

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

CWP No.24909 of 2017

Reserved on 20.02.2023

Pronounced on: 17.03.2023

Asha Devi

.... Petitioner

Versus

Haryana Staff Selection Commission

.... Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rakesh Sobti, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

JAISHREE THAKUR.J

1. By way of present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner herein seeks a writ in the nature of mandamus directing the respondent to rectify the inadvertent mistake committed by her while filling the online application form for the post of Clerk where she had mentioned her category as BCB whereas she belongs to BCA category, and to consider her candidature under BCA category.

2. Brief facts of the case are that the respondent-Haryana Staff Selection Commission invited applications for the post of Clerk in various departments vide advertisement No.10/2015, Category No.01, dated 24.11.2015. The petitioner, being fully eligible, applied for the said post, however, while filling the online application form, inadvertently she filled her category as BCB though has furnished details of her BCA category

certificate against the said column. This fact came to her knowledge, when she downloaded the admit card issued on 02.08.2016. She immediately approached the respondent Commission to rectify the said mistake by way of applications dated 29.09.2016 and 24.10.2016, but when no action was taken on her request, she moved a complaint in CM window as well. However, without there being no change in her category, she took part in written examination on 04.12.2016. The result was declared on 09.10.2017 which shows that the cut off marks under the BCA category was 140 and under BCB category, it was 148. After the declaration of result, she again submitted a representation dated 16.10.2017 to rectify the mistake before her interview on 24.10.2017, but nothing was done. Left with no other option, she served a legal notice dated 23.10.2017 as well in this respect. Thereafter, she appeared for scrutiny of documents-cum interview.

3. Learned counsel for the petitioner would submit that the present petition has been filed with the apprehension that though the petitioner is meritorious, but she may be ignored because of her inadvertent mistake in mentioning the category as BCB instead of BCA in her online application form, which fact has been brought to the notice of the respondent Commission number of times, but nothing was done. It is submitted that in fact the petitioner belongs to BCA category and has certificate in this respect, however, while filling up the online application form for the post of Clerk, she inadvertently mentioned her category as BCB in place of BCA. It is also submitted that she has qualified all the stages of recruitment. In support of the contentions, counsel has relied upon the judgment passed in ***CWP No.14863 of 2017, Sarla Versus State of Haryana and others, decided on***

31.10.2018 where in similar circumstances, the candidature of the petitioner therein was directed to be considered under the category which she actually belongs. That very judgment was challenged by way of ***LPA No.320 of 2019, Haryana Staff Selection Commission through its Secretary Versus Sarla and others***, however, it was dismissed vide order dated 22.02.2019.

4. *Per contra*, learned counsel appearing on behalf of respondent would submit that against the aforesaid advertisement No.10/2015, result was declared on 14.03.2018 and the petitioner's name was recommended for the post of Clerk under the BCB category and sent to the department concerned for further necessary action. It is further submitted that the cut off marks under the BCA category was 158 and under the BCB category, it was 164 and if she is considered under BCA category, she would come in the selection zone, but since in her online application form, she has filled her category as BCB, she was considered against that very category. Moreover, the change of category at this stage may hamper the whole recruitment process. Counsel would argue that while submitting/uploading the application form, the applicant is expected to check the correctness of the entries being made. The petitioner is not expected to take the things casually.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the pleadings of the case.

6. The relief as sought by the petitioner is that her candidature for the post of Clerk advertised vide advertisement No.10/2015, Category No.1, be considered under the BCA category instead of BCB category. Admittedly, the petitioner belongs to BC-A category as would be evident from Annexure

P-1, which certificate was issued on 03.12.2002 by the Sub Divisional Officer (C), Kosli, Haryana. The said certificate is prior to the cut off date of submission of application forms, which shows that the petitioner is unintentional to change her category. For all intents and purposes, it was a typing mistake, and once the application form is uploaded, there is no possibility of rectifying an inadvertent mistake. Moreover, a perusal of the paper book would show that the petitioner had immediately approached the respondent Commission to rectify the mistake.

7. At this stage, it would be pertinent to note that the petitioner had secured 170 marks in the examination that had been held and has the requisite marks to be appointed in both the categories i.e. under the BCA category where the last selected candidate has secured 158 marks and under the BCB category as well where the last selected candidate has secured 164 marks. She has been selected under the BCB category and continues to work as such. It is not a case where the petitioner is seeking a change in her category to get a benefit of appointment, but to ensure that at a later stage, her appointment is not called in question.

8. The judgment, as relied upon by the counsel for the petitioner, is fully applicable wherein while filling the online application form, the petitioner therein declared her category as BCB but in fact she belonged to EBPG category. That writ petition was allowed and the respondents therein were directed to consider her candidature under the EBPG category instead of BCB category and to issue her appointment letter. The said judgment was challenged in LPA No.320 of 2019, which was dismissed vide order dated

22.02.2019 holding that every citizen in this country is not computer/net savvy, they have to depend upon cyber cafes to fill the application form and in such a situation, if any mistake occurs, it would be wholly unrealistic and arbitrary to make such a candidate suffer. It was also taken note of the fact that there is no provision on the website of the Commission for carrying out correction even if it is noticed subsequently.

9. Consequently, in the facts and circumstances of the present case, this Court is of the opinion that the petitioner is entitled to be treated as a candidate of the BCA category, of which category she had uploaded her certificate though had inadvertently mentioned her category to be BCB. In case this change in category is allowed, no prejudice would be caused since she has the necessary marks to be appointed in the said category. In case there is no vacancy, a supernumerary post be created and the last person appointed from the select list of the BCA category be not disturbed.

10. Present petition is allowed on the above terms.

11. Needless to say, this order shall not be quoted as a precedent.

(JAISHREE THAKUR)
JUDGE

17.03.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No