

2024:PHHC:038811-DB

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

Civil Writ Petition No. 6478 of 2024
Date of Decision: March 18 , 2024.

Avinash Yadav
Versus
HPSC and another

..... PETITIONER (s)

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE AMARJOT BHATTI**

Present: Mr. Rajesh Arora, Advocate
for the petitioner.

Ms. Harpriya Khaneka, Advocate
for respondent No.1.

Ms. Puja Chopra, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

1. Prayer in this writ petition is for directing the respondents to modify and clarify clause 9(vi) of advertisement dated 01.01.2024 whereby applications have been invited for recruitment to the posts of Civil Judges (Junior Division) in the cadre of Haryana Civil Service (Judicial Branch) by clearly stipulating that benefit of reservation for respective categories in terms of the reservation policy would be available at every stage of selection process including the preliminary stage.
2. Petitioner, it is submitted, is an aspirant for taking the abovesaid examination being fully eligible. He participated in the preliminary examination,

which was conducted on 03.03.2024 by respondent No.1. Learned counsel submits that petitioner belonging to Ahir caste in the category of Backward Class (B), submitted his application form. Selection of suitable candidates for appointment to Haryana Civil Service (Judicial Branch) has to be carried out on the basis of examination as under:-

- i) Preliminary Examination;
- ii) Main Written Examination;
- iii) Viva-voce.

3. Preliminary examination is conducted for the purpose of screening/short-listing of suitable candidates.

4. Clause 9 (A)(vi) of the advertisement reads as under:-

“(vi) The object of the Preliminary Examination is to short list candidates for the Main Examination. No candidate shall be allowed to appear in the Main Examination unless he/she secures minimum 150 marks (read 100 marks for all reserved category candidates excluding EWS category) in the Preliminary Examination. The marks obtained in the Preliminary Examination shall not be counted towards final result. Candidates equal to 10 times the number of vacancies advertised, selected in order of their merit in the respective categories shall become eligible to sit in the Main Written Examination. However, this number shall be subject to variation. If two or more candidates at the last number (the number at the end) get the equal marks, then all of them shall be considered eligible to sit in the Main Written Examination, warranting the corresponding increase in the stipulated ratio.

Note: The candidates will have to upload the scanned documents/certificates in support of date of birth, category {viz. SC/ BCA / BCB /EWS/ ESM / DESM / DFF / PwBD} and all educational certificates at the time while applying online for the above posts.

The category / caste certificates for BCA I BCB IEWS / DESM should have been issued during the year 2023-24 as per latest instructions issued by the Haryana Government in this regard. Further, these certificates

should be valid for the year 2023-24. The BC-A/BC-B certificates should be issued according to Haryana Govt. Instructions dated 17.11.2021 & 22.03.2022. The EWS certificate must show the annual income of the family less than Rs. 6 Lacs as per Govt. Instructions dated 25.02.2019”

5. Learned counsel for petitioner argues that clause 9(A)(vi) of the advertisement does not clearly reveal the procedure to be adopted inasmuch as it is not clearly stated that the benefit of reservation policy shall be extended at preliminary stage as well. It is vehemently argued that on declaration of the result of preliminary examination, reserved category candidates who have secured more marks than the cut-off marks of the general category candidates, are required to be reflected in the general category list in terms of the judgment of the Hon’ble Supreme Court in **Indra Sawhney and others v. Union of India and others, 1992 Suppl.(3) SCC 217**, besides, judgment of the Madhya Pradesh High Court in **Writ Petition No.542 of 2021 (Kishor Choudhary v. State of Madhya Pradesh and another) and other connected writ petitions, decided on 07.04.2022**. Learned counsel for petitioner urges that all reserved category candidates who have qualified on the basis of their own merit, are required to be treated as General Category candidates for the purpose of short-listing so that benefit of reservation would percolate to other reserved category candidates, who are next eligible in the relevant category. In case such a procedure is not followed, the level playing field which is the object of reservation is not made available in the manner required. It is, thus, prayed that this writ petition be allowed.

6. Learned counsel for respondents, on advance notice, have opposed this writ petition while submitting that benefit of reservation is afforded at the final stage of selection. Learned counsel for respondents further points out that

petitioner had earlier filed CWP No.25407 of 2021 raising an identical issue with the said writ petition being dismissed on 15.12.2021. This fact has been actively concealed in this writ petition, therefore, this writ petition should be dismissed on this ground itself. Dismissal of the writ petition is sought.

7. Learned counsel for petitioner in response thereto submits that though earlier writ petition was filed by petitioner but it was pertaining to another selection and the same had been filed after declaration of the result, therefore, same is not germane to the controversy in hand. Though, the writ petition could be dismissed on this ground itself, but we consider it appropriate to decide the matter on merits.

8. Heard learned counsel for the parties and have gone through the file with their able assistance.

9. Question sought to be agitated in this writ petition is as to whether the concept of reservation applies to all stages of the selection process leading to final recruitment or is to be applied at the stage of filling up the vacancy at the time of making appointment.

10. Selection to the post of Civil Judge (Junior Division) in the cadre of Haryana Civil Service (Judicial Branch) is governed by the Punjab Civil Services (Judicial Branch) Rules, 1951 as applicable to the State of Haryana. Advertisement dated 01.01.2024 was issued for recruitment to the posts of Civil Judge (Junior Division) in the cadre of Haryana Civil Service (Judicial Branch) with details of categories being specifically provided in clause 5. Clause 9(A)(vi) which has been reproduced in foregoing paras clearly provides for the object of preliminary examination, i.e. short-listing of candidates for the main examination and that minimum qualifying marks in the preliminary examination are 150 for

candidates of general category and 100 for all reserved category candidates excluding EWS category. The marks obtained in preliminary examination shall not be counted towards final result. Candidates equal to 10 times the number of vacancies advertised, selected in order of their merit in the respective categories shall become eligible to take main written examination.

11. Reliance by learned counsel for petitioner on the Division Bench judgment of the High Court of Madhya Pradesh at Jabalpur in **Writ Petition No.542 of 2021 (Kishor Choudhary v. State of Madhya Pradesh and another) and other connected writ petitions, decided on 07.04.2022** is of no avail to the petitioner in the given factual matrix. Section 4(4) of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994, constitutionality of which was under challenge provided that pursuant to preliminary examination for State Examination. Section 4(4) (ii) of Adhiniyam reads as under:-

(ii) Firstly, a list of Candidates of unreserved category shall be prepared. This list will include the candidates selected on the basis of the common merit from Scheduled Castes, Scheduled Tribes and Other Backward Classes, who have not taken any advantage/relaxation given to the concerned category.

(iii) Secondly, separate lists of Scheduled Castes, Scheduled Tribes and Other Backward Classes will be prepared.”

It is in view thereof that Rule 4(3)(d)(III) of Examination Rules was set aside.

12. At this stage we take note of the fact that, admittedly, the petitioner has earlier filed CWP No.25407 of 2021 raising very same issue as is urged in the present writ petition. Contention raised by learned counsel for petitioner as noted in para 2 of order dated 15.12.2021 is that there were many candidates in BC-B

category, who have obtained more than 356 marks and if they are moved into the General category then the petitioner would come within the merit of the BC-B merit list. It was categorically held by the Division Bench while dismissing CWP No.25407 of 2021 on 15.12.2021 as under:-

“5. The principle that reserved category candidates should be moved upto the General category in the event of their getting adequate merit has to be seen at the stage of appointment or when the vacancy is consumed. At this preliminary stage, it would not be possible to shift all the BC-B category candidates, who have obtained higher cut-off marks to the General category for the simple reason that this is a premature state. If the argument of the petitioner is accepted, it could lead to great injustice because the candidate who is shifted upto the General category on the basis of the preliminary examination and does not attain the requisite merit in the main examination and the viva voce would then be dis-entitled to claim a seat in the BC-B category. Learned counsel has relied upon the judgment of this Court in the case of Ajit Singh Vs. State of Haryana and other, 2012(1) RSJ 433, in which the Division Bench held as follows:-

“In view of the judgments referred to above, the following principles can be culled down:

(i) The reservations for Physically Handicapped, Exservicemen, dependants of freedom fighters and women etc. are the horizontal reservations.

(ii) The candidates belonging to horizontal reservations will cut across the vertical reservations in the following manner:

(a) Firstly the seats for Open Category candidates will be filled up on the basis of merit; (b) Secondly, the seats meant for vertical reserved categories will be filled up on the basis of merit in their own quota;

(c) Thirdly, the seats equal to the number of the candidates belonging to horizontal reserved category and also falling within vertical reserved category, shall stand consumed in the vertical reserved category. The candidate lower in vertical reserved category will make way for him;

(d) Fourthly, if a candidate belonging to horizontal reserved category does not belong to any of categories of reservations, a candidate in the open category will

make way for such reserved category so as to satisfy quota of the seats meant for the horizontal reserved category.

(e) Lastly, in case of women candidates, who also fall within any one of special reservations or social reservations, such candidate shall be taken into consideration for determining the quota for both women and social reservations.”

6. It is interested to note that in this case, the stage at which the upward movement was demanded at the stage of final selection and not at the stage of the preliminary examination.

7. Finding no merit in the case, the petition is dismissed.”

13. The issue as sought to be raised stands, decided by the coordinate Bench on 15.12.2021 in CWP No.25407 of 2021 and we are in respectful agreement therewith.

14. At this stage, it is relevant to note that a Single Bench of this Court vide detailed judgment dated 03.06.2011 had repelled the argument as raised in the present writ petition. Detailed reference to the judgments of the Hon’ble Supreme Court in Indra Sawhney (supra) and R.K.Sabharwal v. State of Punjab, 1995(2) SCT 646 was made and it was held as under:-

“XX XX XX XX XX

Thus, the moot question which needs to be examined in the present case is whether the principle enunciated in Indra Sawheney and R.K.Sabharwal’s cases, the very concept of reservation applies at all stages of a process leading to the recruitment or its application is to be confined at the time of filling up of the vacancies by such recruitment. Looking to the scheme of the rules namely Punjab Civil Service (Executive Branch) (Class -I) Rules, 1976, it appears that the rules envisage two stages. (1) Preliminary examination which is in the nature of a qualifying examination, (2) the main examination followed by viva voce which is a competitive examination leading to assessment of merit for recruitment. Should the qualifying examination envisaged under the rules is to be construed as a part of

the recruitment process or has to be segregated from the main process of recruitment. It is settled law that the principles of reservation in whatever form particularly for purposes of public employment has direct relation with the appointment to a post. Any qualifying examination preceding the process of selection even if, it is necessary to reach the process of selection should not be subjected to application of strict rules of reservation. The preliminary examination is in the realm of qualifying examination. It is like a student has to successfully qualify 10+2 examination with the required percentage to enable him to seek admission in any professional course which is subject to the reservation policy under Article 15 or a qualifying test like National Eligibility Test (NET) or State Eligibility Test (SET) conducted by the C.S.I.R or the State Agency as the case may be or a teacher's eligibility test proposed by the N.C.T.E, all these are the qualifying examinations. Merit in the qualifying examination is not taken into consideration for determining the merit of a candidate at the time of selection/recruitment. Thus from the scheme of rules, it appears that though preliminary examination is a step towards the process of recruitment but is not an integral part of the process of selection/recruitment. The principle that meritorious reserved category candidates should be selected against the general vacancies cannot be forcefully applied at the stage of qualifying examination. The very object and purport of qualifying examination is to enable the candidates to climb and reach the zone of consideration.

Thus, in my considered opinion the real competition or the process of recruitment commence when all the candidates fulfill all the eligibility conditions and qualify for the real competition i.e. the main examination.

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Having regard to the statutory provisions and ratio of various judgements noticed herein above, following principles emerge:-

- (i) Reserved category candidates who secured higher merit in the process of selection for appointment are to be considered for appointment against general category vacancies notwithstanding the fact that they have applied under the reserved categories and the resultant slot under the reserved category will be occupied by the reserved category candidates next in the order of merit.
- (ii) Above principle is, however, applicable at the time of making appointment on completion of the selection process.
- (iii) Principle at point (I) will have not application at the stage of qualifying examination, shortlisting or screening test.”

15. Judgment dated 03.06.2011 in CWP No.1023 of 2011 (Paramveer Singh and others v. Punjab Public Service Commission and others) and other connected cases as well as order dated 15.12.2021 in CWP No.25407 of 2021 (Avinash Yadav v. Haryana Public Service Commission and another) has attained finality.

16. Keeping in view the facts and circumstances as above, we find no ground for modification or clarification of Clause 9(vi) of Advertisement dated 01.01.2024. Writ petition is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

March 18 , 2024.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No