

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

**LPA-385-2017 (O&M)
in CWP-3047-2017
Date of decision:23.01.2023**

KIRAN BALA

... Appellant

Versus

STATE OF HARYANA AND OTHERS

... Respondents

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO,
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr.Animesh Sharma, Advocate for the appellant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

M.S. RAMACHANDRA RAO, J. (ORAL)

This Letters Patent Appeal is preferred against the judgment dated 21.02.2017 passed by the learned Single Judge in CWP-3047-2017.

Background of the facts

The Haryana Staff Selection Commission(respondent No.3) had advertised 398 posts of PGT (History) including 19 of such posts for the EPBGC category.

The petitioner was a candidate for the recruitment to the post ofPGT (History). She had submitted an online application to Haryana Staff Selection Commission(respondent No.3) on 21.09.2015 after having secured a certificate that the petitioner belongs to EPBGC Category from the competent authority on 21.07.2015.

The petitioner contends that she had filledup her form online from

a Cyber Café, and due to the mistake of the Cyber Cafe operator,

LPA-385-2017 (O&M) in CWP-3047-2017

inadvertently in the application form, she was shown to have applied under the 'General category' instead of EPBGC category.

After realizing the same, on 06.10.2015, she submitted a representation (Annexure P-10) to the respondents requesting correction in her application form and to consider her in the category of EPBGC instead of the General category.

Another representation was also given vide Annexure P-11 on 09.03.2016.

Thereafter, screening test was held on 13.03.2016; and on 30.12.2016, respondent No.3 uploaded the notice on their official website for scrutiny of document on the basis of written test which was held on 13.03.2016.

The petitioner claims to have even submitted a copy of her EPBGC certificate to the Scrutiny Committee.

Petitioner contends that she got 94 marks in written examination and interview which is corroborated by the learned counsel for the respondents.

According to the respondents the cut off marks for General category is 102 while for EPBGC category, it is 84.

When the petitioner filed the Writ Petition before the learned Single Judge challenging the inaction of respondent No.3 in permitting correction of her category in the application form for the post of PGT (History), the said writ petition was dismissed by the learned Single Judge through the impugned order dated 21.02.2017 on the ground that the very object of filling up of application through online would be defeated, if the petitioner was to get rectified the

LPA-385-2017 (O&M) in CWP-3047-2017

category which has not mentioned while filling up of the application form through online. He has also held that there is no provision for modification of category from general to EPBGC category.

Assailing the same this appeal is filed by the appellant.

I have heard learned counsel for the parties at length.

While, it is true that there is no provision permitting modification of category from the General category to EPBGC in the advertisement issued inviting online applications on 28.06.2015, we could not find any prohibition either to permit such correction.

The fact that the appellant belongs to the said category is proved by Annexure P-7 certificate issued to the appellant by the competent authority on 21.07.2015. The certificate is issued to enable the appellant to claim reservation in the said category. It is not in dispute that 19 posts of PGT (History) are earmarked for this particular category.

Having obtained the certificate much prior to last date for submitting the online applications, it would be unrealistic to presume that the appellant did not claim said reservation deliberately and that she is trying to make such a claim at a later point of time. When request for correction was made by the appellant vide Annexures P-10 and P-11 on 06.10.2015 and 09.03.2016 much before the holding of the screening test on 13.03.2016, the respondent No.3 ought to have permitted such correction since there is no prohibition in the advertisement for making such correction.

LPA-385-2017 (O&M) in CWP-3047-2017

Learned counsel for the appellant has placed reliance on the Division Bench judgment of this Court in **Haryana Staff Selection Commission through its Secretary Vs. Sarla and Others, passed in LPA-320-2019, decided on 22.2.2019.**

In the said decision, the Division Bench had observed that one cannot lose sight of the fact that in view of the prevailing socio-economic condition in our Country, every citizen is neither netsavvy nor is a computer or laptop readily available for use; in these circumstances when such a candidate has to submit an application online, he has to depend upon a cybercafe providing the internet services; being himself/herself not computer and thenetsavvy, the candidate has to depend upon the operator in the cybercafe to fill in online form; and in such a circumstance, if any mistake occurs, it would be wholly unrealistic and arbitrary to make such a candidate suffer. The Bench also observed that if an incorrect entry is made due to human error, there is no provision on the website of the Commission allowing correction in the online application form; and in these circumstances, if a mistake is committed, there being no provision for carrying out correction, even if it is noticed subsequently, a poor candidate is to suffer for no fault. The Bench refused to interfere with the order of the learned Single Judge allowing the claim of the respondent-petitioner in the said case.

Though counsel for the State has relied upon the decision of the Supreme Court in **J. & K. Public Service Commission Vs. Israr Ahmad¹**, the said case is clearly distinguishable because in that case at the stage of preliminary examination claim for reservation was not made and such claim was put forth only at the stage of the final examination.

LPA-385-2017 (O&M) in CWP-3047-2017

The case in **Rajasthan High Court, Jodhpur &Anr. Vs. Neetu Harsh &Anr.**², cited by the counsel for the respondents is also not applicable because, even in the said case at the stage of preliminary examination, the benefit of reservation was not sought and such benefit was only sought at the time of main examination.

In the instant case, the request for correction was made immediately after filling of the application much before the screening test.

Therefore, having regard to the law laid down in the decision in **Haryana Staff Selection Commission**(supra), this LPA is allowed; the order dated 21.02.2017 in CWP-3047-2017 is set aside; and the said Writ petition is allowed. The respondents are directed to accommodate the petitioner in the one post of PGT (History) which has been kept vacant as per the affidavit dated 23.01.2023 filed by the Under Secretary, Haryana Staff Selection Commission (Para-4). The respondents are directed to consider the petitioner in the said vacancy earmarked for EPBGC category and if considered eligible and meritorious appoint her in the said post with all consequential benefits.

Pending application(s), if any, shall also stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

23.01.2023
Sonia

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