

SWEETY NAGAR v. STATE OF HARYANA , (2022-2)206 PLR 472, 2022 PLRonline 8364

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

SWEETY NAGAR – Petitioner,

Versus

STATE OF HARYANA and another – Respondents.

CWP-25698-2021(O&M)

Constitution of India, Article 226 – Haryana Staff Selection Commission – Petitioner having applied for the post of LDC, it is not believable that she did not know that her application had been submitted as a General category candidate and not under BCB category – The reasoning given by her that she belongs to rural area, where the application forms are submitted online by Computer Operators and the Computer Operator had inadvertently submitted her application under General Category instead of under BCB category, is least convincing – The petitioner having applied as a General category candidate, taken up the written examination as such besides participating in the process for scrutiny of documents, it is not believable that she did so without realizing that she was appearing as a General category candidate – Petition dismissed.

Cases referred to:-

1. CWP No.15110-2016 decided on 22.05.2018, *Shashi v. State of Haryana*.
2. Civil Appeal No.6696 of 2009 decided on 29.08.2019, *Rajasthan High Court Jodhpur v. Neetu Harsh*.
3. CWP No.9765 of 2019 , *Deepak v. State of Haryana*
4. CWP No.21872 of 2020 decided on 22.05.2020, *Vinay Sharma v. State of Haryana*.

Mr.Rajesh Goyal, for the petitioner. *Ms.Shubhra Singh*, Addl.A.G., Haryana.

H.S. Madaan, J. – (7th January, 2022) – Case taken up through video conferencing.

1. The petitioner has brought the instant civil writ petition under Articles 226/227 of the Constitution of India craving for issuance of a writ of certiorari for quashing the order dated

13.7.2021, copy Annexure P8 vide which the claim of the petitioner has been declined besides praying for issuance of a writ of mandamus directing the respondents to consider her candidature under BCB (backward class - B) category instead of General.

2. Briefly stated, facts of the case as per version of the petitioner are that in response to the advertisement inserted by Haryana Staff Selection Commission, Panchkula (hereinafter referred to as HSSC) - respondent No.2 for 495 posts of LDC and some other posts on 5.7.2019, the petitioner had applied for the same under Category No.26, however, her candidature was wrongly filled up under General category instead of BCB by the Computer Operator in the rural area; since the petitioner could not upload her BCB certificate at the time of submission of online application, she could not mention her category as BCB; the petitioner took up written examination and as per result declared respondent No.2, her roll number figured amongst those of selected candidates; she was called for scrutiny of documents also and result was displayed on 12.3.2021 on the website; when the petitioner had submitted her documents for scrutiny those included her BCB certificate but the department refused to accept that, rather advised her to submit an application to respondent No.2; the petitioner accordingly did so for reconsidering her candidature under BCB category; as per the final result declared on 30.4.2021, the petitioner was not selected as the candidate under General category as the last selected candidate has secured 93 marks, whereas petitioner had obtained 87 marks; whereas under BCB category, the selected candidate had secured 67 marks less than those of the petitioner; the petitioner was not selected for appointment under BCB category; she had filed a CWP-9807 of 2021 in this Court, which was disposed of issuing directing to respondent to decide her representation within six weeks; however, the respondent had rejected the claim of the petitioner vide order dated 13.7.2021.

3. According to the petitioner, she belongs to rural area, where application forms are filled up by computer operators and such computer operator had inadvertently filled up the application form of the petitioner under General category instead of BCB category, in that way, the petitioner has been greatly prejudiced. On rejection of her representation by respondent No.2 vide order dated 13.7.2021, feeling aggrieved the petitioner has approached this Court by way of filing the present civil writ petition.

4. At the asking of the Court, learned State counsel is providing assistance in the matter.

5. I have heard learned counsel for the petitioner and learned State counsel besides going through the record and I find that the writ petition is absolutely without any merit.

6. The petitioner having applied for the post of LDC, it is not believable that she did not know that her application had been submitted as a General category candidate and not under BCB category. The reasoning given by her that she belongs to rural area, where the application forms are submitted online by Computer Operators and the Computer Operator had inadvertently submitted her application under General Category instead of under BCB category, is least convincing. The petitioner having applied as a General category candidate, taken up the written examination as such besides participating in the process for scrutiny of documents, it is not believable that she did so without realizing that she was

appearing as a General category candidate and not a candidate belonging to BCB category. She could not be so naive and simpleton so as to act in such a manner. Her representation for change of category was rightly rejected. The order dated 13.7.2021 passed in that regard is quite detailed and well reasoned and no ground is made out to take a different view in the matter. In the order, the factual and judicial position on the subject has been discussed, while concluding that no change of category can be allowed at this stage. It has been specifically mentioned that in the advertisement for the posts, terms and conditions of recruitment process were clearly mentioned advising the candidates to go through the same carefully before filling up the online application form and then to check up the filled up application form to ensure the correctness of information and uploaded documents before finally submitting the application. It is clearly mentioned that no request for change of any particular of the application form would be entertained by the HSSC. It was also informed that in case the candidate feels that he/she has filled up the form erroneously, then he or she should fill up a fresh online application form along with fresh requisite fee before the closing date. The candidates applying under SC/BCA/BCB etc. categories were required to upload supporting certificate from competent authority and submit the same when called upon to do so by HSSC. The petitioner had admittedly not uploaded BCB certificate what to talk of applying under that category. It was further mentioned in the advertisement that during scrutiny of documents only those documents, which were uploaded by the candidate would be considered. In this case, the petitioner had not uploaded her BCB certificate, therefore, the same could not be taken into consideration. In the order, judgment passed by this Court with regard to category change in CWP No.15110-2016 titled as *Shashi v. State of Haryana and others*¹ decided on 22.5.2018 has been referred to and operative part thereof has been reproduced, which is as under:

Perusal of the advertisement (Annexure P-1) clearly shows that a candidate can apply only once for a particular category of post advertised. It also makes it clear that no offline form is to be accepted. Another condition included in the advertisement is that incomplete application form would be rejected. Thus, a candidate is required to be very circumspect while filling the application.

Although the petitioner may have obtained the EBPB certificate before the extended date of submitting applications, she can not take benefit thereof as she had applied under the general category.

Had she applied for the EBPB category and had failed to attach the certificate alongwith the application, the case may have been different. The Division Bench judgment of this Court in *Usha Dhillon* (supra) does not support the case of the petitioner as in the said case the computer had committed a mistake and the same was permitted to be corrected. The judgment of the Supreme Court in *J&K Public Service Commission* (supra) makes it clear that once a candidate has chosen a particular category, he can not change the same at a later date.

7. Further, judgment of Apex Court in Civil Appeal No.6696 of 2009 titled *Rajasthan High Court Jodhpur & another v. Neetu Harsh & another*,² decided on 29.8.2019 has been referred and operative part thereof has been reproduced, which is as under:

“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 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 of 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 benefit of reservation on the ground that he has 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 not 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 a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.

8. Other judgments by this High Court in CWP No.9765 of 2019 titled *Deepak v. State of Haryana & Ors.*,³ decided on 5..2019 and CWP No.21872 of 2020 titled as *Vinay Sharma v. State of Haryana & Ors.*⁴ decided on 22.5.2020 have also been relied upon.

9. In the order, it has been mentioned that final result has been declared on 3.4.2021, that means the selection process is over. If the writ petition is accepted that would unsettle the entire process. The petitioner herself having applied under the General category and taken part in the selection process as a General category candidate, however, being unsuccessful to get sufficient marks, wants to change the category to BCB for getting herself selected. Such type of hopping of category in such a manner can certainly be not allowed. As regards, the judgment referred to by learned counsel for the petitioner i.e. *Asif Ali Khan v. State of Rajasthan and another*, S.B. Civil Writ Petition No.9455/2019, that had different facts. As per the facts of that case, the category indicated at the time of filling up online application form was by mistake and the petitioner had not taken any advantage of the same and when the mistake was detected, he was permitted to change the category so as to take the type test and final result had not been declared in that case. However, here the plea taken up by the petitioner that the category indicated at the time of filling up of online application form as General was by mistake has not been found to plausible and convincing. The petitioner had taken up the test and participated in the election process as a General category candidate, the final result in the matter has since been declared, therefore, the petitioner has not been found entitled to change her category to BCB so as to take advantage of reservation.

10. As far as in case *Asif Ali Khan v. State of Rajasthan and another* (supra), the candidate instead of indicating his status as OBC(Non-Creamy layer) had given it as OBC (Creamy Layer). There could be possibility of such error under the circumstances but no such inadvertent mistake or error could be there while mentioning her candidature under General category by the petitioner instead of under BCB category. It is not a case of bona fide mistake not effecting third party. Therefore, the judgment referred to by learned counsel for the petitioner is of no help to her. No civil right of the petitioner much less any constitutional right is shown to have been violated in this case, which might have justified

issuance of proper writ in the matter for cure such alleged violation.

11. Under the circumstances, the petition is bound to fail and is dismissed accordingly.

R.M.S.

-

Petition dismissed.