

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14008-2017

Reserved on 16.08.2023

Decided on 14.11.2023

Surender Pal

... Petitioner

VS.

Union of India & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Chanderhas Yadav, Advocate for the petitioner

Mr. HS Oberoi, Advocate and
Mr. Somesh Gupta, Sr.Panel Counsel, UOI

Mr. Gaurav Jindal, Addl. AG Haryana

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the result dated 08.09.2012 (Annexure P2) and result dated 27.10.2012 of selected candidates for the post of Office Assistant by which the law of reservation has been totally ignored and the meritorious candidates, who were required to be selected in general category have been selected in the same category to which they belong. Further, a direction is sought to direct the respondent-authorities to prepare the selection list again as per law.

(2). Learned counsel for the petitioner contended that the petitioner applied for the post of Office Assistant (Multipurpose) in pursuance to advertisement dated 03.03.2012 (Annexure P1), in OBC category. However, the petitioner could not succeed as he got 68.20 marks and was shown at Sr.No.63 of the OBC list as against the another OBC category person who

was selected having secured 83.15 marks in the OBC category and person at Sr.No.31 who had secured 72.40 marks has been shown in the waiting list of OBC category. It is contended that the candidates who had secured 71.75 marks or above in the OBC category were required to be shifted in the general category but as per result dated 27.10.2012 (Annexure P6), a candidate who had secured 71.20 marks was shown to have been selected in general category.

(3). Learned counsel for the petitioner submits that though the candidates of the reserved category who had secured marks more than the petitioner were to be placed in the merit list on the strength of the marks obtained by them, such marks being higher than the cut off marks for general category, such reserved category candidates have been allotted seats in their own quota. The contention therefore is that had those candidates been placed at the relevant point in the merit list of the general category as per their merit, the petitioner would have been within the zone of selected candidates in his own category, i.e. OBC.

(4). It is argued that as per circulars (Annexure P7) issued by the Ministry of Personnel, PG and Pensions, the candidate who had not taken benefits of reserved category and comes on their own merits higher than the general category candidate are required to be selected in the general category.

(5). Learned counsel further submitted that similarly situated persons to the petitioner had challenged the present selection procedure in CWP No. 22900 of 2012 which has been allowed by this Court vide judgment dated 11.01.2016 (Annexure P-8). It is submitted that as the reservation policy was not properly applied by the respondent-authorities, the

petitioner and many other similarly situated persons were under the impression that the respondent-authorities would now apply the reservation policy properly. A contempt petition i.e. COCP No. 1509 of 2016 was also filed and during the pendency of the said contempt petition, the respondent-authorities offered appointment to the writ-petitioner, namely, Satish Kumar and challenged the above said judgment and the Division Bench of this Court vide its decision dated 15.03.2017 has directed that the view taken by the learned Single Judge would be applicable *qua* the petitioner only. As such, the petitioner has approached this Court.

(6). Notice of motion was issued on 03.07.2017 and pursuant thereto, respondents No.3 to 5 have filed written statement dated 26.04.2018 wherein it has been averred that the petitioner has challenged the selection made by erstwhile Gurgaon Gram Bank in the year 2012, after a gap of five years without explaining the delay and as such, thereafter, the selected candidates have also joined and have also got promotions. It is further submitted that Gurgaon Gramin Bank and other rural banks have merged with Sarva Haryana Gramin Bank and there has been a lot of other persons selected by other rural banks which have been working with the duly created Sarva Haryana Gramin Bank. As such the writ petition is not maintainable.

(7). Learned counsel for the respondents NO.3 to 5 has also highlighted that the selection has been made strictly in accordance with selection criteria as laid down by Government of India i.e. NABARD which is not impleaded to the present *lis* and as such, the all action with regard to recruitment etc. of the employees and officers of the Gramin Banks have to

be made in accordance with Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rule, 2010.

(8). Further, it is averred that in order to give implementation to the policy of reservation as per instructions of Government of India, vacancies were advertised categories wise and provisions were duly made for reservation of each category of posts. After conducting the written test, the merit list was prepared category wise and the candidates were called for interview in ratio of 1:3 of the posts advertised category wise. The merit list of successful candidates was prepared on the basis of rank allotted to them based on aggregate merit in written test and interview for all categories separately.

(9). Learned counsel further informed that the last candidate under general category has secured total 71.75 marks and in OBC category, the last candidate has secured 72.50 marks, whereas the petitioner has obtained on 62.0 marks only. Having not obtained the grade in the merit list, the petitioner kept silent for more than five years and all of sudden he has challenged the criteria adopted by the respondent-Bank without pointing out any *mala fide* or irregularities in making the selection.

(10). Having heard learned counsel for the parties and after going through the record, this Court is of the considered view that this petition ought to fail.

(11). The petitioner had applied for the post of Office Assistant (Multipurpose) in OBC category and appeared in the written examination on 06.05.2012. The petitioner was issued interview letter. A final select list of 124 candidates was prepared on the basis of overall merit/marks attained by

the candidate belonging to various categories and in the order of comparative total marks obtained by the candidates who appeared in the written test and interview. The last candidate under the General category secured 71.75%; under OBC category secured 72.55% marks; and under SC category secured 74% marks. The petitioner, who belongs to OBC category, secured only 68.20% as against 72.55% secured by the last candidate under OBC category. The petitioner was rightly not selected as he failed to make the more than the requisite grade of 72.55%.

(12). Secondly, the petitioner kept silent for more than five years and all of a sudden, laid challenge to the recruitment criteria adopted by the respondents without specifically pointing any mala fide or irregularity in the selection or selection-making process. The petitioner cannot be allowed to challenge the criteria after having participated in the selection only because he remained unsuccessful and was not selected. Only because he did not find himself to have emerged successful as a result of combined performance both at written test and interview, the petitioner has filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair. Therefore, the settled position of law is that a candidate, aware of the stipulations and norms of recruitment process, participating in a selection process, after being unsuccessful in the selection process, cannot turn round and challenge the said process. This view of mine is affirmed by various pronouncements of the Apex Court viz. (i) **Madan Lal v. State of J&K, (1995) 3 SCC 486**, and (ii) **The State of Uttar Pradesh**

Vs. Karunesh Kumar and others, 2022 LiveLaw (SC) 1035 wherein it has been authoritatively held that a candidate who has participated in the selection process adopted under the Rules is estopped and has acquiesced himself from questioning it.

(13). For the aforesaid reasons, this Court does not find any illegality, unfairness or arbitrariness in the selection/result dated 08.09.2012 and 27.10.2012 for the post of Office Assistant.

(14). Dismissed.

14.11.2023
V.Vishal

(Sandeep Moudgil)
Judge
Yes/No
Yes/No

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