

LPA-1412-2024 (O&M)

2024.PHHC.122605-DB



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

**CM-3361-LPA-2024 in/and
LPA-1412-2024 (O&M)
Date of Decision: September 17, 2024**

RUPINDER KAUR Appellant

Versus

STATE OF PUNJAB AND OTHERS Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. B.S. Jaswal, Advocate for the appellant.

 Mr. R.S. Pandher, Sr. DAG, Punjab.

LISA GILL, J.

CM-3361-LPA-2024

1. Heard.
2. For reasons mentioned in the application as well as arguments addressed, delay of 14 days in filing the appeal is condoned.
3. Application is, accordingly, disposed of.

LPA-1412-2024 (O&M)

1. Prayer in this appeal is for setting aside order dated 15.01.2024 passed by learned Single Judge whereby CWP-12090-2016 filed by the appellant (writ petitioner) was dismissed.
2. Appellant-writ petitioner filed above said writ petition seeking direction to respondents to fill up four posts of General (Ex-Serviceman) category out of the available candidates pursuant to advertisement dated

LPA-1412-2024 (O&M)

11.03.2016 (Annexure P1). Appellant pleaded that being fully eligible and qualified, she applied for the post of Staff Nurse against General (Ex-Serviceman) category pursuant to advertisement dated 11.03.2016. She admittedly secured 344 marks, therefore, she was not called for verification of documents as the cut off had been set at 400 by the Department. With grievance that minimum cut off marks of 400 had been incorrectly kept for Ex-Serviceman General category, CWP-12090-2016 was filed. Learned Single Bench while considering the facts and circumstances dismissed the writ petition vide impugned order dated 15.01.2024 while observing as under:-

“8. In selection process there are different posts meant to be manned by different categories of persons. The posts are to be filled horizontally as well as vertically by the various reserved categories.

9. In vertical reservation, the categories which are required to be noticed are the SC, ST, OBC and as observed by the Supreme Court, the remaining reservations are to be treated as horizontal reservations.

10. The horizontal reservations cut across vertical reservations. Thus, a person who may be from SC, ST or OBC category may also be suffering from the reservations of horizontal kind, like being a person with a disability (PWD) or may be an Ex-servicemen or may be a ward of a freedom fighter or may be from a female category or may be from sports category. Thus, within reservations there can be further reservations.

11. The General category is an open category which takes into its ambit all the reserved category persons. The open category posts are to be filled only on merit. Thus, a person belonging to a reserved category who scores highest marks and does not take any advantage or benefit of selection available to a reserved category would be entitled to be placed in the open category. In ***Jitendra Kumar Singh Vs. State of Uttar Pradesh and Others; 2010 (3) SCC 119***, the apex Court has held as under:-

LPA-1412-2024 (O&M)

“53. Mr. Rao had suggested that Section 3 (6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field, by providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age limit. We are unable to accept the aforesaid submission. Section 3 (6) is clear and unambiguous. It clearly provides that a reserved category candidate who gets selected on the basis of merit in open competition with general category candidates shall not be adjusted against the reserved vacancies. Section 3(1), 3(6) and Section 8 are interconnected. Expression "open competition" in Section 3 (6) clearly provides that all eligible candidates have to be assessed on the same criteria. We have already noticed earlier that all the candidates irrespective of the category they belong to have been subjected to the uniform selection criteria. All of them have participated in the Preliminary Written Test and the Physical Test followed by the Main Written Test and the Interview. Such being the position, we are unable to accept the submissions of the learned counsel for the petitioners/appellants that the reserved category candidates having availed relaxation of age are disqualified to be adjusted against the Open Category seats. It was perhaps to avoid any further confusion that the State of UP issued directions on 25.3.1994 to ensure compliance of the various provisions of the Act. Non-compliance by any Officer was in fact made punishable with imprisonment which may extend to period of three months.”

3. It was held that once a person from reserved category (horizontal) has been placed in the open category, the concerned reserved post is treated to be fulfilled. It was, thus, held that in the given circumstances, no ground is made out for interference. Aggrieved therefrom, present appeal has been filed.

4. Learned counsel for appellant vehemently argues that four posts were yet to be filled, therefore, in this factual scenario it was incumbent upon the respondents to have called the candidates belonging to Ex-Serviceman category (General), who had secured less than 400 marks in order to ensure that candidates of the said category could be represented. Reference has been made to some other advertisement issued by respondents in which this course of action was followed. It is, thus, prayed that this appeal be allowed.

5. Learned counsel for State (on advance notice) while refuting the arguments as raised, submits that though it was not mentioned in written statement filed before the writ Court, four remaining posts were in fact

LPA-1412-2024 (O&M)

subsequently filled up from the General category candidates who had obtained more than 400 marks and appointment letters were issued on 20.05.2016. This course was adopted as candidates of Ex-Serviceman category, who had secured requisite marks were not available, said posts of Ex-Serviceman (General) category, were carried forward.

6. Having heard learned counsel for parties and perusing the file, we do not find any ground to cause interference in this matter. Even if it is assumed that certain posts remained vacant, it cannot be said that separate criteria should be carved out for the candidates belonging to Ex-Serviceman General category. It has been correctly held by learned Single Bench that selection process has been carried out in accordance with merit and persons from respective categories have been appointed while observing as under:-

“16. The cut-off for open category, therefore, has to be firstly determined considering the total number of posts which are available in the open category. Once the minimum cut-off is laid down, all the persons who fall in the horizontal/vertical category would be allowed to march in open category provided they come within the said minimum cut-off. Thus, Ex-serviceman (General) category person would get placement in the open category provided he scores above the minimum cut-off. If any different interpretation is taken, it would result in a chaos in preparing of merit.”

7. Learned counsel for appellant is unable to point out any infirmity or irregularity in impugned order dated 15.01.2024 which calls for interference.

LPA-1412-2024 (O&M)

8. No other argument has been raised.
9. In the given facts and circumstances as above, appeal is dismissed
being devoid of any merit.

(LISA GILL)
JUDGE

September 17, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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