

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

CWP-4652-2022 (O&M)

Date of decision: 23.07.2024

Usha Rani

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sunil Kumar Nehra (Sirsa), Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana

AMAN CHAUDHARY, J.

1. As it emerges from the averments in the petition and the submissions advanced on behalf of the petitioner that, at the time of downloading the admit card at 16:31:14 hrs on 18.07.2021, she discovered the inadvertent error that had crept in, while her form was submitted online at a cyber cafe, wherein the category in which she had applied, was selected as ESM (General) in place of EWS. The additional ground of non-suiting her was that alongwith the application form, the EWS certificate uploaded was for use of jobs/ admissions under Government of India.

2. Insofar as the first issue is concerned, a beneficial reference can be made to the judgment of **Vashist Narayan Kumar vs. State of Bihar**¹, wherein Hon'ble the Supreme Court had held that if there is a mistake in the application form, which appears to be genuine and bona fide, then it will be unjust to penalise the candidate and the cancellation was set aside by observing that, in the said case, the appellant had participated in the selection process and cleared all the stages successfully. The State was not justified in making a mountain out of this molehill.

Perhaps the rarefied atmosphere of the cybercafe, got the better of the appellant.

¹ 2024 SCC OnLine SC 2

He omitted to notice the error and even failed to avail the corrective mechanism offered. Further, “In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 [*Prince Jaibir Singh v. Union of India*], this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.” Following the above dictum, Division Bench in **Haryana Staff Selection Commission vs. Vishvajeet Singh and another**² affirmed the relief as granted by the Single Bench, by dismissing the appeal, while observing that the category of the respondent therein being BC-‘B’ and it was not in dispute that the certificate, in that regard was uploaded. The error that had occurred, was on account of him having mistakenly opted for BC-‘A’, nonetheless the marks he obtained were way higher than the cut off for both categories. There would have been no benefit that he would have derived by mentioning the wrong category.

3. In **Haryana Staff Selection Commission through its Secretary vs. Sarla and others**³, the petitioner while utilising the facilities of the cyber cafe to submit the application form, accidentally selected the wrong category, which could not be corrected due to lack of options. Thereafter, the Division Bench directed the respondents to consider her candidature under EBPB category instead of BCB category, observing that “We cannot loose sight of the fact that in view of the prevailing socio economic condition in our country, every citizen is neither net savvy nor has a computer or laptop readily available for use. In these circumstances, when such a candidate has to submit an application on-line he has to dependent upon the cyber cafés providing the net services. Being himself/herself not computer and net savvy the candidate has to depend upon the operator in the cyber café to fill in online form and in such a circumstance if any

² LPA-13-2023, decided on 01.02.2024

³ LPA-320-2019, decided on 22.02.2019

mistake occurs it would be wholly unrealistic and arbitrary to make such a candidate suffer. It is also to be taken note of 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. 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.”

4. Likewise in the present case, the certificate attached was that of EWS, which apparently substantiates the plea of the petitioner of a mistake having been committed unknowingly of selecting the ESM category.

5. The second objection taken to oust her of consideration, is the uploading of the EWS certificate relating to Government of India, which was not raised in the written statement but in a subsequent affidavit dated 10.07.2024, which cannot come in her way, in wake of the judgment of Hon’ble the Supreme Court in **Dolly Chhanda vs. Chairman, JEE**⁴, wherein it was observed that, “...Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.” Notably in the case in hand, the petitioner, on having been allowed to compete, secured 62 marks, while the cutoff for EWS category is 57.5 and one post vide order dated 19.04.2022 was also ordered by this Court to be kept vacant.

6. Evidently, the intention of the petitioner was to be considered against

⁴ (2005) 9 SCC 779

EWS category, there being no denying the fact that the certificate to establish her claim therein, was uploaded. Now the plea of the respondents remains that it was to obtain employment under Government of India, while the required was for the State of Haryana. The difference between being, for the former the income was to be less than 8 lakhs, whereas for the latter 6.

7. In view of the afore discussion, the candidature of the petitioner be considered under EWS and it would be in the interest of justice and equity that she be granted an opportunity to produce the requisite certificate for it, in the eventuality of her doing so and subject to her falling in the merit, she be offered appointment. Needful be done within a period of two months.

8. The present petition is disposed of.

(AMAN CHAUDHARY)
JUDGE

23.07.2024
dinesh

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