

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.25036 of 2021 (O&M)

Reserved on: 05.01.2023

Date of Decision: 19.01.2023

Rakesh Kumar

...Petitioner

Vs

Haryana Staff Service Commission and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. Harish Rathee, DAG, Haryana.

Mr. B.R. Mahajan, Senior Advocate with
Ms. Nikita Goel, Advocate
for respondent No.2.

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JAISHREE THAKUR J.

1. The present writ petition has been filed seeking to quash order dated 06.09.2021 (P-10) passed by the Haryana Staff Selection Commission, Panchkula whereby the petitioner has been denied appointment to the post of Lower Divisional Clerk.

2. In brief, the facts are that Haryana Staff Selection Commission invited applications for filling up 440 posts of Lower Divisional Clerk in Dakshin Haryana Bijli Vitran Nigam (DHBVN)-respondent No.2 vide Advertisement No.11/2019 dated 05.07.2019. Out of 440 posts, 77 posts were reserved for BCB category, which were further bifurcated into 55 posts kept for NonESM/ESP, 19 posts for ESM and 3 posts for ESP. The petitioner belonging to BCB category chose to apply under the category of Dependent of Ex-Serviceman for the aforesaid post and was thereafter, issued admit card dated 17.02.2020 for the exam scheduled to be held on 25.02.2020. The petitioner appeared in the written examination and secured 83 marks out of 90

marks and was called for scrutiny of documents on 26.02.2021. During security of documents, petitioner was advised to supply latest eligibility certificate from the Zila Sainik Board, which was obtained on 09.03.2021. Thereafter, the petitioner was advised to submit the said certificate at the time of joining before the appointing authority. The final result was declared on 15.04.2021, however, petitioner's name did not find mention either in the merit list of BCB category or under the category of Dependent of Ex-Serviceman. The last candidate on the merit list in the category of BCB had obtained 66 marks. The petitioner served a legal notice dated 12.07.2021 upon respondent No.1 to recommend name of the petitioner for selection to the post of Lower Divisional Clerk but claim of the petitioner was rejected by respondent No.1 vide impugned order (Annexure P-10) in an illegal and arbitrary manner. Hence, the writ petition.

3. Learned counsel appearing for the petitioner would contend that the petitioner had secured 83 marks in the written examination and the candidate having 66 marks has been selected under BCB category whereas appointment has been denied to the petitioner. It was argued that even if the petitioner could not be considered under the category of Dependent of Ex-Serviceman, he still had furnished his BCB category certificate, which ought to have been considered and offered appointment, keeping in view the fact that the petitioner had higher merit than the last selected candidate under BCB category. It was further argued that category of the petitioner would remain BCB category as he belongs to the said category. In support of his contention, counsel for the petitioner relied upon judgment rendered by a Coordinate Bench in CWP No.21732 of 2010 titled as *Braham Dutt Vs. State of Haryana and others* decided on 27.09.2013.

4. Per contra, Mr. B.R. Mahajan, learned Senior Advocate assisted by Ms. Nikita Goel and Mr. Harish Rathee, DAG, Haryana appearing on behalf of the respondents would submit that the petitioner cannot be considered for appointment under the BCB category because he had applied under the BCB-Dependent of Ex-Serviceman category and once he had not furnished eligibility certificate qua Dependent of Ex-serviceman, he could not be considered for appointment. It is argued that once the petitioner had applied under BCB-Dependent of Ex-Serviceman category, he cannot be permitted to change his category to BCB category. In support of aforesaid contentions, reliance has been placed upon the judgments rendered by the Hon'ble Supreme Court in *J&K Public Service Commission Vs. Israr Ahmad (2005) 12 SCC 498* and *A.P. Public Service Commission, Hyderabad and others Vs. B. Sarat Chandra and others (1990) 2 SCC 669* as well as the judgments passed by this Court in CWP No.15119 of 2016 titled as *Shashi Vs. State of Haryana and others* decided on 22.05.2018 and CWP No.18442 of 2014 titled as *Baljinder Singh Vs. State of Haryana and another* decided on 28.02.2017.

5. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case as well as the case laws cited.

6. In every advertisement issued to fill up a vacancy/post, the government follows the reservation policy and this is mentioned by enlisting the total number of posts and category wise reservation for General, SC, BC, EWS, EBP, Ex-serviceman etc. Each candidate has to fill the form as per his/her category for claiming the benefit of reservation. If any candidate opts a category to which he/she does not belong, then he/she can't take the benefit of other category at any later stage.

7. The short question involved in the instant writ petition is whether the petitioner, who has not been able to produce eligibility certificate qua

Dependent of Ex-Serviceman under BCB Category, the category in which he had applied for the post of Mandi Supervisor-cum-Fee Collector, can be considered for appointment for the posts meant for BCB (Non ESM/ESP) Category and the answer is in negative. A perusal of the advertisement would reveal that out of 440 posts of Lower Divisional Clerk, 77 posts were kept reserved for BCB category, which were further bifurcated into Non ESM/ESP (55 posts), ESM (19 posts) and ESP (3 posts). The petitioner herein chose to compete for the 19 posts meant for ESM/DESM. A further perusal of the advertisement would reveal that in clause 15 of Note given under para 2.4 with heading Regulatory Framework, it is specifically mentioned that *DESM candidates of Haryana claiming benefit must have valid eligibility certificate on last date of submission of online application form and will have to produce the valid Eligibility Certificate from the concerned Zila Sainik Board when called upon to do so by Haryana Staff Selection Commission. Mere dependent certificate will not be entertained.* The advertisement was published on 05.07.2019 whereas the DESM certificate attached by the petitioner was dated 29.06.2015 and the same had expired on 29.09.2016, as validity of the said certificate is for one year, to be renewed every year. Thus, the DESM certificate was not valid even on the day of publication of the advertisement and therefore, on the date of submitting online application by the petitioner, he was not having valid DESM certificate to make him eligible to compete for the post of Mandi Supervisor-cum-Fee Collector under DESM category.

8. The argument of the petitioner by relying upon the judgment rendered by Coordinate Bench of this Court in *Braham Dutt's case* (supra) that the petitioner had secured more marks than the last selected candidate under BCB (Non ESM/ESP) Category and therefore, he should be considered for appointment under that category, would also fall flat. The judgment rendered

in *Braham Dutt's case* (supra) is distinguishable on the facts of the instant case. In the said judgment, there was only one post meant for ESM (BC-A) Category and the candidate who was selected against the said post had higher marks than the last selected candidate under BCA category and thus, the petitioner (Braham Dutt) therein raised a plea that the candidate selected against the post meant for ESM (BC-A) (horizontal + vertical reservation) should be considered for appointment under BCA category (vertical reservation) so that the benefit of horizontal reservation could be afforded to him, by laying emphasis on the judgments rendered by the Hon'ble Supreme Court in *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others 2007 (8) SCC 785* and by the Division Bench of this Court in *Ajit Singh Vs. State of Haryana and others 2012 (1) RSJ 433*. The Coordinate Bench acceded to the plea made by the petitioner (Braham Dutt), keeping in view the settled law that if a candidate belonging to horizontal reservation falls within the merit of vertical reservation, he will be considered for appointment to the posts meant for vertical reservation and the candidate lower in vertical reserved category will make way for him. This court has no hesitation in accepting the ratio culled out in the aforesaid judgment. In the said case, there was no question qua eligibility and the petitioner-Braham Dutt was seeking consideration of appointment of the candidate selected against the ESM-BCA category (vertical reservation) as he was falling in merit of BCA category so that the benefit of horizontal reservation could be extended to him, being number one in the waiting list of ESM-BCA category. However, in the instant case, the petitioner is found not eligible for the category, he applied under, i.e. BCB-DESM category on account of relevant dependant certificate not being available on the relevant date. The petitioner chose to compete for the 19 posts reserved for ESM-BCB and not against the 55 posts meant for BCB category. The reason for the same

is obvious; to face less competition as well as the lower cut-off in merit, which is evident from the fact that cut-off for the BCB category was 66 marks whereas for ESM-BCB category, the cut-off was 35 marks. Though the petitioner had secured 83 marks i.e. higher than the last selected candidate under BCB category but since he was not having the eligibility certificate of DESM under which category he applied, he cannot seek consideration of his candidature under BCB Category. Since the petitioner was ineligible at the very first stage to compete for the posts kept reserved for ESM category (horizontal reservation), he cannot be considered under BCB category (vertical reservation). It is also settled position of law that a candidate cannot seek change of category he applied for, at the fag end of selection process. In this regard reference can be made to judgment rendered in *J&K Public Service Commission's case* (supra) wherein it has been held that once a candidate had chosen to opt the category to which he is entitled, he cannot change the status and make a fresh claim. No doubt, the petitioner is a BCA candidate but he did not apply under the said category and chose to apply under the category of being dependant of an Ex-serviceman.

9. In view of the aforesaid facts and circumstances, this Court does not find any reason to interfere with the impugned order. Consequently, the instant petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

January 19, 2023
Pankaj*

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