



CWP No. 6120 of 2016

1

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

(223)

CWP No. 6120 of 2016

Date of Decision : 22.07.2024

Veerpal Kaur**...Petitioner****Versus****State of Punjab and others****...Respondents*****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. R. K. Malik, Senior Advocate with
Mr. Kartikey Chaudhary, Advocate for the petitioner.

Mr. Arun Gupta, Deputy Advocate General, Punjab.

Mr. Kapil Kakkar, Advocate for respondent No. 3.

Harsimran Singh Sethi J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the petitioner competed for the post of S.S. Teacher as advertised vide Advertisement dated 09.09.2012 and competed for the reserved category of Backward Class. That while applying for the post in question, the Backward Class certificate issued by the competent authority within the State of Punjab has also been attached. In the final merit prepared, in the Backward Class, the petitioner secured 53.1951 marks. As per the petitioner, the last candidate, who has been appointed in pursuance to the said selection in the backward class category got 52.3894 marks, hence, as the petitioner has higher merit, she is entitled for the grant of appointment in accordance with her merit.



The respondents filed the reply raising a plea that the certificate of Backward Class, which was submitted, was only issued in the name of her husband and no certificate in the name of her father was issued so as to see the eligibility.

After considering the facts of the present case, the Co-ordinate Bench passed the following order on 14.02.2020 :

“On 01.04.2016, while issuance of notice of motion, following submissions of the learned senior counsel for the petitioner were recorded:-

“Inter-alia submits that the ground for rejection of the petitioner's candidature is that the BC category certificate bearing the name of her father has to be submitted. Reference is made to communication dated 8.3.2016 (Annexure P/11). It is contended that the requisite certificate dated 10.9.2007 (Annexure P/1) was submitted. Initially there was a dispute as to which category she has to be considered which was rectified on 8.2.2013 (Annexure P/4) and thereafter the name of the petitioner also figured in list of eligible candidates at serial no.40 (Annexure P/5). It is submitted that merit of the petitioner is 53.1951 whereas candidates from serial no. 27 onwards are having less merit than the petitioner (Annexure P/7 at page no.41).”

Reply to the writ petition has been filed, according to which, the stand of the respondent is that the petitioner had submitted the Backward Class Certificate, which was issued in the name of her husband and did not produce the Backward Class Certificate with the name of her father in



order to ascertain her caste by birth, because of which, the petitioner was declared ineligible.

This stand as has been taken by the respondents is not acceptable in the light of the fact that the certificate, which is attached with the present writ petition, dated 10.09.2007 (Annexure P-1), which is of the petitioner with the father's name mentioned therein. There was no reason as to why the petitioner produced the Backward Class Certificate at that time, when her name initially figured in the list of candidates, where there were certain discrepancies and an opportunity was given to explain the said discrepancies.

Learned senior counsel for the petitioner has referred to Annexure P-3, which was a public notice issued relating to the discrepancies, which were found in the certificates etc. of the candidates. In the said objections, against the name of the petitioner, she was shown to be belonging to Scheduled Caste category candidate. In response to this objection, petitioner had submitted a representation dated 08.02.2013 (Annexure P-3), where she had pointed out that she belongs to a Backward Class category and is wrongly shown as Scheduled Caste category candidate. Thereafter, another public notice was displayed, wherein the name of the petitioner was figured at Sr.No.40 and it was rightly mentioned that the petitioner belongs to the Backward Class category. This list 2 of 3 ::: Downloaded on - 22-07-2024 12:38:32 ::: CWP-6120-2016 -3- contained the candidates, who initially had certain objections against their names and on removal thereof, names were shown to have been removed from the said list. He, thus, contends that it is only on the submission of Backward Class Certificate issued in the name of her father, dated 10.09.2007 (Annexure P-1), at the time of



scrutiny of documents, the name of the petitioner was included in the said list and she was shown to be belonging to the Backward Class category. At no occasion was it mentioned that the Backward Class Certificate which has now been submitted by the petitioner was not in consonance with the advertisement/instructions which had been issued. Therefore, it cannot be said that the petitioner is ineligible for consideration for appointment in the Backward Class category.

This contention of the learned senior counsel for the petitioner carries weight.

Counsel for the respondents/State to seek instructions as to whether there are vacancies available for accommodating the petitioner in the Backward Class category on the post of S.S. Master/mistress.

List on 19.02.2020 for further consideration.

Let an affidavit detailing therein the posts advertised, the same filled-up in the category of Backward Class along with the list of candidates so appointed and who had joined, be filed on the next date of hearing.”

In reply to the said direction, the respondents have placed on record the list of the selected and appointed candidates in the reserved category of Backward Class but submits that no advertised post is lying vacant as of now, hence, as the selection process culminated in the year 2016, the claim of the petitioner seeking appointment may kindly be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.



CWP No. 6120 of 2016

The question whether the petitioner is entitled to seek selection and appointment to the advertised post in the reserved category of Backward Class is not in dispute as of now as, keeping in view the time given by the respondent-department to the petitioner to place on record certificate issued in the name of her father was submitted by the petitioner, much before the selection process was over.

Further, the petitioner had a valid certificate issued by the competent authority from the State of Punjab certify that the petitioner belong to the reserved category of backward class, which certificate was never withdrawn at any given point of time.

Further, keeping in view the order passed by this Court in CWP No. 8462 of 2019 titled as ***Sonam Verma and others Vs. State of Punjab and others***, decided on 11.07.2024, it was already held that a certificate issued in the name of husband by the competent authority in the State of Punjab would certify the candidate concerned belong to a particular reserved category, same is to be treated as valid certificate unless and until the same is withdrawn. It is a conceded fact that none of the certificate issued showing the petitioner to be a Backward Class candidate either in the name of her husband and in the name of her father, has been withdrawn by the authorities concerned, hence, the objection being taken by the respondent-State that the eligibility of the petitioner to compete in the Backward Class was in dispute, cannot be accepted.

The further question arises is whether, the petitioner is entitled for appointment against one of the advertised post. Keeping in



CWP No. 6120 of 2016

view the facts and circumstances of the present case, one of the vacant post is lying vacant even as of now. From the affidavit filed by respondent No. 1 and 2 on behalf of Mr. Harpreet Singh, Assistant Director, Education Recruitment Directorate, Department of School Education, Punjab dated 24.05.2023, there are large number of candidates who have been recruited against the advertised posts in the Backward Class category, who have less merit than the petitioner.

Once, the said fact has been conceded by the respondents, the petitioner becomes entitled for the grant of appointment from the date, the candidate lower in merit has been granted the same even if the last selected candidate in the Backward Class category has to be made junior/subordinate of the petitioner.

As the candidates who have been selected in the Backward Class category are working for the last eight years and the fact that a post of S.S. Teacher (Pendu Sehyogis Teacher) is lying vacant has gone un-rebutted, the respondents are directed to appoint the petitioner against the vacant post. Ousting the last selected/appointed candidate after a period of eight years will be too harsh as the said candidate might have become overage to compete for the post in question henceforth.

Keeping in view the above, the present petition is allowed. Respondents are directed to grant the petitioner the benefit of selection/appointment with effect from the date the candidate lower in merit has been appointed. It may be noticed that the pay of the petitioner will be notionally fixed from the said date and the actual salary will be given



CWP No. 6120 of 2016

7

from the date of appointment, which appointment should be extended to the petitioner within a period of four weeks of the receipt of copy of this order.

Petition is allowed in above terms.

July 22, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No