

(126)

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

LPA-1525-2023 (O&M)
Date of decision : 20.02.2024

Virender Singh

.....Appellant

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Brijesh Kumar, Advocate, for the appellant.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The present appeal is directed against the order dated 31.08.2023 passed in CWP No. 18901 of 2023 filed by the petitioner (appellant herein), whereby the learned Single Judge had declined to interfere in the order dated 18.07.2023 (Annexure P-12), vide which candidature of the appellant under Ex-Servicemen Dependent category for the post of PGT (Sanskrit) was rejected.

2. The reasoning weighed with the learned Single Judge was that the application form as such was filled up by the appellant under the General category and he had appeared in the interview, but remained unsuccessful as he had secured lesser marks than the last selected candidate in the said category. Resultantly, his request for change of category was not permissible keeping in view the settled principle of law laid down by the Apex Court in *J & K Public Service Commission Vs. Israr Ahmad and others, (2005) 12 SCC*

498. Mere submission of a representation by the appellant would not give him a vested right as such to entitle him for change of category.

3. The advertisement bearing No. 4 for the post of PGT (Sanskrit) was of the year 2015. Out of 626 advertised posts, 27 were reserved for ESM category. The result itself was declared on 01.01.2019. In the order dated 18.07.2023 (Annexure P-12 in the writ petition), which was the subject-matter of challenge before the learned Single Judge, it was mentioned that there was no vacant post available in the said category as per the result. A perusal of the advertisement in question would also go on to show that a candidate applying under the ESM category had to produce valid eligibility certificate, to be issued by the concerned Zila Sainik Board, which the appellant apparently has placed on record as Annexure P-1. He, however, had applied under the General category. As per the terms and conditions of the advertisement, a candidate could submit only one online application form for a particular category of post advertised. It was also mentioned that instructions had to be read carefully. The relevant instructions read as under :-

“A candidate whether he belongs to General or reserved category viz. SC, BCA, BCB, SBC, EBPG, ESM/ DESM, DFF, PHC or OSP can submit only one online application form for a particular category of post advertised. The special instructions for online applications as given on website www.hssc.gov.in must be carefully read to help in understanding and filling in the application form. No offline form will be accepted. All the relevant columns of the application form should be filled in.”

4. In order to substantiate his claim for the DESM category, the candidate also had to upload scanned copy of valid Eligibility Certificate duly

issued by the respective Zila Sainik Board as per serial No. (ii) of the “Documents to be uploaded with Application Form” of the advertisement. Not having done so was at the peril of the appellant himself and now at this belated stage, he cannot claim any consideration for change of category, in view of the law laid down by the Apex Court in ***J & K Public Service Commission Vs. Israr Ahmad and others (supra)***. The relevant portion reads as under :-

“7. We have considered the rival contentions advanced by both the parties. The contention of the first Respondent cannot be accepted as he has not applied for the selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail the reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal.”

5. The action of the respondents, thus, is as per the necessary instructions and rights of other candidates, and it has also been actually noticed by the learned Single Judge that there was no vacant post as such. The prayer

for change of category at this stage merely because litigation regarding the issue that the Degree of Shiksha Shastri is equivalent to B.Ed. is pending before the Apex Court can not be examined by us, keeping in view the fact that the learned Single Judge had not deviated from the settled principles and decided the issue as per the settled principles.

6. The decision of the Apex Court in *Vashist Narayan Kumar Vs. State of Bihar and others, 2024 SCC OnLine SC 2*, relied upon by learned counsel for the appellant, would not be applicable to the facts and circumstances of this case, as it was a case where a downtrodden segment of the society applied for the post of Police Constable under the reserved category. The appellant in the present case had applied for the post of PGT (Sanskrit) and, therefore, he cannot take any benefit of the fact that he filled up the form wrongly or somebody else had filled it for him. The said case also pertained to discrepancy in the date of birth which was sought to be corrected and it did not pertain to a case where the appellant had applied in a different category.

7. Resultantly, we do not find any merit in the appeal and same is dismissed.

8. Accordingly, all the pending applications stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

February 20, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	No