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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-12090-2016 (O&M)
Date of Decision:15.01.2024

RUPINDER KAUR

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Balbir Singh Jaswal, for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has prayed for issuance of a Writ in the nature of *mandamus* for directing the respondents to fill up the 4 posts of General (Ex-Serviceman) category out of the available candidates in the test held on 24.04.2016.

2. The petitioner had participated in selection for the post of Staff Nurse Recruitment Test 2016 as an Ex-serviceman (General), however, she could not score marks above 400 and the respondents while preparing the merit, put a cut-off for Ex-serviceman (General) as 400 marks.

3. Learned counsel for the petitioner submits that the minimum cut-off of 400 marks for Ex-serviceman (General) was wrongful as no candidate from Ex-serviceman category was selected and therefore, the said cut-off marks for Ex-serviceman (General) should not have been there as it was not a part of the advertisement.

4. Learned counsel for the petitioner has relied on a judgment passed by the coordinate Bench of this Court in CWP-312-2017 titled as

Malkeet Singh and Others Vs. State of Punjab and others and the connected Writ Petitions decided together by the Court on 23.05.2018.

5. I have considered the submissions and find that in the aforesaid order dated 23.05.2018, the petitioners therein were from the handicapped categories and other reserved categories. They approached the Court stating that at the time of the advertisement and even at the time of conducting of the written test, no criteria of cut-off marks was prescribed and the cut-off marks criteria was introduced during counselling. It was stated that they were higher in merit than the General category candidates who fell within the zone of consideration, and cut-off marks cannot be allowed to be introduced. The Court after considering the submissions therein, had passed the following order:-

“XXXX XX XXX XXX. Admittedly, in the advertisement, there is no mention of cut off marks and the respondents have adopted the criteria of cut off marks while preparing the schedule of counseling whereby the candidates of general category having 50% marks (upto 400/800 marks) and candidates of scheduled caste category having 40% marks (upto 320/800 marks) in the written test were called for counseling. It has been pointed out that in certain categories marks of the candidates are more than the last selected candidates of the general category but their categories were not specified. The stand of the respondents that the candidates who belong to SC and BC categories who fall in general category merit list have already been considered in general/open category in view of the instructions dated 11.09.2015 and the candidates of handicapped category having higher merit were to be considered in the general category as per instructions dated 24.06.2015 issued by the competent authority and

they were not considered as the cut off was also fixed as 50% due to oversight and further the candidates of ESM (SC) and ESM (BC) categories having higher merit could not be adjusted against general merit is not tenable and based on pick and choose method.”

6. Thus, on the facts of the said case, the Court set aside the merit list and directed the respondents to start the counselling and finalize the result afresh.

7. Question arises whether the cut-off marks are required to be published after the advertisement is issued even if there was no condition mentioned in this regard in the advertisement?

8. In selection process there are different posts meant to be manned by different categories of persons. The posts are to be filled horizontally as well as vertically by the various reserved categories.

9. In vertical reservation, the categories which are required to be noticed are the SC, ST, OBC and as observed by the Supreme Court, the remaining reservations are to be treated as horizontal reservations.

10. The horizontal reservations cut across vertical reservations. Thus, a person who may be from SC, ST or OBC category may also be suffering from the reservations of horizontal kind, like being a person with a disability (PWD) or may be an Ex-servicemen or may be a ward of a freedom fighter or may be from a female category or may be from sports category. Thus, within reservations there can be further reservations.

11. The General category is an open category which takes into its ambit all the reserved category persons. The open category posts are to be filled only on merit. Thus, a person belonging to a reserved category who

scores highest marks and does not take any advantage or benefit of selection available to a reserved category would be entitled to be placed in the open category. In **Jitendra Kumar Singh Vs. State of Uttar Pradesh and Others;** 2010 (3) SCC 119, the apex Court has held as under:-

“53. Mr. Rao had suggested that Section 3 (6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field, by providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age limit. We are unable to accept the aforesaid submission. Section 3 (6) is clear and unambiguous. It clearly provides that a reserved category candidate who gets selected on the basis of merit in open competition with general category candidates shall not be adjusted against the reserved vacancies. Section 3(1), 3(6) and Section 8 are inter-connected. Expression "open competition" in Section 3 (6) clearly provides that all eligible candidates have to be assessed on the same criteria. We have already noticed earlier that all the candidates irrespective of the category they belong to have been subjected to the uniform selection criteria. All of them have participated in the Preliminary Written Test and the Physical Test followed by the Main Written Test and the Interview. Such being the position, we are unable to accept the submissions of the learned counsel for the petitioners/appellants that the reserved category candidates having availed relaxation of age are disqualified to be adjusted against the Open Category seats. It was perhaps to avoid any further confusion that the State of UP issued directions on 25.3.1994 to ensure compliance of the various provisions of the Act. Non-compliance by any Officer was in fact made punishable with imprisonment which may extend to period of three months.”

12. Once a person from a reserved category (horizontal) is placed in the open category, the concerned reserved post shall be fulfilled. Thus, if a

woman is placed at No.1 in the merit list, she would fill one open category post at the same time, she will take away one post reserved for woman as has been held in the case of **Rajesh Kumar Daaria Vs. Rajasthan Public Service Commission and Others**; 2007(8) SCC 785.

“10. 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 woman.”

13. However, this interpretation is only limited to the horizontal reservations. Meaning thereby that if an SC candidate or ST or OBC candidate occupies a post in the open category on the basis of his/her own merit, without taking any advantage/benefit of reservation in selection (Age/weight/height etc.) He/she will not eat away SC reserved category post and the SC, ST or OBC quota will remain intact as settled by the Supreme Court in **R.K.Sabherwal and Others Vs. State of Punjab and Others**; 1995 (2) SCC 745.

14. Keeping in view the aforesaid principles, it is necessary therefore to have different cut off for different categories vertical as well as horizontal to be published. The said cut off will be prepared keeping in mind

the aforesaid principle. (See Dharamveer Tholia Vs. State of Rajasthan and Another; 2000 SCC Online Raj 680).

15. In Saurav Yadav Vs. The State of Uttar Pradesh; AIR 2021 SC 233, the Hon'ble Supreme Court has observed as under:

“58. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.”

16. The cut-off for open category, therefore, has to be firstly determined considering the total number of posts which are available in the open category. Once the minimum cut-off is laid down, all the persons who fall in the horizontal/vertical category would be allowed to march in open category provided they come within the said minimum cut-off. Thus, Ex-serviceman (General) category person would get placement in the open category provided he scores above the minimum cut-off. If any different interpretation is taken, it would result in a chaos in preparing of merit.

17. Similarly, if there are three ex-serviceman general post, the last three general category post will have to be occupied by the ex-serviceman if they are available. In case no one has marched above in merit, however, if some are already in the open merit the number will reduce accordingly.

18. Learned counsel for the petitioner has not been able to place before this Court any such document showing that a roster was being followed in an open category. In these circumstances, the claim of the petitioner who scored less than 400 cut-off marks, for appointment on Ex-serviceman (General) post is found to be without basis. The selections for the posts have already been concluded and the persons have been appointed. As per the respondents, the final recruitment procedure was completed on 17.05.2016, and the categories of persons appointed have been mentioned with their respective cut-off marks which is quoted as under:-

<i>Sr. No.</i>	<i>Date</i>	<i>Category</i>	<i>Category-wise marks obtained in Written Test</i>
1.	16.05.2016	SC (R&O)	388 and above
2.	16.05.2016	SC (M&B)	343 and above
3.	16.05.2016	BC	388 and above
4.	16.05.2016	Handicapped	Roll No.700659
5.	16.05.2016	ESM (General)	Roll No.703683
6.	16.05.2016	ESM (R&O)	Roll No.703204
7.	16.05.2016	ESM (M&B)	Roll No.703039
8.	16.05.2016	ESM (BC)	Roll No.703913
9.	16.05.2016	Sportsman (General)	Roll No.700998 and 701133
10.	16.05.2016	Sportsman (SC) (R&O)	Candidates not available
11.	17.05.2016	General	According to combined merit list 424 and above.

19. In view of the above, it is apparent that respondents have carried out the selection process in accordance with merit and persons from the respective categories have been duly appointed, no interference is, therefore, warranted.

20. The Writ Petition is devoid of merits and is dismissed accordingly.

21. All pending applications in this Writ Petition stand disposed of accordingly.

January 15, 2024
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No