

CWP-305-2019(O&M)

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

224/2

CWP-305-2019(O&M)
Date of Decision: 07.11.2023

Sonia Devi

...Petitioner(s)

Versus

Haryana Staff Selection Commission

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with Mr. Sandeep Dhull,
Advocate for the petitioner

Mr. Ravi Pratap Singh, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed seeking a writ of *mandamus* directing the respondents to allow the petitioner to appear for interview/*viva voce* provisionally for the post of PGT Commerce (Rest of Haryana cadre) which was to be conducted on 25.12.2018.

2. Facts in brief, relevant to decide the case are, the respondent/Haryana Staff Selection Commission advertised 337 posts of PGT Commerce (Rest of Haryana cadre) vide advertisement no.4 of 2015, dated 28.06.2015, out of which seventeen posts were earmarked for Ex-servicemen (hereinafter referred to as 'ESM') category; last date for submission of online applications was 21.09.2015.

2.1. The petitioner applied for the post as general category candidate, and was issued roll number under that category. After declaration of written

examination result, the candidates were called for scrutiny of documents vide

notice dated 22.01.2017. Since the petitioner had cleared the written examination, she was also called for the scrutiny; her certificates were found in order, and was declared eligible for the post as a general category candidate.

2.2. Subsequently, vide notice dated 18.12.2018, the candidates were asked to come for interview for the advertised posts. The petitioner scored less marks than those of the last short-listed candidate in general category, and was not called for interview. On not receiving a call letter, she approached this Court by filing the instant petition dated 20.12.2018. It is claimed that she belonged to Dependent of Freedom Fighter (hereinafter referred to as 'DFF') category, and the certificate dated 08.03.2016, Annexure P-1, has also been issued to her to that effect.

2.3. After declaration of final result of selection, five posts of ESM category remained vacant.[This fact has been mentioned in the records of connected writ petition, CWP No.1145 of 2019, which was heard along with the instant petition.] On that basis, claim to be considered against these vacant posts has been made by the petitioner.

3. Learned senior counsel has contended that the petitioner belongs to DFF Category and has a right to be considered against the ESM category posts, which remained vacant due to non-availability of eligible candidates as per the final result of selection. In terms of Government instructions, dated 15.07.2014, the vacant posts of ESM category have to be given to DFF category candidates. Therefore, the petitioner has a right to be so considered by permitting change of her category, as she is a dependent of freedom fighter as per the certificate dated 08.03.2016, which is not disputed. In support of the

submission, he has relied upon a judgment of this Court passed in *Kiran Bala v. State of Haryana and others*, 2023 SCC OnLine P&H 640.

4. Learned State counsel, on the contrary, contends that the petitioner is not entitled to be considered against the vacant ESM category post, as she was never an applicant under DFF category. She applied as a general category candidate and cleared the written test as such, but was not called for interview on scoring less marks than those of the last shortlisted candidate in the category. Only thereafter, she produced the DFF category certificate and sought change of category from the general to DFF, which cannot be permitted.

5. Heard.

6. As per facts apparent on record, the petitioner on her own applied for the post as a general category candidate, and her candidature was duly considered as such. On account of getting less than cut-off marks in the written examination, she could not be called for interview. After failing to reach the bench mark, she has sought change of her category to DFF on the basis of a certificate, dated 08.03.2016, in the midst of selection process. While applying for the post, she never claimed herself to be belonging to DFF category; the certificate too was issued to her after the closing date of submission of application, 21.09.2015. Besides, learned senior counsel could not point out from the record as to when did the petitioner approach the respondents for considering her candidature under DFF category; there is no averment to that effect in the petition either. Merely because she has been certified to be belonging to this category during the selection process, that in itself cannot be a ground to permit her to change the category.

7. It has been held by the Supreme Court in *J&K Public Service Commission v. Israr Ahmad and others*, 2005 (12) SCC 498, that once a candidate has chosen to opt for the category for which he/she is entitled, his/her status cannot later be changed to make a fresh claim under a different category. The relevant paragraph of the judgment reads as under:

5. We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.

8. The judgment in *Kiran Bala* case (*supra*) relied upon by learned senior counsel for the petitioner has no application to the facts of the instant case. Since, in that case the petitioner belonged to EPBGC category and was issued a certificate, dated 21.07.2015, to that effect by the competent authority

prior to submission of online application for the post. It was due to mistake

committed by the cyber cafe operator in filling-up the application form, that her category could not be correctly mentioned. Soon thereafter, on realizing the mistake, the petitioner therein made a request for correction of her category on 06.10.2015, much before holding of the screening test on 13.03.2016. In these circumstances, it was held that she ought to have been permitted to make the correction in her category as there was no prohibition in the advertisement for making such a correction. Whereas, the petitioner herein applied as a general category candidate and was considered in that category. She never approached the Commission seeking correction of her category to that of DFF. After remaining unsuccessful in the selection process, the claim was raised which could not have been entertained.

- 9. In view of the above discussion, there is no merit in the petition.
- 10. Dismissed.
- 11. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

07.11.2023
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>