

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-27698-2023_(O&M)
Decided on : 11.12.2023

Sahil Sharma

...Petitioner

Versus

Haryana Staff Selection Commission

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Ankur Sidhar, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioner is that the petitioner be allowed to change his category from General to Economic Weaker Section (EWS) and allow him to participate further in the selection process for the post in question.

2. It may be noticed that the respondents had issued an advertisement for conducting common eligibility test for group C posts, copy of which has been appended as Annexure P-1.

3. In the present case, in pursuance to the said advertisement, the petitioner filled-up the application form in a General category so as to allow him to compete in the said category which application was accepted by the respondents. The petitioner appeared in the common eligibility test which

was conducted by the respondents to shortlist the candidates for the post in question. The petitioner appeared in the common eligibility test as a general category candidate and obtained 46.5 marks. The last candidate in the general category who has been shortlisted for further participation in the selection process for the post in question, has secured 47.5 marks, but the petitioner was not shortlisted for further selection process as he did not secure the minimum marks that was required for in order to be shortlisted for further selection process.

4. The petitioner, thereafter, raised the grievance that the petitioner's category should be changed from General to economic weaker section keeping in view the public notice dated 11.01.2023 as well as 01.02.2023 (Anneuxre P-3).

5. Learned counsel for the petitioner refers to the judgment of Hon'ble Division Bench of this Court in CWP No. 23185 of 2014, titled as '**Usha Dhillon vs. State of Haryana and others**' decided on 15.12.2014 and the judgment of the Co-ordinate Bench of this Court passed in CWP No. 10407 of 2019, titled as '**Kaptan Singh and another v. Union of India and others,**' decided on 30.08.2019 to support his claim.

6. The grievance of the petitioner is that the petitioner has not been allowed to change his category from general category to Economic Weaker Section category, which is causing prejudice to the petitioner.

7. I have heard learned counsel for the petitioner and have gone through the case file with his able assistance.

8. It is a conceded fact that the petitioner filled up the application form for the post in question in which he claimed to compete under the general category. The petitioner appeared in the common eligibility test also under the general category but after being unable to secure the minimum

marks required to clear common eligibility test in general category, the petitioner is now raising a grievance with regard to the fact that as he has obtained 46.5 marks and he also belongs to the category of EWS, for which the cut-off is 38 marks, the petitioner be allowed to change his category from general category to EWS category. The said prayer of the petitioner cannot be accepted for the reasons is that once the petitioner has applied in a particular category, the same has to be taken into account while proceeding with the selection process for the post in question.

9. Further, the petitioner has already appeared in the common eligibility test under general category candidate and where his candidature has already been considered under general category and he has not been found eligible to compete further. That being the position, the petitioner cannot be allowed to change his category at this belated stage. As per the judgment of the Honble Supreme Court of India in Civil Appeal No. 198 of 2005, titled as **J & K Public Service Commission v. Israr Ahmad and others**, decided on 07.01.2005, once a candidate has competed in a particular category, same cannot be changed at a belated stage.

Relevant paragraph of the judgment is as under:

"6. *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 the 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 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 the the 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 later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal."

10. The question as to whether, the public notice dated 11.01.2023 & 01.02.2023 (Anneuxre P-3) will allow the petitioner to change his category or not. A bare perusal of the said public notices would show that the same were only for correction of the application form wherein the category has wrongly been mentioned by the candidates. In the present case, it is a conceded position that the petitioner has not mentioned an incorrect category while submitting the application form for the post in question rather the petitioner chose to compete in the general category.

11. On being asked as to whether, the petitioner had attached the certificate/documents to prove his eligibility under EWS category, learned counsel for the petitioner very fairly submits that it is only while applying under the public notices, the petitioner chose the category of EWS and has requested that his documents to support the said claim be also accepted and no document to support the claim under EWS category was appended with

the application form.

12. The said request of the petitioner cannot be accepted for the reasons that as per the clause of the advertisement, all the documents required to claim a benefit under the category are needed to be appended alongwith the application form. In case, any document for claiming the benefit under any category is not appended with the application form by the candidate, the benefit of the said category was not to be given to the candidate, that being the terms and conditions of the advertisement, the petitioner is now changing his category under the garb of making correction in his application form is not permissible.

13. Further more, as learned counsel for the petitioner submits that the claim of the petitioner is covered with the judgment of the Co-ordinate Bench of this Court in **Kaptan Singh's case (Supra)**. A bare perusal of the said judgment would show that the details were mentioned wrongly in the application form which was needed to be corrected but in the present case, the petitioner filled up the application form in general category for the post in question and raised no objection qua competing in general category till the result of the common eligibility test was declared and it was only after the declaration of result of common eligibility test and keeping in view the marks secured by the petitioner in the general category, the petitioner is trying to change is category to the EWS category, hence, judgment passed by the co-ordinate bench of this Court in Kaptan Singh's case (Supra) will not come in the rescue of the petitioner.

14. Similarly, reliance is being placed by the petitioner upon the judgment of Hon'ble Division Bench of this Court in **Usha Dhillon's case (Supra)**, is misplaced as the said judgment also relates to a *bona fide* mistake with regard to a category mentioned while filling up the application form for

the post in question.

15. In the present case, it is not the case that the petitioner wanted to apply in the EWS category but has wrongly filled up the application form under the General category.

16. Story being projected by the petitioner is an after thought, which can be proved from various facts. The last date of filling up the application form was 13.07.2022 and in case, the petitioner had made a mistake in filling up the application form under general category, he could have rectified the same immediately by submitting any representation. The common eligibility test was held on 05-06.11.2022. The petitioner got a roll number under the general category and he appeared in the common eligibility test under general category. Not only this, his result has been declared in the general category and it is only after the declaration of the result of common eligibility in the general category merely realizing that the candidate under EWS category has a lesser percentage of clearing the Common eligibility test, the petitioner filed first representation with the respondents on 22.02.2023. This Shows that the petitioner is only trying to change his category keeping in view the marks obtained by him in common eligibility test and it is not case of bona fide mistake while filling up the application form under a particular category as being claimed by the petitioner. The petitioner is trying to mislead this Court, which is clear from the facts raised in the present petition and arguments raised by the learned counsel for the petitioner during the hearing. This kind of act of misleading to the Court needs to be curbed by strict order. Though, this Court intended to impose cost upon the petitioner for misleading the Court, as the petitioner is unemployed, the cost is not being imposed with the clear warning to the petitioner to remain careful in future.

17. Keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for inference interfere in the present case, hence the present case stands **dismissed**.
18. Pending civil miscellaneous application, if any, shall also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

11.12.2023
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<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>