IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-11045-2023 (O&M)
Date of Decision:05.08.2024

Komal

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present:- Mr. Sajjan Singh, Advocate for the petitioner

Mr. Tapan Kumar, DAG Haryana

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AMAN CHAUDHARY, J.

1. The petitioner, aspiring to be appointed to the post of Junior Engineer applied in the category of Economic Weaker Section (EWS), in pursuance of advertisement No.10 of 2019, dated 15.06.2019, whereby 1259 posts of Junior Engineer under various categories in different Departments.

2. As per the final result dated 06.06.2020, she had secured 74 marks (69 in written test and 5 on the basis of socio economic criteria), while the cut off for EWS category was 60 and that of General 63.

3. Notably, the petitioner had filed CWP-8100-2020, which came to be allowed on 03.08.2022, in terms of **Om Roj vs. Haryana Staff Selection Commission and others**[1], observing thus:

> "The controversy, in fact, is already res judice vide judgment dated 28.04.2022 rendered in CWP No.2667-2022 titled "Om Roj Vs. Haryana Staff Selection Commission and others." I need not, therefore, labour to give an independent opinion, as I am in agreement with what has already been opined in Om Roj, supra.
> 4. On a Court query, learned State counsel does not dispute

[1] CWP-2667-2022, decided on 28.04.2022

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> that petitioner is similarly situated with Om Roj, to whom, benefit of appointment has been accorded. He further submits that steps though are being taken to challenge the judgment rendered in Om Roj case, ibid by way of filing an intra court appeal.
> 5. On a further Court query qua the availability of vacancy as on today, learned counsel for the petitioner submits that as per the RTI information dated 03.06.2022, copy thereof has been tendered in course of hearing, which is taken on record and marked as Annexure 'A', as many as 6 posts in the general category, in which the petitioner had applied, are lying vacant.
> 6. In the premise, judgment rendered in Om Roj case ibid has since already been implemented, I see no reason as to why the petitioner be also not accorded the benefit on the ground of parity alone."

4. On non-compliance of the directions issued in the aforesaid writ petition, the petitioner was constrained to file COCP-2245-2022, during the pendency of which, her claim was rejected by the Commission, by passing order dated 02.11.2022, stating that though she was shortlisted for scrutiny, however, the EWS certificate attached by her, having been found to be of 09.10.2019, was after the cut off date i.e. 04.07.2019, thus could not considered for further selection process in either the said category or General, which led to disposal of COCP finding thereto be no wilful disobedience.

5. Aggrieved thereof, the petitioner is, therefore before this Court challenging the said speaking order.

6. As is apparent from Annexure P-2 (colly.), she had uploaded the EWS certificate dated 02.04.2019, of her father for the year 2019-20, mentioning therein the gross annual income of his family to be below Rs.6 lac and it did not own or possess the assets as enumerated in (I) to (V). The prerequisite to issuance of the above was the income certificate, wherein the annual income of the family from all sources was declared to be Rs.2,50,000/- as verified by the Patwari and issued by the Tehsildar. This was followed by

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the submission of her EWS certificate dated 09.10.2019, furnished during the scrutiny of the documents, which was found to be not valid, having been issued after the closing date i.e. 04.07.2019.

7. This Court in **Om Roj** (supra), had held that a candidate, who had applied under EWS category and his certificate for the said category was found to be invalid, was still entitled for consideration of his claim against a vacancy in the General category based on his merit therein, relevant paras whereof read thus:

> "4. Learned Deputy Advocate General contends per contra. She argues that the petitioner had since applied under EWS reserved category and cannot, therefore, be considered for general category. His EWS certificate was found invalid, rendering him ineligible for said category. He could not, therefore, be considered for selection either in EWS reserved category or general category.
> 5. Having heard rival contentions, it is rather appalling to see the conduct of the respondents in denying the benefit of what is envisaged under Article 16 of the Constitution of India, which for their education is reproduced herein below:
>
> > "16. Equality of opportunity in matters of public employment :-
> > (1). There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
> > (2). No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.
> > (3). Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
> > (4). Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is

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> not adequately represented in the services under the State.
> (5). Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."
>
> 6. It is the basic principle of reservation, which the respondents need to be aware and be careful in future, that first and foremost general category seats are to be filled from the merit list as per result and thereafter the reserved category seats are to be allocated as per the quota assigned thereto.
>
> 7. First and foremost, once the merit list is prepared of the general or open category and if any candidate, who has applied under reserved category and not considered eligible, but obtained higher marks than the last selected candidate in general category, even then he has a right of selection and appointment under general category. In the present case, concededly the petitioner had though applied under EWS category and as per declaration of result he scored more marks than the last selected candidate in general category. Petitioner, even if not given the benefit of EWS reservation, he was/is eligible to be considered in General Category as he got more marks i.e. 79 marks as against the last selected candidate in general category, who has scored 70 marks.
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> 8. It is rather preposterous to argue, as is being canvassed by learned State counsel that if in the scrutiny round, a candidate is found not eligible for the reservation sought by him, then he shall not be considered even in the open (General) Category. The same goes against the very content and intent of Article 16 of the Constitution."
>
> (Emphasis supplied)

8. One of the EWS certificates having been uploaded that of the father of the petitioner, related to the income of the family and on a Court query, learned counsel on instructions stated that she was unemployed and unmarried at that time. She additionally produced her own as well during the scrutiny, fortifying the claim to the EWS category, ergo the Commission ought not to have outrightly ousted her from the selection process. Be that as it may, as recorded in the order dated 03.08.2022, passed in the previous *lis*, as many

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as 6 posts of General Category were lying vacant, hence her right for consideration in the general category could not be eclipsed, especially in wake of the Instructions dated 25.02.2019, issued by the Chief Secretary, Government of Haryana envisaging that EWS candidate cannot be denied right to compete against unreserved vacancy. The above coupled with the judgment in the case of **Om Roj** (supra), which was upheld by the Division Bench in LPA-153-2023, filed by the Haryana Staff Selection Commission, vide judgment dated 31.01.2024 passed in a bunch of petitions, with lead LPA-1203-2022, which reads thus:

> "5. There was no gainsaying that the petitioner-respondents, though having once projected themselves as EWS category, would not be ousted from the selection under the general category, on having obtained more marks than the last selected candidate in the said category. In wake of which, when considered, the learned Single Judge has rightly held them to be entitled in terms of provision of Article 16 of the Constitution, irrespective of the fact that they belonged to the EWS category. In this regard, it would be worthwhile to also refer to Jitendra Kumar Singh vs. State of U.P., (2010) 3 SCC 119, a case wherein Hon'ble the Supreme Court held that, "If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category."
>
> 6. On cumulative consideration, the candidates belonging to categories of vertical reservations being entitled to be selected in open or general category, there is found to be no error in the impugned judgement. The appeals being sans merit, are hereby dismissed."

9. The petitioner, though, would not be entitled to the 5 marks for socio economic criteria, in view of the judgment in **Sukriti Malik vs. State of**

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Haryana and others[2], passed in a batch of petitions and appeals, wherein the grant of bonus marks was held to be violative of Articles 14, 15 and 16 of the Constitution of India and the SLPs against which, filed by the State were also dismissed on 24.06.2024.

10. In view of the afore discussion and as a fall thereof, this Court finds it to be in the interest of justice to direct the respondents to consider the petitioner either in the EWS category or General and subject to her merit position appoint her, for which, if required, a supernumerary post be created. She would be entitled to notional benefits from the date, candidates lower than her in merit came to be appointed. Needful be done within a period of two months from when a certified copy of this judgment is received by them.

11. Disposed of, accordingly.

(AMAN CHAUDHARY)
JUDGE

05.08.2024
M.Kamra/ashok

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

[2] CWP-1563-2024, decided on 31.05.2024

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