

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

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**CWP-16373-2016 (O&M)
Date of Decision: 02.11.2023**

Ashish Kayala and Another

...Petitioners

Versus

Staff Selection Commission and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Gurpreet Singh, Advocate and
Ms. Gunjan Nahata, Advocate and
Mr. Karan Kathuria, Advocate and
Mr. Jaskaran Singh, Advocate
for the petitioners

Ms. Monica Chawla, Central Govt. Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to the respondents to consider candidature of the petitioner for the post of Constable (GD) in SC Category. The petition was filed by two petitioners, however, petition qua petitioner No.2 stands dismissed as withdrawn vide order dated 31.08.2023 of this Court.
2. The petitioner pursuant to advertisement dated 05.02.2011 applied for the post of Constable (GD). He applied under SC Category. He cleared Written Test, Physical Standard Test, Physical Endurance Test and thereafter, medical examination. During medical examination, the petitioner was considered under SC Category, however, his result was declared under ST Category. The petitioner was declared unsuccessful. The selection process

came up for consideration before a Division Bench of Delhi High Court which while passing order dated 14.12.2012 in ***Vinay Kumar v. Union of India and Others, WP(C) 7651/2012*** observed that the Court is flooded with spate of writ petitions and it would be appropriate to issue general mandamus. The relevant extracts of the order dated 14.12.2012 read as:

“14. It is obvious that the system is being manipulated. If the Department gives a right to question the medical unfitness certified by Medical Board, we see no reason why select list are finalized without taking into account the decision at the Review Medical Board. In the instant case, pertaining to the petitioner, the decision of the Review Medical Board certifying petitioner fit is dated October 22, 2011. The final result was declared on November 28, 2011. Just as the petitioner, many other similarly situated persons were left out. The result is that persons lower in merit were empanelled. Thereafter, the revised list was drawn out for the few left over seats and needless to state, included in the list were the so called wastage candidates, who had secured more marks than the last empanelled candidates when the result was declared on November 28, 2011. The result is that at the end of the recruitment process, people lower in merit are empanelled and those higher in merit stand outside the door.

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18. We are issuing a general mandamus because experience have shown to us that whenever in the past a correction has been directed to be made good with respect to one person, the Court is flooded with a spate of writ petitions. Not that our only desire is to save precious judicial time, but even on principles of law we would be justified in issuing a general mandamus.

19. Where a wrong is found to be in rem by a public authority, it would be expected that the authority would

take remedial action in rem and not with respect to a single individual. If a selection procedure is found to be contaminated, the benefit of decontamination must enure to all.”

3. The Delhi Court vide order dated 14.07.2014 disposed of writ petition of other candidates, namely, Deepak Kumar Singh and Others. The respondents, in 2015, in the light of orders passed by Delhi High Court, revised merit list. As per revised merit list, the cut-off of SC Category candidates for the post of Constable (GD) in CRPF was 38 marks whereas in the original result, it was 47 marks.

4. Learned counsel for the petitioner submits that result was revised in 2015, thus, fresh cause of action arose in favour of the petitioner. The petitioner had secured 43 marks and cut-off under SC Category was 38 marks. There are so many candidates who have secured marks less than petitioner still they have been selected. The petitioner even as on day is physically fit and is ready to undergo medical examination. The respondent had wrongly declared result of the petitioner under ST Category. The documents prepared at the time of medical examination clearly indicate that petitioner was considered under SC category. The respondent has not produced application form of the petitioner just to hide actual position.

5. *Per contra*, learned counsel for the respondents submits that result of the petitioner was declared under ST category and cut-off under ST Category is more than 43 marks, thus, petitioner is ineligible for the post.

6. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

7. Learned counsel for the respondents expressed her inability to controvert the fact that as per revised result, the cut-off under SC Category is 38 marks whereas cut-off in the original result was 47 marks. She insisted that petitioner applied under ST Category, thus, he cannot be considered under SC Category.

8. From the perusal of Physical Efficiency Test and Physical Standard Test Form, it comes out that petitioner was called for the said test under SC Category and he was examined under SC Category. Physical Efficiency Test Form is duly signed by 3 senior officials of the respondent. The said form cannot be disbelieved especially when it was filled up by officials of respondent and it is duly signed by 3 officials of the respondent. The respondent has failed to place on record application form of the petitioner. The findings recorded by the Delhi High Court indicate that everything was not straight and there was something wrong on the part of respondent in the selection process which compelled Delhi High Court to issue general mandamus. The petitioner, as per documents enclosed with the petition, belongs to SC Category, thus, he deserves to be considered under said category instead of ST category until it is proved that he had applied under ST Category. In the absence of application Form, this Court is forced to rely upon documents enclosed with the writ petition which *prima facie* indicate that till the declaration of result, the respondent had considered petitioner under SC Category.

9. In the wake of above discussion and findings, this Court is of the considered opinion that case of the petitioner needs to be reconsidered. In the absence of application Form of the petitioner with the respondent, the

to fresh medical examination. If the petitioner is found fit in the medical examination and it is further found that vacancy is available, the petitioner shall be issued appointment letter. The entire exercise shall be completed within 6 months from today.

- 10. Disposed of in above terms.
- 11. Pending application(s), if any, also stand(s) disposed of.

(JAGMOHAN BANSAL)
JUDGE

02.11.2023
Mohit Kumar

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