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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-655-2018 (O&M)

Date of Decision:16.01.2024

ATMA SINGH

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Ashok Bhardwaj, Advocate for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has claimed consideration for appointment on the post of Warder, Jail Department in the BC category submitting that in the selection process, he obtained 27 marks and respondent No.5, who obtained 26.63 marks i.e. less than the petitioner, and belonged to the BC category, has been considered and appointed.

2. Learned counsel for the petitioner submits that the selection for the post of Warder was originally advertised on 12.10.2011, but the said selection process was cancelled by the State Government vide its decision dated 05.06.2014. However, the High Court intervened in CWP-15409-2014 and revived the selection process vide order dated 17.12.2016, whereafter the selection was conducted for the post. It is submitted that in the meantime, the petitioner's caste namely "Saini" was included in the Backward Class (BC) vide notification dated 12.09.2016. The petitioner, therefore, has participated in the selection process in the BC category and the denial of considering his candidature under the BC category was wholly unjustified.

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3. He further submits that his certificate of BC category was produced by him during the interview and the same ought to have been taken into consideration in view of the judgment passed by the Hon'ble Supreme Court in the case of Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Another; 2016 AIR (SC) 1098.

4. Learned counsel for the petitioner submits that a similar view has also been taken by this Court in CWP-13713-2014 titled as Dheeraj Kumar Vs. State of Haryana and Another decided on 20.01.2017.

5. I have considered the submissions and find that the respondents have denied the petitioner's consideration in the BC category on the ground that the "Saini" community was included in the BC category vide notification dated 12.09.2016 whereas, the selections have been made under the advertisement dated 12.10.2011.

6. The contention of the learned counsel for the petitioner to the extent that the selections remaining in abeyance and having actually conducted after his caste was notified as a BC category caste, cannot be accepted as the Court's order dated 17.12.2016 passed in CWP-15409-2014, reviving the selection process of 2011 did not in any manner changed the conditions of the advertisement. The last date for submitting the application form was neither extended nor were any new candidate allowed to participate in the said selection process. The petitioner too admittedly applied under the general category under the advertisement dated 12.10.2011. He, therefore, has to be treated as general category candidate as was existing on the day when the advertisement was issued. The posts were also bifurcated according

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to the position as it stood in the year 2011. Thus, merely because the posts could not be filled for reasons as above, it cannot be said that the candidates belonging to “Saini” community would have to be treated as BC category.

7. This Court further finds that on the date when the advertisement was issue i.e. in the year 2011, the candidates who applied from the “Saini” community would have applied in general category. Their selection process was revived by the order of this Court on 17.12.2016. Thus, their applications continued to be under general category. Since the “Saini” community has been included in the BC category only on 12.09.2016, and no new person has been allowed to participate in the selection process, it cannot be said that selection process which concluded after 2016 would include the candidates from “Saini” community as belonging to BC category. They also did not possess any such certificate on the last date of submission of the application form.

8. In view of the above, the claim of the petitioner for treating them as BC reserved category and give them appointment in the said category is not sustainable in law.

9. So far as the judgments cited hereinabove by the learned counsel for the petitioner in the case of **Ram Kumar Gijroya** Vs. **Delhi Subordinate Services Selection Board and Another;** 2016 AIR (SC) 1098 (Supra) and **Dheeraj Kumar** Vs. **State of Haryana and Another** (Supra) rendered by this Court are concerned, the same are relating to the candidates who were belonging to a BC category at the time of advertisement and the only issue was the submission of the certificate on the last date for submitting of the

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application form and the High Court as well as the Supreme Court has held that a person can submit the BC certificate even subsequently as the same will hold field for the candidate who was originally in the BC category.

10. The Writ Petition accordingly fails and the same is dismissed.
11. All pending applications in this Writ Petition stand disposed of accordingly.

January 16, 2024

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned

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Yes

/

No

Whether Reportable

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Yes

/

No