

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

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CWP No.18666 of 2019 (O & M)

Date of Decision : 8.4.2024

*Rakesh Saini and others**..... Petitioners**versus**State of Haryana and others**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Ashutosh Bhardwaj, Advocate, for
Mr. Parvesh K. Saini, Advocate, for the petitioners
Mr. Ravi Pratap Singh, DAG, Haryana
Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Tejas Bansal, Advocate, for respondent no.2
Mr. S.K. Nehra, Advocate and
Mr. Arnav Udai Singh, Advocate, for respondents no.4 to 7

TRIBHUVAN DAHIYA J. (ORAL):

The petition has been filed seeking a writ of *mandamus* directing the official respondents to count reserved category candidates, who have scored more marks than the candidates selected in general category, as general category candidates for the post of Clerk and, consequently, consider the petitioners' claim against the posts reserved for their respective categories, i.e., Backward Class (BC)-A and BC-B categories. Further, it has been prayed that the respondent-University may be restrained from issuing appointment letters to any candidate during pendency of the petition.

2. Briefly, the facts necessary to adjudicate the case are, the University advertised one hundred sixteen posts of Clerks, along with other posts, vide advertisement no.UHSR/Rectt.7/2018, of which forty-

two were for general, sixteen for BC-A, ten for BC-B, and the rest for other reserved categories. The petitioners being eligible applied for the post of Clerk in response thereto; petitioners no.1 and 2 under BC-B category, and petitioner no.3 under BC-A category. The final result of selection was declared on 3.2.2019, and each of the petitioners scored sixty-eight out of one hundred marks. As per list of selected candidates under BC-A category, Annexure P-5, the candidates at merit position no.1 to 6, scored between seventy-three to seventy-five marks; and as per select list for BC-B category, Annexure P-6, the candidates at merit position no. 1 to 6 scored seventy-two to seventy-eight marks out of one hundred. Whereas, the last selected general category candidate scored seventy-two marks, as per select list Annexure P-4. Accordingly, the BC-A and BC-B categories candidates, who scored more marks than the last selected general category candidate, were required to be migrated to the latter category, and the petitioners who secured sixty-eight marks were accordingly become entitled to be considered for appointment under their respective reserved categories. The respondent, however, failed to do so for no reason, despite clear instructions to that effect dated 25.6.1997 and 26.4.2018, Annexures P-7 and P-9 respectively, issued by the government that the reserved category candidates who got selected in open competition on the basis of their own merit, will not be counted against the quota reserved for them and will be treated as open/unreserved/general category candidates. Based on these facts, it is contended by learned counsel for the petitioners that the action is illegal, and the University is bound to revise the selection list and consider the petitioners for selection and appointment.

3. Learned counsel for the University, on the contrary, contends that the petition itself is not maintainable since all the affected candidates have not been impleaded as parties. During pendency of the petition, the University has appointed candidates in the waiting-list also on the posts falling vacant, but none such candidate has been impleaded as party to the petition. He further contends that in the advertisement there is a specific condition 19 stipulating, in case an applicant belonging to the reserved category applies against a general category post, he/she must fulfill the conditions of eligibility regarding age, application fee, etc. which are meant for the general category candidates as per government instructions. The petitioners applied as reserved category candidates and deposited concessional application fee meant for the reserved, and not the one meant for general category candidates. Therefore, failing to fulfill the conditions of eligibility regarding deposit of fee as general category candidates, they were not entitled to be considered as such in terms of condition 19. Still further, one of the petitioners represented to the University seeking consideration as general category candidate, and the representation was rejected vide communication dated 26.4.2019, Annexure P-11, which has not been challenged.

4. Heard.

5. Undisputedly, the wait-listed candidates who were given appointment as Clerks, have not been impleaded as party respondents. Adjudication of the case on merits will require effective hearing to be given to all the concerned. In case the petition is accepted, the merit list gets revised and the candidates appointed out of the waiting list will be affected. In the absence of their being parties to the *lis*, no effective relief

can be granted to the petitioners. Further, the petitioners’ case for being considered as general category candidates was specifically rejected by the University, vide communication dated 26.4.2019, on the ground that they had applied only as reserved category candidates by depositing the concessional fee. They did not fulfill the eligibility condition regarding application fee for general category candidates and, accordingly, could not be considered as such in terms of condition 19 of the advertisement. Still, neither the communication rejecting their case, nor condition 19 is under challenge. Therefore, legality of the respondents’ action cannot be examined.

6. In view of the reasons recorded above, the petition is not maintainable, and stands dismissed as such.

7. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

8.4.2024
Ashwani

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