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

CWP-25317-2013

Date of Decision:31.10.2023

PAWAN KUMAR

..... Petitioner

Versus

CENTRAL BANK OF INDIA AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. V.K. Shukla, Advocate
for the petitioner.

Mr. Raj Kumar, Advocate
for respondent No.1.

JAGMOHAN BANSAL, J. (Oral)

1. With the consent of both sides, the main case is taken up for final disposal.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of selection of respondents No.2 and 3 to the post of Safai Karmchari-cum-Sub Staff vide selection list (Annexure P-3) pursuant to advertisement dated 08.11.2012 (Annexure P-1).

3. The matter was *sine die* adjourned to await disposal of LPA No.2202 of 2016. The LPA was filed by respondent-Bank assailing order passed by learned Single Judge of this Court. A Division Bench of this Court vide order dated 12.07.2018 has set aside order passed by learned Single Judge. As per petitioner, the case of the petitioner is not covered

by order dated 12.07.2018 passed by LPA Bench.

4. The petitioner pursuant to an advertisement dated 08.11.2012 (Annexure P-1) applied for the post of Safai Karmchari-cum-Sub Staff. There were 35 posts of Safai Karmchari-cum-Sub Staff. 17 posts were meant for General Category, 12 for OBC and 6 for SC category. There was 5 years age relaxation to candidates belonging to SC category. The petitioner secured age relaxation and applied under SC category. The petitioner secured 44 marks and marks secured by last candidate under SC category were more than 44 marks, thus, petitioner was not selected under SC category. The petitioner requested the respondent to consider his case under General category. The respondent considered case of the petitioner under General category, however, he was rejected on the ground that he is overage for the purpose of consideration under General category. The maximum age prescribed for candidates belonging to General category was 26 years whereas petitioner at that point of time was 30 years old.

5. Learned counsel for the petitioner submits that respondent was bound to consider case of the petitioner under General category despite granting age relaxation, meaning thereby, the petitioner was entitled to age relaxation as well as consideration under General category.

6. Per contra, learned counsel for respondent No.1 submits that age relaxation could be granted to petitioner for consideration under SC category, however, as soon as petitioner is considered under General category, he cannot be extended benefit of age relaxation. A candidate cannot claim age relaxation while being considered under General category.

7. Hon'ble Supreme Court in '***Deepa E.V. Versus Union of India and others***' (2017) 12 SCC 680 has clearly held that a candidate belonging to SC/ST/OBC who has availed age relaxation cannot be considered under General category. The Supreme Court has considered instructions dated 01.07.1998 issued by Ministry of Personnel, Department of Personnel and Training.

8. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

9. From the perusal of record, it comes out that petitioner at the time of selection was 30 years old and maximum age prescribed for General category candidate was 26 years. The petitioner participated as SC candidate and he availed age relaxation. The cut off for SC category candidates was more than 44, thus, petitioner was not selected under SC category. The cut off for General category candidates was less than 44, however, he was not considered under General category because he had availed age relaxation.

10. The Supreme Court in ***Deepa E.V. Versus Union of India and others (supra)*** after considering instructions dated 01.07.1998 issued by Ministry of Personnel has formed an opinion that there is an express bar for the candidates belonging to SC/ST who had availed age relaxation for being considered under General category. The relevant extracts of the judgment read as:

“6. Department of Personnel and Training had issued proceedings O.M. No.36012/13/88-Estt. (SCT), dated 22.5.1989 and OM No.36011/1/98-Estt. (Res.), dated 1.7.1998 laying down stipulation to be followed by the various Ministries/Department for recruitment to various

posts under the Central Government and the reservation for SC/ST/OBC candidates. The proceedings reads as under:-

“G.I. Dept. of Per. & Trg., O.M. No. 36012/13/88-Estt. (SCT), dated 22.5.1989 and OM No.36011/1/98-Estt. (Res.), dated 1.7.1998 “Subject:- Reserved vacancies to be filled up by candidates lower in merit or even by released standards- candidates selected on their own merits not to be adjusted against reserved quota.

As part of measure to increase the representation of SC/ST in the services under the Central Government, the Government have reviewed the procedure for implementation the policy of reservation while filling up reserved share of vacancies for Scheduled Castes and Scheduled Tribes by direct recruitment. The practice presently being followed is to adjust SC/ST candidates selected for direct recruitment without relaxation of standards against the reserved share of vacancies. The position of such SC and ST candidates in the final select list, however, was determined by their relative merit as assigned to them in the selection process. When sufficient number of suitable Scheduled Caste and Scheduled Tribe candidates were not available to fill up all the reserved share of vacancies, SC/ST candidates were selected by relaxed standards.

2. It has now been decided that in cases of direct recruitment to vacancies in posts under the Central Government, the SC and ST candidates who are selected on their own merit, without relaxed standards along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will thus comprise SC and ST candidates who are lower in merit than the last candidate on the merit list but otherwise

found suitable for appointment even by relaxed standards, if necessary.

3. All Ministries/Departments will immediately review the various Recruitment Rules/Examination Rules to ensure that if any provision is contrary to the decision contained in previous paragraph exist in such rules, they are immediately suitably modified or deleted.

4. These instructions shall take immediate effect in respect of direct recruitment made hereafter. These will also apply to selections where though the recruitment process has started, the result have not yet been announced unless in the Examination/Recruitment Rules or in the advertisement notified earlier there is a specific provision to the contrary and the manner in which the SC/ST vacancies could be filled has been indicated.

Clarification:- The instructions contained in the above OM apply in all types of direct recruitment whether by written test alone or written test followed by the interview alone.

2. The above OM and the O.M. No.36012/2/96-Estt.(Res.), dated 2.7.1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies. 3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standards as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.” (Underlining added)

7. On a combined reading of Rule 9 of the Export Inspection Agency (Recruitment) Rules, 1980 and also the proceedings dated 1.7.1998, we find that there is an express bar for the candidates belonging to SC/ST/OBC who have availed relaxation for being considered for General Category candidates.”

11. The case of the petitioner is squarely covered by the aforesaid judgment.

12. There is another aspect of the matter. The selection in question took place in 2013. The petitioner is assailing appointment of respondents No.2 and 3 who are working with respondent-Bank since 2013. It would not be appropriate at this belated stage to set aside appointment of candidates who have already worked for more than 10 years. The Bank has availed benefit of experience of respondents No.2 and 3 for quite long time. A similar view has been expressed by a Five judge Bench of Supreme Court in *Sivanandan C T and others Vs. High Court of Kerala and others*.

13. In the wake of above discussion, present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

31.10.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No