

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

116

CWP-29863-2022

Date of Decision : 24.11.2023

Hitesh

..... Petitioner

Versus

Union of India and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Naman Jain, Advocate
for the petitioner.

Mr. Pankaj Gupta, Sr.Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking direction to the respondents to consider him under PwD category instead of general category.

2. The petitioner is a person with benchmark disability. The petitioner applied pursuant to advertisement dated 23.12.2021 of Combined Graduate Level Examination, 2021 for filling up of various Groups B and C posts in different departments of Government of India. It was a four stages exam i.e. Tier-1, Tier-II, Tier-III and Tier-IV. The petitioner applied under general category, though, he was suffering from benchmark disability. The petitioner appeared in Tier-1 examination on 20.04.2022 and successfully qualified. The petitioner was allowed to appear in Tier-II and Tier-III examination. The petitioner appeared in Tier-II exam held on 08.08.2022

and Tier-III examination held on 21.08.2022. The respondent on 15.10.2022 declared result of Tier-II examination. The petitioner could not qualify under general category. The petitioner, on 21.12.2022, came to be issued disability certificate by competent authority wherein the petitioner was declared as person suffering from mental ailment to the extent of 71% which is more than benchmark disability i.e. 40% under PwD Act. The petitioner applied for the change of category.

3. The respondent did not pay heed to the request of the petitioner and he preferred the present petition before this Court. By interim order dated 22.12.2022 passed by this Court, the petitioner was permitted to participate in Tier-IV exam under PwD category. The petitioner cleared Tier-IV exam under PwD category though he was unsuccessful under general category.

4. Learned counsel for the petitioner submits that as per notification dated 02.02.2022 issued by Ministry of Personnel, Public Grievances and Pensions (DoPT), with respect to Civil Services Examination, a candidate who becomes a person with benchmark disability during the course of examination process may produce valid document for the consideration under the said category. The petitioner was suffering from disability, however, he was not having requisite certificate which was mandatory, thus, he applied under general category. During the process of examination, he got certificate from the competent authority and accordingly requested respondent to consider his candidature under PwD category. The petitioner has secured requisite marks and successfully cleared Tier-IV stage, thus, the petitioner deserves to be considered under PwD category. A number of posts are lying vacant with respondent, thus,

no prejudice is going to be caused to respondent.

5. Counsel for the petitioner relied upon order dated 14.11.2022 passed by this Court in CWP No.12949 of 2017 titled as “Anil Singla vs. State of Haryana and another”.

6. Per contra, learned counsel for the respondent submits that respondent cannot travel beyond the advertisement as well as rules governing Combined Graduate Level Examination. Clause 6.2 of the advertisement read with Clause 23 provides that candidates seeking reservation under SC/ST/OBC/EWS/PWD must ensure that they are entitled to such reservation as per eligibility prescribed in the notice. The last date for claiming benefit under these categories was 23.01.2022 whereas the petitioner furnished disability certificate after November' 2022. The category of the petitioner at the belated stage could not be changed.

7. I have heard the arguments of learned counsel for the parties and perused the record.

8. The conceded position emerging from record is that the respondent issued advertisement on 23.12.2021 inviting applications for Combined Graduate Level Examination, 2021. The crucial date for claiming SC/ST/OBC/EWS/PWD status was closing date of receipt of online applications i.e. 23.01.2022. The petitioner is suffering from disability, however, he applied under general category. The petitioner cleared Tier-I exam and he was permitted to participate in Tier-II and Tier-III exam. The petitioner did not clear Tier-II exam under general category so he was not eligible to participate in Tier-IV exam. The petitioner by way of interim order dated 22.12.2022 passed by this Court was permitted to participate in Tier-IV exam. The petitioner could not score requisite marks

under general category, however, if he is considered under PwD category he has qualified. The petitioner is relying upon Clause 26 of notification dated 02.02.2022 issued by DoPT with respect to Civil Service Exam. The said Clause reads as :

Change of Category :

26.(1) If the category indicated by a candidate in the application form for the Civil Services (Preliminary) Examination is unreserved category but the candidate subsequently writes to the Commission to change the category to a reserved one, such request shall not be entertained by the Commission. Further, once a candidate has chosen a reserved category, no request shall be entertained for change to other reserved category viz. SC to ST, ST to SC, OBC to SC/ST or SC/ST to OBC, SC to EWS. EWS to SC, ST to EWS, EWS to ST, OBC to EWS, EWS to OBC, etc. No Reserved category candidates other than those recommended on General Merit shall be allowed to change their category from reserved to unreserved or claim the vacancies (Service Cadre) for unreserved category after the declaration of final result by UPSC Further, no candidate belonging to any sub-category of Persons with Benchmark Disabilities (PwBD) shall be allowed to change the sub-category of disability,

(2) While the above principle will be followed in general, there may be a few cases where there was a gap of not more than 3 months between the issuance of a Government Notification enlisting a particular community in the list of any of the reserved communities and the date of submission of the application by the candidate. In such cases, the request of change of

category from unreserved to reserved may be considered by the Commission on merit.

(3) In case of a candidate becoming a candidate belonging to Persons with Benchmark Disability category during the course of the examination process, the candidate must produce valid document of acquiring a disability to the extent of 40% or more as defined under the RPwD Act, 2016 to consider drawing the benefits of reservation as available to the Persons with Benchmark Disability (PwD) category.

9. The respondent is relying upon clause 6 as well as clause 23 of the advertisement. Clause 6 prescribes process of certification & format of certificates and Clause 23 encompasses important instructions to candidates. The relevant extracts of Clause 6 and 23 of the advertisement are reproduced as below :

Process of Certification and Format of Certificates:

X X X X

6.2 Crucial date for claim of SC/ST/OBC/EWS/PwD status or any other benefit viz. fee concession, reservation, age-relaxation, etc, where not specified otherwise, will be the closing date for receipt of online applications i.e. (23-01-2022).

X X X X

23 Important Instructions to Candidates

(a) to (c) X X X X

(d) Candidates seeking reservation benefits available for SC/ST/ OBC/ EWS/PwD/ ESM must ensure that they are entitled to such reservation as per eligibility prescribed in the Notice. They should also be in possession of the certificates in the prescribed format in support of their claim.

(e) to (i) X X X X

(j) *Before submission of the corrected/ final online application as the case may be, candidates must check that they have filled correct details in each field of the form. After submission of the corrected/ final online application form OR expiry of the period of 'Window for Application Form Correction', no change /correction/ modification will be allowed under any circumstances. Requests received in this regard in any form like Post, Fax, Email, by hand, etc. shall not be entertained by the Commission and will be summarily rejected."*

10. From the perusal of Clause 26 of notification issued by DoPT, it is evident that if a candidate applies under general category he cannot be permitted to change his category to a reserved category. In case, a candidate becomes a person belonging to persons with benchmark disability, during the course of examination process, he may be considered under PwD category. There is nothing on record to disclose that the petitioner became disable during the course of examination process. The petitioner is relying upon sub-clause (3) of clause 26, however, petitioner has ignored mandate of clause 26 (1) of the aforesaid notification. Sub-clause (3) is applicable where a candidate suffers disability during the course of examination process. Sub-clause (3) is not applicable to a candidate who is disabled prior to commencement of examination process. It is further apt to notice that aforesaid notification is applicable to Civil Services Exam and it is not applicable to all the examinations conducted by different authorities though inference in an appropriate case may be drawn from the said notification.

11. The petitioner is bound by terms and conditions of the

advertisement. Clause 6.2 specifically provides that crucial date for claim of reservation would be closing date of receipt of online applications i.e. 23.01.2022. General instructions adumbrated in Clause 23 clearly provides that a candidate seeking reservation under PwD category must ensure that he is entitled to such reservation and he is in possession of certificate in support of his claim. No candidate is permitted to change or correct or modify any particular of the application.

12. The petitioner applied under general category and he participated in the examination process as a general category candidate. The petitioner was not having disability certificate even on the date of participating in the examination process. The petitioner cleared Tier-I exam under general category, however, he could not crack Tier-II exam under general category. At this stage, he got certificate under PwD category and asked the respondent to consider his claim under PwD category. It is apt to notice that petitioner even did not apply for disability certificate prior to participating in the examination process. It is not a case of the petitioner that he applied to a competent authority for requisite certificate prior to filing online application. The last date for filing online application was 23.01.2022 whereas the petitioner secured disability certificate on 21.11.2022. The petitioner filed even application before competent authority seeking disability certificate post 23.01.2022.

13. A two-judge Bench of Supreme Court in **J & K Public Service Commission vs. Israr Ahmad and ors., 2005(12) SCC 498** has held that a candidate cannot be permitted to claim benefit of reservation after participating in the examination process.

In the said case, the petitioner after passing preliminary

examination claimed benefit of reservation. A single judge of High Court of J & K held that a candidate was not entitled to benefit of reservation, however, a Division Bench extended benefit of reservation. The Apex Court reversed judgment of Division Bench holding that a candidate cannot be permitted to claim benefit of reserved category after last date of submitting application. The relevant extracts of the judgment read as :

3. *The first respondent thereafter challenged the selection by filing a writ petition and the learned Single Judge of the High Court of Jammu and Kashmir held that the first respondent was not entitled to the benefit of reservation based on SRO 126 of 1994 as he had not indicated in his application for the preliminary examination that he was entitled to such benefit. The writ petition filed by the first respondent was dismissed and he challenged the same by way of LPA (SW) No. D-29 of 2002 and the Division Bench of the High Court of Jammu and Kashmir held that the first respondent herein in fact possesses the eligibility for being considered in the reserved category even before the date of advertisement and he submitted his proof only later and that by itself did not disentitle him from claiming the reservation. Accordingly, the LPA was allowed and the direction to treat him under the reserved category was issued. This is challenged before us by the Public Service Commission.*

4. *Learned counsel for the Commission submits that as the last date for submitting the application was 16-3-1999 the respondent did not produce the certificate claiming reservation nor did he indicate in the application that he belongs to that category. It was submitted that several other applications of similar nature were rejected by the Commission and the*

respondent's application also was treated alike and the Division Bench erred in coming to the conclusion that he was entitled to get reservation. Counsel for the respondent on the other hand pointed out that though the first respondent did not avail of the benefit of reservation when he submitted the application for the preliminary examination he had submitted the application for the main examination in which he had clearly shown that he was entitled to get reservation as per SRO 126 of 1994 dated 20-6-1994 and he had also produced the certificate along with the application for the main examination. It is submitted that he had claimed the reservation for the main examination and he should have been treated as a reserved candidate in the main examination.

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.

14. The case of the petitioner is squarely covered by aforesaid judgment. In the case in hand, the petitioner neither applied under PwD category nor was possessing disability certificate on the date of application. The petitioner appeared in the exam under general category and on being declared unsuccessful under general category furnished disability certificate claiming reservation under PwD category.

15. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition sans merit and deserves to be dismissed and accordingly dismissed.

16. Before parting with the judgment, this Court finds it appropriate to observe that as per petitioner a number of posts are still lying vacant and petitioner has qualified under PwD category, therefore, the dismissal of this petition would not inhibit the respondent to consider petitioner under PwD category, if at any stage, it is found appropriate by respondent.

24.11.2023
anju

(JAGMOHAN BANSAL)
JUDGE

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