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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7875-2021
Date of decision: 09.02.2024

MANISH KUMAR

...Petitioner

VERSUS

HARYANA STAFF SELECTION COMMISSION AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Kuldeep Sheoran, Advocate
for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

None for respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari/mandamus* for quashing/modifying the result dated 22.03.2021 (Annexure P-7) to the extent that the petitioner has not been declared selected for the post of Assistant Lineman (ALM) advertised vide advertisement No.11/2019 (category No.2) dated 05.07.2019 (Annexure P-1) either in the EWS category or General category despite the fact that the petitioner has more marks than the cut off marks in the General category and he is also duly eligible under the EWS category with a further prayer for directing the respondent to declare the petitioner successful and offer him appointment on the aforesaid

post as per his merit with effect from the date other candidates were offered appointment along with all consequential benefits.

2. Learned counsel for the petitioner submitted that the petitioner applied for the post of Assistant Lineman (ALM) under the EWS category in pursuance of advertisement No.11/2019 dated 05.07.2019 (Annexure P-1). He further submitted that the petitioner obtained total 93 marks and since he applied under the EWS category, he was considered against the aforesaid category only and was non-suited only on the ground that his EWS category certificate dated 14.06.2019, which has been appended as Annexure P-3 with the present petition was issued although by the State of Haryana but was meant for the purpose of jobs/admissions under the Government of India. He also submitted that even if assumingly the petitioner was not qualified for being considered under the EWS category and although he applied under the same category but he secured more marks than the last selected candidate under the General category. He further submitted that the last selected candidate under the General category had secured 91 marks, whereas the petitioner had secured 93 marks. He further submitted that in this way, first of all the petitioner should have been considered against the General category as a matter of normal procedure and since he had secured more marks than the last selected candidate under the General category, he was to be selected and offered appointment but he has not been considered under the General category and he has been considered only under the EWS category, to which he applied but non-suited on the ground of some defect in the EWS certificate. He further submitted that such an approach of the respondent-Haryana Staff Selection Commission was

totally illegal and violative of Article 14 and Article 16 of the Constitution of India.

3. Learned counsel for the petitioner also submitted that similar controversy had arisen before a Coordinate Bench of this Court although pertaining to different selection process but the facts were similar in nature and the issue and law point involved is the same. He further submitted that one Om Roj had filed a writ petition against the Haryana Staff Selection Commission and others bearing No.CWP-2667-2022, which was decided on 28.04.2022, wherein it has been held that once a candidate has applied for a post under the EWS category and his marks were more than the last selected candidate of the General category, then he ought to have been considered against the General category notwithstanding the fact that he had applied under the EWS category because at first instance the candidate was to be considered under the General category. He further submitted that a Coordinate Bench of this Court in the aforesaid judgment has allowed the writ petition and directed the respondents to consider the candidature of petitioner-Om Roj in General category in accordance with the marks obtained by him and proceed further in accordance with law within a period of 30 days. He further submitted that the aforesaid judgment was assailed by the Haryana Staff Selection Commission before the LPA Bench by way of *LPA-153-2023* and the aforesaid LPA has now been dismissed by the LPA Bench of this Court on 31.01.2024. He further submitted that in view of the aforesaid position, the case of the petitioner is squarely covered by the aforesaid judgment passed by a Coordinate Bench of this Court, which has been upheld by the LPA Bench of this Court.

4. On the other hand, Ms. Dimple Jain, DAG, Haryana submitted that the aforesaid factual position is not in dispute pertaining to the marks obtained by the petitioner and also that the proposition of law has already been decided by a Coordinate Bench of this Court as aforesaid.
5. I have heard the learned counsel for the parties.
6. In view of the aforesaid position, this Court is of the view that the prayer of the petitioner is squarely covered by the aforesaid judgment passed by a Coordinate Bench of this Court, which has been upheld by the LPA Bench of this Court and therefore, the present writ petition deserves to succeed.
7. Consequently, the present writ petition is allowed in the same terms as in *CWP-2667-2022*.

09.02.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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