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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 18.03.2024***

+ W.P.(C) 2831/2021 & CM APPL. 8519/2021 -Int. relief.

MONIKA

..... Petitioner

Through: Ms. Advocate (appearance not given)

versus

DSSSB & ANR.

..... Respondents

Through: Mr. Nitesh Kumar Singh, Advocate
for Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD with**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Article 226 and 227 of the Constitution of India seeks to assail the order dated 05.03.2020 passed by the learned Central Administrative Tribunal in O.A.3572/2017. Vide the impugned order, the learned Tribunal has dismissed the original application filed by the petitioner, wherein she had sought inclusion of her name in the selected list of candidates for appointment to the post of TGT (Computer Science) under the 'Physically Handicapped' Category (PH category).

2. Before dealing with the rival submissions of the parties, we may note the brief factual matrix as emerging from the record.



3. Upon an advertisement being issued by the respondents in January 2014 inviting applications for appointment to the post of TGT (Computer Science), the petitioner who belonged to the PH category applied for selection to the said post under the unreserved category. The petitioner duly appeared in the computer based examination for the said post on 21.05.2017 and while filling her OMR sheet, she stated that she belonged to the PH category. Within ten days thereafter, the petitioner, on 02.06.2017, upon realising that her candidature was likely to be considered as unreserved category candidate, approached the respondent to seek correction of her category. As she had, while filling the OMR sheet stated that she belonged to the PH category, she was shortlisted under the PH category and accordingly, uploaded her requisite documents, including the medical certificates, for verification under the said category. Upon declaration of results, even though the petitioner scored 76.25% marks, her name was not included in the list of candidates selected under the PH category on the premise that she had submitted her application form under the unreserved category.

4. Being aggrieved, the petitioner made repeated representations to the respondents to consider her candidature under the PH category. However, upon receiving no response thereto, she was compelled to approach the learned Tribunal by way of the aforesaid original application. While issuing notice in the O.A, the learned Tribunal passed an interim order directing the respondent to keep one seat



vacant for the petitioner under the PH category. However, after completion of pleadings, the learned Tribunal has rejected the original application filed by the petitioner. It is in these circumstances that the petitioner has approached this Court by way of the present petition.

5. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that it was undisputed that the petitioner belongs to the PH category and had inadvertently filled her application form under the unreserved category, which mistake she sought correction of within 10 days of her appearing in the examination. She submits that when the factum of her being physically handicapped was easily verifiable from the medical documents, which had been duly uploaded and therefore, there was no reason for the respondent to reject her candidature under the PH category. In support of her plea that change of category can be permitted even at a later stage, she seeks to place reliance on a decision of the Coordinate Bench dated 08.03.2019 passed in W.P.(C) 10007/2018 titled as ***Govt. of NCT of Delhi and Anr. Vs. Mukesh Kumar Yadav***. She, therefore, prays that the impugned order be set aside and the respondents be directed to appoint the petitioner with all consequential benefits.

6. On the other hand, Mr. N.K.Singh, learned counsel for the respondents supports the impugned order, and submits that the learned Tribunal has correctly opined that the petitioner having filled her application form under the unreserved category, cannot be permitted



to seek change of her category at this belated stage. He, therefore, prays that the writ petition be dismissed.

7. Having considered the rival submissions of the learned counsel for the parties and perused the record, we find that it is an admitted position that the petitioner is a physically handicapped candidate, who had, while filling her application form inadvertently stated that she belongs to the unreserved category. Learned counsel for the respondent has vehemently urged that since the petitioner had initially filled her application under the unreserved category, she could not be permitted to seek change of category at a later stage. In our view, even though, the petitioner was at fault in not applying under the correct category at the time of filling the application form, however the fact remains that she had within 10 days of appearing in the exam submitted a representation to the respondents for change of her category i.e much before the declaration of the exam result.

8. We also considered the decision of the Coordinate Bench of **Mukesh Kumar Yadav (Supra)**, relied upon by the petitioner, wherein this Court had rejected the Govt. of NCT's challenge to an order passed by the learned Tribunal by permitting change of category for a candidate from unreserved category to the OBC category upon finding that the petitioner could not have gained any benefit from declaring himself as unreserved category when he infact possessed the necessary OBC certificate before the cut of date. It may, therefore, be apposite to note the relevant extracts of the said decision, para 7 to 10 whereof read as under:



“7. We have perused the impugned order; the record placed before us, considered and the submissions of the learned counsel for the petitioners, as well as the two decisions of this court in **Neeti Nayyar** (supra) and **Pooja Sehrawat** (supra).

8. No doubt, the respondent did make the mistake of applying as an Unreserved category candidate for the post in question. We call it a mistake and not a deliberate act on the part of the respondent, since the respondent had nothing to gain by declaring himself as an Unreserved candidate when he, indeed, is an OBC category candidate and was having a requisite OBC certificate before the cut-off date.

9. Unlike the case of **Union Public Service Commission** (supra), or **Neeti Nayyar** (supra), or even **Pooja Sehrawat** (supra), in the present case, the respondent had pointed out the mistake committed by him and sought correction in the records of the petitioners at the earliest possible opportunity. Even before undertaking the examination, when he received the admit card declaring as an Unreserved category candidate, the respondent sent a representation to treat him as an OBC category candidate. The petitioners chose not to respond to the same. Even after the result was declared and the petitioners continued to treat him as General category candidate, he again represented on 16.06.2016 but to no avail. We may observe that in **Union Public Service Commission** (supra) the factual position was materially different. The applicants in that case had failed to produce their L.LB. Degree certificate along with their forms, which they were obliged to. Thus, **Union Public Service Commission** (supra) was a case where candidate had not submitted, by the cut-off date, the documentary evidence of their possessing the requisite qualification. As opposed to that, in the present, the applicants were not required to produce their certificates, including caste certificates, while making their applications. In **Neeti Nayyar's** (supra)



*case, the candidate had participated as a General category candidate, the result whereof was declared in May, 2015. Around two years later, she sought consideration of her candidature as an OBC category candidate in 2017. It was in this background that the Tribunal rejected her original application and this court upheld the order of the Tribunal. In **Pooja Sehrawat's (supra)** case as well, the candidate had applied as an Unreserved candidate; undertaken the examination as an Unreserved category candidate, and; only after the written test was conducted, she made a representation that she was actually an OBC category candidate."*

10. In the light of the fact that the Tribunal had allowed the OA granting relief to the respondent/applicant in the peculiar facts and circumstances of the case, we are therefore, not inclined to interfere with the impugned order in exercise of our writ jurisdiction. Accordingly, the petition is dismissed.

9. From a perusal of the aforesaid, we are of the view that the case of the petitioner is in fact on a better footing as unlike in the case of **Mukesh Kumar Yadav (Supra)**, the petitioner had applied for change in category within 10 days of appearing in the exam. Further, she had filled the OMR sheet as a PH category candidate itself and this request by her was made much before the results were declared on 15.09.2017, i.e., before the rights of other selected candidates were crystallised. Infact, we find that the respondents are not seriously disputing that the petitioner belongs to the PH category, which fact in any event, was easily verifiable from the medical documents uploaded by her. This Court cannot lose sight of the fact that under the Rights of Persons with Disabilities Act, 2016 and the various international



treaties on the rights of persons with disabilities, an endeavour must be made to integrate persons with disabilities in the mainstream.

10. In the light of the aforesaid, we have no hesitation in setting aside the impugned order passed by the learned Tribunal and allowing the writ petition by directing the respondents to appoint the petitioner as TGT (Computer Science) by granting her seniority and other notional benefits including pay fixation with effect from the date when other candidates selected pursuant to the said examination were appointed. It is, however, made clear that the petitioner will not be granted any back wages, though her pay will be fixed appropriately, at par with her counterparts.

11. The writ petition is, accordingly, allowed in the aforesaid terms.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

MARCH 18, 2024/ib