned Single Judge is erroneous; that he could not have ignored the cut off date stipulated in the advertisement for submission of the documents by the candidates, who are seeking employment in the said post; all eligibility conditions including the EBPGC have to be considered only on the relevant date and any certificate obtained thereafter, cannot be considered.

It is contended that if permission is allowed as directed by the learned Single Judge, any other candidate, who did not have such certificate on the cut off date and who did not apply would also make a claim and the sanctity of cut off date and the conditions of the advertisement would be lost.

Reference is made to the clause in the advertisement saying that the qualifications/eligibility conditions, age and other documents would be determined with regard to the last date fixed to apply online i.e. 21.9.2015.

It is contended that the candidate is required to possess the said certificate duly issued by the competent authority as per the instructions issued by the State Government on or before the closing date for submission of online application; and since the certificate proving the eligibility of respondent No.1 to get reservation under the EBPGC category was issued by the Welfare of SC& BC Department on 05.06.2017, after the cut off date prescribed in the advertisement, the same cannot be considered; and respondent No.1 ought to have produced such a certificate issued by the competent authority prior to the cut off date.

Reliance is placed on the decisions of the Supreme Court in *Rajasthan High Court, Jodhpur and another Vs. Neetu Harsh and another*¹, *A.P. Public Service Commission Vs. B. Sarat Chandra*² and *Mrs. Rekha Chaturvedi Vs. University of Rajasthan*³.

Counsel for respondent No.1 refuted the said contentions and supported the order of the learned Single judge.

He placed reliance on the judgments of the Supreme Court in *Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another*⁴, *Sunita Rani Vs. Haryana Staff Selection Commission*⁵ and *Kiran Bala Vs. State of Haryana and others*⁶.

Consideration by the Court

We have noted the contentions of both sides.

It was brought to our notice during the course of hearing of the appeal by the counsel for the parties that pursuant to a direction given by the Chief Secretary of the State of Haryana, SBC category reservation, which was initially provided in the advertisement and in which category the respondent had applied, was decided not to be implemented in 2016 and this fact came to be disclosed to the selected candidates only when the result of the selection was notified on 17.9.2018.

The note appended to the Select List states as under:

“The result of SBC/BC(C) category has been withheld as per letter No.42/187/2015-5GSI Dated:25.08.2016 issued by Chief Secretary, Government of Haryana in view of directions of the Hon’ble High Court that no appointments in service shall be made on the basis of the provision

¹(2021) 11 SCC 383

²(1990) 2 SCC 669

³1993 (suppl. 3) SCC 168

⁴2016(4) SCC 754

⁵LPA-656-2021 decided on 12.05.2022

⁶LPA-385-2017 decided on 23.01.2023

of the Haryana Backward Classes (Reservation in services and admission in educational institutions) Act 2016 to the castes mentioned in Schedule-III i.e. Backward Class Block 'C'. The SBC/BC (C) category candidates, except those who have availed the benefit of age relaxation, have been considered against general vacancies." (emphasis supplied)

The decision that the SBC reservation claimed by respondent No.1 in the application submitted by him for the post of PGT (Political Science) was not to be given to him was however not intimated to respondent No.1 by the appellant at the time when such a decision was taken in 2016 till the result was announced on 17.9.2018.

Though there may be valid reasons why such a reservation was not being offered for appointment to the said post, it was incumbent on the Appellant Commission to inform the candidates of the said fact because if such candidates are also entitled to reservation under a different category and they did not claim such reservation initially (because of the SBC reservation having been announced to be applicable at the time of submission of application), they would have had an opportunity to claim the other category reservation.

No explanation is forthcoming from the appellant as to why this was not done and why the applicants like respondent No.1 were kept in dark of the decision not to give SBC reservation till the date the results were announced on 17.9.2018.

If really the cut off date in the advertisement was important as is being claimed by the appellant, the said cut off date would be binding on both the appellant as well as respondents. The appellant cannot contend that it is only applicable to the candidates like respondent No.1 and not to the appellant themselves.

Coming to the other point argued by the appellant, the question is “*whether the delay in production of the EPBGC certificate issued in 2017 by respondent No.1 can be a ground to not consider claim of respondent No.1 for appointment under the said category?*”

Merely on the ground that there was a delay in production of EPBGC certificate from the competent authority, in our opinion, respondent No.1 cannot be denied employment.

In **Dolly Chhanda Vs. Chairman, JEE⁷**, the Supreme Court held as under:-

“The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

(emphasis supplied)

Thus the important thing to be seen is that while eligibility i.e possessing education qualification should be possessed by the cut off date, for claiming benefit of *reservation*, proof of eligibility to claim such reservation need not be submitted by cut off date. Even if proof of claim of eligibility for

⁷2005(9)SCC 779

reservation is produced beyond cut off date, the candidate can be considered for grant of the said benefit and cannot be denied relief.

In ***Ram Kumar Gijroya*** case (4 Supra), the appellant had sought appointment to the post of Staff Nurse under the OBC category, but the said certificate was not submitted with the application and submitted after the last date mentioned in the advertisement. The appellant was therefore not selected on that ground, but the Supreme Court held that the candidature of those candidates, who belonged to reserved categories, could not be rejected simply on account of late submission of caste certificate. The Supreme Court held that the purpose of certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to a particular category and act thereon by giving the benefit to such candidate for his belonging to the said category. It was not as if the petitioners therein did not belong to the reserved category prior to the cut off date or that they acquire the status of belonging to the said category only on the date of issuance of the certificate. It held that necessitating upon a certificate to be issued prior to the cut off date would be clearly arbitrary and it has no rational objective sought to be achieved.

In ***Charles K. Skaria and others Vs. Dr. C. Mathew and others***⁸, the Supreme Court held that the candidates who got admission even though they had not attached the certificate of having passed the diploma alongwith their applications, could not have their admission to a Post Graduate cancelled provided they had in fact passed the diploma before the date fixed, but had submitted the diploma with delay. It observed that the important question is *whether or not the candidate secured a diploma before the final date of application for admission to the degree course and if he did have the diploma*

⁸ 1980(2) SCC 752

some relaxation in producing evidence of the diploma can be granted. It held that the emphasis should be on the diploma and the proof thereof subserves the factum of possession of diploma and is not an independent factor. It held that what is essential is the possession of the diploma before the given date and what is ancillary is the safe mode of proof of the qualification. To make mandatory, the date of acquiring the qualification before the last date for application make sense. But if it is shown that the qualification has been acquired before the relevant date, to invalidate the merit factor because proof was adduced a few days later, would not be proper.

We may also point out that the decision in **Dolly Chhanda** (7 Supra) was applied by the Supreme Court in **Archana Chouhan Pundhir (Dr.) Vs. State of Madhya Pradesh and others**⁹.

In **Archana Chouhan Pundhir (Dr.)** (9 Supra) as on 30.04.2007, the appellant had completed more than 7 years service as Medical Officer in Public Health and Family Welfare Department of Government of Madhya Pradesh. Her services were regularized w.e.f. 31.12.2005 vide order dt. 10.04.2007. Her application for admission to the post of graduate course as an in-service candidate was accepted by the authorities and she was allowed to appear in the entrance exam of 2007, but she was denied admission because of non award of remarks in lieu of her 7 years service. The High Court dismissed her Writ Petition for admission into the Post Graduate course as an in-service candidate on the ground that the result of the entrance examination was declared on 09.04.2007 and the order of regularization of her service was issued on 10.04.2007. The Supreme Court reversed the order of the High Court and held that the date on which the order of regularization was issued was purely

⁹2011 (11) SCC 486

fortuitous and the same cannot be made basis for depriving the appellant of her legitimate right as an in-service candidate. It noted that the appellant had worked as Assistant Surgeon in District Hospital, Raisen on contract basis vide order dt.26.10.1999 and her Writ Petition had been allowed by the learned Single Judge on 21.04.2004 directing consideration of regularization of her services in three months, but the respondents took three years and only on 10.04.2007 regularized her service w.e.f. 31.12.2005. It observed that if the State Government had issued the order of regularization before 05.03.2007 i.e. the last date fixed for receipt of the application, the appellant would have been saved of the harassment, mental agony and financial loss suffered by her on account of unwarranted and post litigation.

Thus importance was given to the possession of the eligible qualification by the candidate as on the cut off date and not on the possession of the proof of such eligibility on that date.

Similar view has also been taken by this Court in *Rina and another Vs. Vice Chancellor, Pt. B.D. Sharma University of Health Sciences, Rohtak and others*¹⁰.

In *Rajasthan High Court, Jodhpur* case (1 Supra), cited by the counsel for the appellant, a candidate though a differently-abled person applied under General category but in the columns 'persons with disability' indicated as 'no'. The Supreme Court held that he cannot later on seek benefit of reserved category.

The said judgment does not apply in the instant case because in the instant case at the time of advertisement, the respondent No.1 could claim under

¹⁰Order dt.25.08.2022 in LPA-1963-2017 and batch,

both SBC category and EPBGC category and claimed reservation under the SBC category because it was unnecessary for him to seek reservation in the EPBGC category as well,. But without his knowledge and behind his back, the appellant had decided not to give reservation under the SBC category.

In this circumstance, the appellant cannot also contend that respondent No.1 cannot seek reservation under the EPBGC category.

There is thus no necessity to doubt the genuineness of the same because it would have been issued after a verification process by the competent authority.

In fact according to the respondents, the District Administration was not issuing EPBGC certificate to eligible candidates, who came back from SBC to EPBGC category, and the District Administration had started to receive the applications for issuance of EPBGC certificates only when instructions were issued on 07.06.2017 by the Chief Secretary, Government of Haryana and only thereafter the respondent No.1 was issued such certificate.

So the respondent no.1 cannot be blamed for not claiming reservation or not producing certificate under the said category in October,2015. He could not have complied with the requirement because it would have been impossible for him to do so.

The decision in *A.P. Public Service Commission* (2 Supra) is with regard to determination of age of a candidate for selection by fixing a specific date for the same. Thus, it was a case of possessing a necessary eligibility condition but not a case where a claim for reservation is made. As pointed out for the latter, proof of reservation claim can be submitted later.

The decision in *Mrs. Rekha Chaturved* (3 Supra) is also one applicable to possession of essential qualification by a cut off date and is not a case dealing with a claim for reservation like the instant case.

The decisions cited by the counsel for the appellant are thus distinguishable because qualification for holding a post is certainly to be decided on the basis of the cut off date fixed in the admission, but for availing benefit of reservation, production of certificates issued before the cut off date is not necessary and there is no such rigid principle as held in **Dolly Chhanda Vs. Chairman, JEE** (7 supra).

So in the peculiar facts and circumstances of the case, we are of the opinion that no case is made out for interference with the judgment of the learned Single Judge. Accordingly, the appeal is dismissed.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

24.03.2023

Vivek

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes
Yes