



CWP-14177-2019

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

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CWP-14177-2019

Date of Decision:30.09.2024

SOHAN SINGH

...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Jasbir Mor, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Kanwal Goyal, Advocate with
Ms. Sheena Dahiya, Advocate for respondent No.3/HPSC.

Mr. Jitender Nara, Advocate for respondent No.4.

TRIBHUVAN DAHIYA, J. (Oral)

The issue arising for consideration in the matter is, whether a candidate selected against a vertically reserved category post can be considered to be the one who has been selected on merit without relaxed standards, and resultantly cannot fill a horizontally reserved post for the category he/she belongs to in terms of Government instructions dated 15.07.2014.

2. This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the letter dated 10.04.2019, Annexure P-22A, whereby the petitioner's claim for appointment as Assistant Professor Biotechnology against a post reserved for Persons with Disabilities (Orthopedically Handicapped) [for short, 'PwD(OH)'] category, pursuant to advertisement 10/2016, published on 16.02.2016, has been rejected. Further, a writ of *mandamus* has been sought directing the respondents to revise/rectify the final



result of selection for the post, dated 09.02.2017, after considering the petitioner's candidature against PwD(OH) category.

3. Briefly, facts of the case are, the third respondent/Haryana Public Service Commission issued the aforementioned advertisement inviting applications for the posts of Assistant Professor (College Cadre), HES II, in various subjects in the Higher Education of Department. It included six posts for the subject of Biotechnology; four for General category, one each for Scheduled Caste (SC) and Backward Class-A (BC-A) categories. Later, the Commission issued a corrigendum dated 29.04.2016, Annexure P-2, whereby one post out of these six posts was reserved for PwD(OH) category which was horizontal reservation cutting across vertical reservation in view of the Government instructions dated 15.07.2014, Annexure P-17, on the subject 'Grant of reservation in Jobs under Government/Government Undertakings & Local Bodies as well as in admission in Government/Government aided educational/technical/Professional institutions'.

3.1 The petitioner is suffering from hundred per cent orthopedic disability, as certified by the medical certificate dated 09.11.2005, Annexure P-4. He possessed requisite qualifications for the post of Assistant Professor Biotechnology, and applied for the same as Unreserved/General PwD(OH) category candidate. The final result of selection was declared on 09.02.2017, Annexure P-11, whereby four candidates were selected against General category, one against SC category, and the fourth respondent, who is PwD(OH), against BC-A category; the petitioner was not amongst the selected candidates. Accordingly, the posts meant for horizontally reserved category of PwD(OH) was considered to have been filled by the fourth respondent giving representation to the category.



3.2 Thereafter, the Commission uploaded detailed marks of the candidates on 09.02.2017, Annexure P-12, wherefrom the petitioner came to know that he had secured 60.64 marks in the selection; and the fourth respondent secured 72.76 marks, which were the highest amongst the four BC-A category candidates called for interview. The petitioner claimed that the fourth respondent could not be considered as PwD(OH) category candidate as he had been selected as BC-A category on merit. And the petitioner being highest in merit of PwD (OH) category, having secured 60.64 marks as against the only other candidate's 60.39, has a right to be so considered.

3.3 He, accordingly, sent a legal notice to the Commission dated 05.02.2019, Annexure P-22, for being so considered which was rejected vide impugned order, dated 10.04.2019, on the ground that post of PwD(OH) category was rightly filled by the fourth respondent who belongs to BC-A category; he could not have been shifted to Unreserved/General category, since he secured less marks than those of the last selected candidate in that category, 75.33.

4. In this factual background, learned counsel for the petitioner contends that as per Government instructions dated 15.07.2014, persons with disabilities selected on their own merit without relaxed standards, cannot be adjusted against horizontally reserved posts. Accordingly, the fourth respondent having been selected under BC-A category on his own merit, was not required to be adjusted against a PwD(OH) category post, which had to be filled as per merit amongst the remaining PwD(OH) category candidates. This mistake by the Commission in preparing the merit list needs to be corrected by revising the final result of selection after considering the petitioner's candidature. He further contended that in similar circumstance and pursuant to



the advertisement in question, the Commission has already revised its result for the post of Assistant Professor Hindi, vide notice dated 25.09.2018, Annexure P-23, whereby two candidates belonging to SC PwD(Visually Handicapped/VH) category, who had earlier been recommended against two of the four posts reserved for VH category, were withdrawn and recommended against SC category by revising the result. And against the two posts of the horizontally reserved PwD(VH) category, which fell vacant on that account, the candidates next in the order of merit from this category were recommended. The revised result notification reads as under:

This is in continuation of the result declared on 09.08.2017 by the Haryana Public Service Commission wherein recommendation of the candidates for the posts of Assistant Professor (College Cadre) in the subject of Hindi was made against Advertisement No. 10/2016 published on 16.02.2016 followed by corrigendum dated 15.03.2016 & 29.04.2016. It is hereby announced for the general information of the candidates that two candidates bearing Roll No.2753 and 4152 belonging to SC (PH-VH) category have been inadvertently recommended against the posts reserved for Visually Handicapped category. Actually, they should have been recommended against the posts meant for SC category on their own merit without relaxed standard. Therefore, after correcting this inadvertent error, these two candidates bearing Roll No. 2753 and 4152 belonging to SC (PH-VH) category have now been recommended against the posts meant for the SC of Haryana category and the posts of PH-VH category already occupied by the above these two candidates bearing roll No. 2753 & 4152 now become vacant. These two posts reserved for PH-VH of Haryana category are, therefore; to be filled from the candidates who are next in order of merit in the PH-VH category and such candidates bearing Roll No. 3034 & 7529 are from General PH-VH of Haryana category. These two candidates are now being recommended in General category as



per horizontal reservation and Government instructions by withdrawing the names of two candidates bearing Roll No. 4684 and 5693 of General Category already recommended vide result dated 09.08.2017.

On the same lines, the result for the post of Assistant Professor Biotechnology also needs to be revised, and not doing so is discriminatory against the petitioner.

5. *Per contra*, learned counsel for the Commission contends that the petitioner had applied for the post under General category as PwD(OH), appeared for the written test on 06.07.2016, and cleared the same. He was called for interview on 06.02.2017, along with two other candidates in PwD(OH) category, but remained unsuccessful; the fourth respondent, who had applied under BC-A PwD(OH) category, was selected. He also contends that reservation for PwD(OH) category was horizontal, which cuts across vertical reservation for the post. Since the fourth respondent was a candidate under BC-A category as PwD(OH) and had been selected, there was no need to include any other PwD(OH) category candidate as only one post was reserved for the category. Further, he has tried to explain the revised result for the post of Assistant Professor Hindi by contending that two candidates belonging to SC PwD(VH) category had been inadvertently recommended against the post reserved for VH category, although they were required to be recommended under the SC category on merit which was without relaxed standards. The mistake was rectified which caused two vacancies under PwD(VH) category, and next candidates in the order of merit under the category were recommended. The Commission had acted well within its right, as it was clearly mentioned under Note 1 in the result, dated 09.08.2017, that the right to rectify any error at a later stage stood reserved with it.



6. Learned counsel for the fourth respondent contends that the petition has been filed after unexplained delay of about two years from the declaration of final result of selection, and is liable to be dismissed on account of delay. Besides, as per the settled law, once the posts meant for horizontally reserved category are filled by way of candidates recommended on their own merit against vertically reserved posts, selection of any other horizontally reserved category candidate was impermissible. Therefore, the Commission has wrongly revised result for the post of Assistant Professor Hindi, by excluding SC PwD(VH) candidates against the posts reserved for PwD(VH) category, which was not required to be done. It has resulted in the Commission recommending six candidates instead of four against the posts reserved for PwD(VH) category, vide the revised result dated 25.09.2018. This is against the law, and the petitioner cannot claim entitlement on that basis.

7. Submissions made by learned counsel for the parties have been considered.

8. As per facts apparent on record, the Commission advertised six posts of Assistant Professor Biotechnology (UR-04, SC-01, BCA-01), out of which one post was reserved for PwD(OH) category, which was horizontal reservation cutting across vertical reservation. The petitioner applied for the post as General PwD(OH) category candidate, whereas the fourth respondent applied as BC-A PwD(OH) category candidate. The final result of selection was declared on 09.02.2017. As per detailed marks of selection, apart from the petitioner and the fourth respondent, there was one more candidate under PwD(OH) category; these three secured 60.64, 72.76 and 60.39 marks, respectively. The fourth respondent was selected as BC-A category candidate



having secured maximum marks under the category. Since he belonged to PwD(OH) category, for which one post was horizontally reserved, no other candidate was required to be considered against the post horizontally reserved, and no exception has been taken against the Commission's action in not doing so since horizontal reservation is within vertical reservation. As per settled law, if the quota of posts fixed for horizontal reservation stands filled by the candidates selected against vertically reserved posts, selection of any other candidate belonging to the horizontally reserved category cannot be made. Only if the posts meant for horizontal reservation remain unfilled by the candidates from vertically reserved category, that candidates next in the order of merit from the horizontally reserved category need to be selected by excluding the candidates from vertically reserved category from the bottom of merit list. A reference in that regard can be made to the judgment in *Rajesh Kumar Daria v. Rajasthan Public Service Commission and others*, (2007)8 SCC 785, which lays down as under:

10. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 (woman) candidates, which was equal to the quota for "general category women". There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven woman candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 and 41 of the selection list) and another eleven (candidates at Sl.



Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 and 80 of the selection list) included under reservation quota for “general category women”. This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of “OBC women”, instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the selection list. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for women.

9. So far as the notification dated 25.09.2018, revising the result for the post of Assistant Professor Hindi is concerned, the same cannot be considered in line with the settled law on the issue, nor can the candidates selected against vertically reserved/SC category be considered to have been selected without relaxed standards. The relevant part of instructions, dated 15.07.2014, dealing with adjustment of persons with disabilities against their reserved share of vacancies is as under:

F) ADJUSTMENT OF CANDIDATES SELECTED ON THEIR OWN MERIT:

Persons with disabilities selected on their own merit without relaxed standards alongwith other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, by relaxed standards. It will apply in



case of direct recruitment only, whenever reservation for persons with disabilities is admissible.

The standards of selection as such have not been defined in instructions, which nevertheless provide, as apparent from the clause reproduced above, that persons with disabilities selected on merit without relaxed standards will not be adjusted against the posts/vacancies reserved for them, which is horizontal reservation. To give effect to this reservation for the category, the relaxed standards of selection need to be decided. In competitive selections the standards meant for any post/seat are determined by merit, which remain the undisputed benchmark across systems/structures. In view of the settled law governing operational aspects of reservations in selection, these standards get determined by the merit of the ones selected against unreserved posts/seats since the same are offered solely on excellence irrespective of the category one belongs to. Accordingly, the meritorious from amongst all the applicants compete on the basis of their worth/quality/brilliance decided by the merit position earned, and determine the standards in the process. The ones who do not get selected against the unreserved posts/seats as per the standards determined, are required to be considered thereafter against the seats/posts reserved in their respective categories for which different standards get determined, which cannot be higher than the ones determined for the unreserved, or else the rule of migration will come in operation requiring the more meritorious, whether in vertically or horizontally reserved categories, to be shifted to the unreserved category. Hence, the standards meant for any post are determined by the merit of the unreserved, and standards for the vertically or horizontally reserved categories are to be seen *vis-a-vis* those standards. Resultantly, the candidates admitted/selected against the vertically or horizontally reserved categories cannot be considered to have been selected



without relaxed standards. And only the candidates selected against unreserved posts/seats are to be considered to have been selected without any relaxation in standards. In case the Commission has considered the SC candidates selected against vertically reserved posts as the ones selected without relaxed standards, this is wrong. However, validity of the revised result is not under challenge, nor can it be at this stage.

10. Besides, if any wrong has been done by the Commission, it will not confer any right on the petitioner to claim entitlement for the post. The right to equality cannot be enforced in breach of law. A reference in that regard can be made to law laid down in *State of Kerala v. K. Prasad and Anr.*, (2007) 7 SCC 140.

13. We may now deal with the plea of the respondents that they have been discriminated against. It is true that Article 14 of the Constitution embodies a guarantee against arbitrariness but it does not assume uniformity in erroneous actions or decisions. It is trite to say that guarantee of equality being a positive concept, cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others, though falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the similar benefit has been denied to them. Any direction for enforcement of such claim shall tantamount to perpetuating an illegality, which cannot be permitted. A claim based on equality clause has to be just and legal.

11. In view of the discussion, there is no merit in the petition and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

30.09.2024

Ad

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No