

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

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LPA-740-2023 (O&M)
Decided on: 11.01.2024

Haryana Staff Selection Commission ... Appellant

Versus

Neeraj and Others ... Respondents

**CORAM: HON’BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON’BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Mr. Deepak Balyan, Additional AG Haryana

Mr. Gaurav Tyagi, Advocate for
Mr. Ashok Tyagi, Advocate for respondent No.1

AMAN CHAUDHARY, J.

1. The present intra-court appeal, under Clause X of the Letters Patent has been filed against the judgment dated 30.11.2022, vide which the civil writ petition preferred by respondent No.1 came to be allowed.
2. Learned counsel appearing on behalf of the appellant submits that the petitioner-respondent No.1 was not entitled to the relief as granted by the learned Single Judge on account of the fact that there was no provision to change the category in the process of selection for appointment to the post of Staff Nurse, to the category of person with disability from General Category under Employees State Insurance Health Care.
3. Learned counsel appearing for respondent No.1 contends that it was not a case of change of category but for correction as he being deaf and mute had inadvertently clicked the category No. 19 in the online application. It

being a bona fide mistake, the learned Single Judge has rightly allowed the writ petition.

4. Thoughtful consideration has been given by us to the matter and find that there is no flaw in the judgment of learned Single Judge.

5. The respondent No.1, as is apparent from the disability certificate, has a multiple disability being hearing impaired in both ears to the extent of 56% permanent disability as also short stature/dwarfism of 28% and overall physical impairment has been assessed by the Department of Empowerment of Persons with Disability, Govt. of India, the authority which issued the said disability certificate.

6. The facts that weighed with the learned Single Judge to rule in favour of respondent No.1 amongst others was that the online form was got filled with the help of a third party from a kiosk located in the rural area, where she lived; the request for rectification was made by her at the initial stage that is even before having taken the written examination, thus, could not be said that only upon having secured marks and finding them higher in the general category was the request made. The reliance has rightly been placed on a judgment of the Division Bench of this Court in **Haryana Staff Selection Commission through its Secretary vs. Sarla and others**, LPA No.320-2019, decided on 22.02.2019, that affirmed the decision of the Single Bench while observing that in a process of submission of online application forms by citizens of a country like ours, in view of the prevailing socio economic conditions, being dependent on cyber cafes, a mistake can occur due to human error and there being no provision on the website for carrying out correction, a poor candidates has to suffer for no fault. Here, it would also be worthwhile to make a reference to the judgment in **Kiran Bala vs. State of Haryana**, LPA No.385

of 2017, decided on 23.01.2023, wherein also based on similar facts, as in the present case, it being a case of correction, sought before the screening test, the Division Bench allowed the case, directing to consider the appellant therein against the vacancy earmarked for EPBGC category and if considered eligible and meritorious, appoint her to the said post with all consequential benefits.

7. Apparently, the case of respondent No.1, who is a physically disabled girl belonging to a rural area, is not *per-se* of change of category but a request for rectification of an inadvertent error that crept in, on account of the application having been filled and submitted with support of a third person, unaware of the intricacies and repercussions, in the eventuality of commission of a mistake made in the said process. Being at the threshold of the process of selection itself, she could not be attributed any motive or craftiness, as by such time even the written examination had not taken place. It would have been different, had she made a request upon failing to make a mark in the merit of the general category and on becoming aware of securing higher marks than the last selected candidate in the category No.10 and sub category PwD (Person with disability), which indubitably is not the case in hand.

8. The judgments in **High Court of Rajasthan vs. Neetu Harsh**, (2021) 11 SCC 383 and **J&K Public Service Commission v. Israr Ahmad**, (2005) 12 SCC 498, are distinguishable inasmuch as, it is discernible from the facts involved therein as the candidates had sought for change in category at the time of final examination, while **Shashi v. State of Haryana and others**, CWP No.15119-2016 was decided on 22.05.2018 by a Single Bench based on **J&K Public Service Commission** (supra) and in **Vinay Sharma v. State of Haryana and others**, CWP No.21872-2018, the learned Single Judge vide judgment dated 22.05.2020, dismissed the case, as the petitioner had

approached two years after having failed to secure the requisite bench mark in the category in which he had applied.

9. In view of the peculiarity of facts and circumstances of the case and as an upshot, we find there to be no illegality or perversity in the impugned judgment that may have called for any intervention. As a sequel thereto, the present appeal being bereft of merit, is dismissed. However, it is clarified that the present case be not treated as a precedent. Compliance of the judgment of the learned Single Judge be made forthwith and this Court be informed of it within two weeks from today.

10. Pending applications, if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

11.01.2024
gsv/ashok

Whether speaking / reasoned: YES / NO

Whether Reportable: YES / NO