

Before M.M. Kumar & Sabina, JJ.

NAVNEET KAUR,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 13239 of 2007

24th July, 2008

Constitution of India 1950—Art. 226—Punjab Govt. Instructions dated 8th September, 2003, 17th January, 2004, 27th July, 2005 and 17th August, 2005—Petitioner applying for post of Mathematics/Science Mistress in Backward Class category—Date of eligibility—On last date of receipt of applications—Last date extended—Petitioner possessing educational & professional qualifications as required for post on extended date of receipt of applications—Department discarding Backward Class category certificate issued prior to issuance of Government instructions dated 17th August, 2005—Certificate issued according to old instructions showing that petitioner did not belong to creamy layer—Latest instructions only enhancing income slab of creamy layer—Second certificate according to latest instructions submitted by petitioner could not have been ignored because advertisement postulates that candidates who are seeking reservation were required to produce their certificates by competent authority before issuance of appointment letters—Petition allowed, respondents directed to issue appointment letter in respect of post advertised w.e.f. date a person lower in merit than petitioner appointed.

Held, that the petitioner must also be regarded as a candidate belonging to Backward Class Category because the certificate dated 6th May, 2005 cannot be discarded on a mechanical basis that it has been issued prior to the issuance of Government instructions dated 17th August, 2005. A perusal of relevant portion of the instructions shows that sons and daughters of persons having gross annual income of Rs. One lac or above for a period of three consecutive years used to be covered by the expression 'creamy layer' and were not to be entitled

to get the benefit of reservation for Backward Classes/Other Backward Classes. This was the position under the instructions issued on 8th September, 2003, 17th January, 2004 and 27th July, 2005. However, the income limit was raised by the Instructions dated 17th August, 2005 from Rs. One Lac to Rs. 2.50 lacs. In other words earlier the sons and daughters of those persons who have Rs. One lac or more income were excluded from the benefit of reservation of Backward Classes or other Backward Classes, whereas that limit was later raised and those who had income of Rs. 2.50 lacs would lose the benefit of reservation for Backward Classes or Other Backward Classes. The net result, therefore, is that those who were not covered by the expression 'creamy layer' earlier would continue to be beneficiary because their income is less than Rs. One lac. The aforementioned position in any case has to be accepted for another reason also. Para 5 of the advertisement dated 27th October, 2006 postulates that the candidates who are seeking reservation were required to produce their certificates by the competent authority before issuance of appointment letters. Therefore, even the certificate dated 22nd December, 2006 could not have been ignored.

(Paras 15 & 16)

M.S. Kang, Advocate, *for the petitioner.*

Ms. Charu Tuli, Sr. DAG, Punjab.

JUDGMENT

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing order dated 25th July, 2007 (Annexure P-12) passed by the Director, Public Instructions (S), Punjab, Chandigarh rejecting the representation made by the petitioner. The impugned order has been passed in pursuance to the directions issued by a Division Bench of this Court in CWP No. 1059 of 2007 on 30th January, 2007 (Annexure P-10).

2) Brief facts of the case, necessary for disposal of this petition are that respondents issued an advertisement on 11th June, 2006 (Annexure P-4) for filling up the posts of master/mistress in various subjects

including Mathematics and Science. According to clause 10 of the advertisement a candidate is required to possess prescribed educational qualification and professional qualification for the post applied for on or before the last date of receipt of application, which was fixed as 10th July, 2006. However, the respondents issued a corrigendum (Annexure P-5) and in clause (ii) of the corrigendum the educational and professional qualifications for the posts of Mathematics Master/Mistress were required to be read as Graduate with Mathematics as one of the elective subject at Graduation level with B.Ed. instead of B.A./B.Sc. There was some amendment made in respect of the post reserved for Scheduled Caste and Backward Class and the number of posts was also altered. The petitioner claims to have qualified B.Ed. examination on 20th August, 2006, (Annexure P-1), which is earlier than the date of issuance of corrigendum on 31st August, 2006. Accordingly, she applied for the posts of Mathematics as well as Science mistress in the category of Backward Classes. She also attached Backward Class certificate dated 6th May, 2005 (Annexure P-2). The Subordinate Services Selection Board, Punjab (for brevity the 'Board') found the application of the petitioner in order after scrutiny. Accordingly, the Board called all eligible candidates for verification of the documents by public notice published in the 'The Tribune' ('English Daily') on 24th October, 2006. The petitioner did not receive any letter but in pursuance to the public notice visited the office of the Board. Her documents were verified as she had shown all her original certificates. The Board did not raise any objection to any of the document.

(3) The criteria for selection adopted by the respondents is objective in as much as percentage of marks obtained in B.Sc. and B.Ed. are to be assessed and no viva voca test is provided. The petitioner was not selected in the result declared by the Board and to that effect general information was published in the Daily Newspapers dated 21st November, 2006 informing the candidates about their merit according to their category.

(4) The respondents issued another advertisement which was published in 'Punjabi Daily Ajit' on 27th October, 2006 (Annexure P-7) inviting applications for filling up 500 posts of Master/Mistress (Mathematics). The petitioner submitted her application online for the

posts of Science/Mathematics Mistress in the Backward Class as well as general category. The petitioner appeared at C-DAC for scrutiny of the documents made on 16th November, 2006 and her merit was calculated as 73.463% (Annexure P-8). On 19th November, 2006 the respondents issued final merit list of eligible candidates for appointment of Master/Mistress in the subjects of Science, Mathematics and others in C-DAC selection. In the Backward Class category the last candidate selected had secured 69.933% marks but the name of the petitioner did not figure in the list despite the fact that she had secured 73.463% marks. A copy of the result in the subject of Mathematics Master/Mistress is annexed as Annexure P-9. Eventually the petitioner filed CWP No. 1059 of 2007 which was disposed of by issuing directions to decide her representation. In pursuance to the aforementioned directions and filing of C.O.C.P. No. 963 of 2007, respondent No. 2 has passed the impugned order dated 25th July, 2007 (Annexure P-12), which is subject matter of challenge in the instant petition. The claim made by the petitioner has been rejected.

(5) The first contention of the petitioner was rejected whereby she has claimed that fixation of ratio of 50% each for male and female category in respect of the post of Master/Mistress in the subject of Science and Mathematics is not permissible. The basis of rejection as per the impugned order is that it is strictly in accordance with Punjab State Education Class III (School Cadre) Service Rules, 1978 as amended in 1995. The second contention of the petitioner was also rejected whereby she has been considered ineligible despite the fact that the last date for receipt of applications by issuance of corrigendum stood extended to 31st August, 2006 yet her detailed marks card dated 20th August, 2006 has been rejected. Respondent No. 2 while rejecting her claim has observed as under :—

“The last date for submitting the application for the aforementioned posts in response to the said advertisement was 10th July, 2006 which was later on extended upto 31st August, 2006. As per the condition No. 10 in the Advertisement No. 1/2006, a candidate must possess requisite academic and professional qualifications on or before the last date of submission of applications, which was

31st August 2006 in the present case. The petitioner has passed the examination of Bachelor of Education, one of the essential qualifications, in the month of September, 2006 i.e. after the date of determining the eligibility of a candidate in the present which was 31st August, 2006. The petitioner has indicated herself as “appeared” in the said examination while submitting her applications for the aforementioned posts. Thus it becomes apparent that the petitioner was not in possession of the requisite qualifications on the last date of submitting the application i.e. 31st August, 2006.”

(6) The third submission of the petitioner, that she did not belong to creamy layer and her Backward Class certificate did not suffer from any legal infirmity, was also rejected by observing as under :—

“..... The claim of the petitioner for the aforesaid posts under the category of Backward Class (Female) has not been found to be sustainable for the reasons that the Backward Class certificate submitted by the petitioner at the time of scrutiny of the original documents, dates back to 6th May, 2005 i.e. prior to the issuance of the Government instructions dated 17th August, 2005 pertaining to the exclusion of creamy layer from the benefit of reservation meant for the candidates belonging to the category of Backward Class. Vide the said Government instructions the ceiling of Annual Family Income of a candidate for the purpose of including a candidate into the creamy layer, thus rendering him/her in eligible for getting the benefit of reservation for the Backward Class candidates, has been increased to Rs. 2.50 lacs from the existing limit of Rs. 1 lac which was earlier fixed vide Government instructions dated 17th January, 1994. The petitioner has submitted the Backward Class (BC) certificate issued on the basis of Government instructions dated 17th January, 1994. Thus the petitioner has failed to prove to the satisfaction of the competent authority that she does not belong to the creamy layer and as such is entitled for the benefit of reservation for Backward Class candidates. The Backward Class

certificate submitted by the petitioner on the day of scrutiny of original documents, was not valid as a period of more than one year has lapsed since its date of issuance hence the same was not in conformity with the Government instructions issued from time to time on this issue. The instructions of the Government of Punjab, Department of Welfare (Reservation Cell) contained in letter No. 1/41/93-RC-1/459 dated 17th January, 1994 read with instructions *vide* letter No. 1/41/93-RC-1/1597 dated 17th August, 2005 stipulate that income/wealth statement of the last three consecutive years has to be considered to eliminate the creamy layer, which was impossible in case of an old certificate. Moreover, Backward Class is not a caste, but a class and that there can be a frequent mobility into or out of Backward Class due to application of creamy layer condition, and income/wealth test for which last three consecutive years have to be seen, the candidate was under obligation under law to produce the latest Backward Class certificate as per the aforesaid instructions.....”

(17) Mr. Kang, learned counsel for the petitioner has made following submissions before us :-

- (a) The petitioner was fully eligible as per Clause 10 of the advertisements dated 11th June, 2006 and 27th October, 2006 (Annexure P-4 and P-7 respectively). According to the learned counsel a corrigendum was issued (Annexure P-5), which would result into alteration of the date of eligibility because according to para 2 of the corrigendum the last date of application was extended to 31st August, 2006. On the aforementioned basis, Mr. Kang has submitted that the B.Ed. certificate issued to the petitioner on 20th August, 2006 (Annexure P-1) cannot be ignored and it is sufficient to declare the petitioner as eligible. Mr. Kang has also submitted that in any case the name of the petitioner cannot be ignored from consideration with respect to the advertisement issued on 27th October,

2006 (Annexure P-7) for which she has applied online for the post of Science/Mathematics Mistress because in the aforementioned advertisement the applications were to be submitted on all day during 29th October, 2006 to 11th November, 2006.

- (b) The Backward Class certificate dated 6th May, 2005 (Annexure P-2) has made it absolutely clear in para 3 that the petitioner did not belong to creamy layer as per column No. 3 of the Schedule appended to the instructions issued by Government of India, Department of Personal and Training dated 8th September, 1993. According to the learned counsel the instructions issued on 17th August, 2005 (Annexure R-2) did not bring any change except the fact that those who had income of Rs. 2.50 lacs or above would be considered to be covered by creamy layer. Such like candidates were not to fall in the category of Backward Class. Learned counsel has pointed out that under the old instructions dated 8th September, 1993 the income slab of creamy layer was Rs. One lac or above and it was enhanced by the later instructions dated 17th August, 2005 to Rs. 2.5 lacs or above.

(8) From the change of definition of creamy layer the petitioner would not suffer any disability because she was declared by competent authority to be covered by instructions dated 8th September, 1993 when certificate was issued to her. The income of her parents was less than Rs. One lac and she did not belong to creamy layer. Learned counsel has further maintained that if a person exceeding income of Rs. 2.50 lacs is to be covered by creamy layer and a person who has income less than Rs. 2.50 lacs is not to be covered by creamy layer then the petitioner who had certificate of income which is less than Rs. One lac would surely not be covered or hit by the later instructions.

(9) Ms. Charu Tuli, learned State counsel has pointed out that the impugned order dated 25th July, 2007 (Annexure P-12) has been amended and a corrected copy was sent to the petitioner. She has drawn

our attention to corrected copy Annexure R-1 where the date of eligibility of academic and professional qualifications has been corrected with reference to cut off date as 10th July, 2006 instead of 31st August, 2006 as is reflected in the impugned order (Annexure P-12). In other words her contention seems to be that the petitioner was required to fulfil her professional and academic qualifications as on 10th July, 2006 and therefore, she was not eligible because she acquired B.Ed. qualification on 20th August, 2006. Learned State counsel has also maintained that the certificate of Backward Class produced by the petitioner is in accordance with the old instructions, whereas, new instructions have been issued on 17th August, 2005 (Annexure R-2).

(10) After hearing learned counsel for the parties at a considerable length we find that this writ petition deserves to succeed. The undisputed facts are that after the initial advertisement issued on 11th June, 2006 (Annexure P-4) another advertisement was issued on 27th October, 2006 (Annexure P-7). It would be appropriate to make reference to Clause 10 of the first advertisement, which reads thus :-

“10. The candidate should possess prescribed Educational Qualification and Professional Qualificaiton for the post applied for on or before the last date of receipt of application.”

(11) A perusal of the aforementioned clause would show that a candidate is required to possess professional and educational qualificaion for the post of Master/Mistress in the subjects of Science and Mathematics on the last date fixed for receipt of applications, which is 10th July, 2006. Likewise in the advertisement dated 27th October, 2006 Clause 10 is in the same terms. The dates for sending online applications are 29th October, 2006 to 11th November, 2006. After issuance of first advertisement a corrigendum was also issued. In Clause (ii), the educational and professional qualifications are required to be read differently than the one described in the advertisement dated 11nd June, 2006. Likewise in para 2, the last date for receipt of application has been extended to 31st August, 2006. Both Clause (ii) and para 2 are reproduced herein below :-

“(ii) The educational and professional qualification for the posts of Mathematics Master/Mistress may be read as

“Graduate with Mathematics as one of the elective subject in Graduattion with B.Ed.” instead of ‘B.A./ B.Sc. with Mathematics as one of elective subject with B.Ed.”

- “2. In view of above para eligible candidates can send their applications for 700 posts of Master/Mistress’ and 600 posts of ‘Mathematics Master/Mistress’ and the posts reserved for Scheduled Caste (ESM), Scheduled Caste (Sportsmen/women) and Backward Class (ESM) in all categories to The Secretary, Subordinate Services Selection Board, Punjab, SCO No. 156-160, Sector 8-C, Chandigarh in accordance with the procedure laid *vide* advertisement No. 1/2006, by Regd. Post, not later than 31st August, 2006. Other conditions pertaining to age i.e. 18 to 37 years as on 1st January, 2006 (except relaxation cases), possessing of required educational and professional qualification on or before 10th July, 2006 and selection criteria etc. in respect of such candidates shall remain unchanged and shall be considered as per conditions of advertisement *ibid* i.e. 1/2006.”

(12) It is evident that by the corrigendum the applications for 700 posts and 600 posts of Mathematics Master/Mistress were invited and the date was extended to 31st August, 2006. Once the last date for submission of applications has been extended to 31st August, 2006 then it follows that the eligibility as per Clause 10 would automatically be considered as on 31st August, 2006. The detailed marks card of the petitioner in respect of her B.Ed. examination is dated 20th August, 2006 (Annexure P-1) and accordingly she has to be considered as eligible.

(13) Apart from above, the candidature of the petitioner for appointment to the post in pursuance to advertisement dated 27th October, 2006 has to be considered as she has acquired the B.Ed. qualification on 20th August, 2006. Therefore, she has to be considered

against the posts of Masters/Mistress in Mathematics and Science advertised on 27th October, 2006.

(14) The petitioner must also be regarded as a candidate belonging to Backward Class category because the certificate dated 6th May, 2005 (Annexure P-2) cannot be discarded on a mechanical basis that it has been issued prior to the issuance of Government instructions dated 17th August, 2005 (Annexure P-2). It would be apposite to extract the relevant portion of the instructions to comprehend the consequences brought about by the change, which reads thus :-

“ I am directed to refer to the Punjab Government letter No. 1/41/93-RC-1/459 dated 17th January, 1994 and No. 8/144/93-WC-2/7017 dated 27th September, 1995 on the subject noted above and to say that sons and daughters or persons having gross annual income of Rs. 1 lakh or above for a period of three consecutive years fall within the creamy layer and are not entitled to get the benefit of reservation provided to the Backward Classes/Other Backward Classes. Government has decided now to raise the income limit from Rs. 1 lakh to Rs. 2.5 lakh for determining the creamy layer amongst the BCs/OBCs.”

(15) A perusal of the aforementioned para shows that sons and daughters of persons having gross annual income of Rs. One lac or above for a period of three consecutive years used to be covered by the expression ‘creamy layer’ and were not to be entitled to get the benefit of reservation for Backward Classes/Other Backward Classes. This was the position under the instructions issued on 8th September, 2003, 17th January, 2004 and 27th July, 2005. However, the income limit was raised by the instructions dated 17th August, 2005 (Annexure R-2) from Rs. One lac to Rs. 2.50 lacs. In other words earlier the sons and daughters of those persons who have Rs. One lac or more income were excluded from the benefit of reservation of Backward Classes or Other Backward Classes, whereas, that limit was later raised and those who had income of Rs. 2.50 lacs would lose the benefit of reservation for Backward Classes or Other Backward Classes. The net result, therefore, is that those who were not covered by the expression ‘creamy layer’ earlier would continue to be beneficiary because their income

is less than Rs. One lac. The certificate dated 6th May, 2005 (Annexure P-2) issued to the petitioner in unequivocal terms states as under :-

“This is also to certify that she does not belong to the person/ sections (creamy layer) mentioned in column 3 of the Schedule to the Government of India, Department of Personal and Training O.M. No. 36012/22/93 Esstt. (SCT) dated 8th September, 1993.”

(16) The aforementioned position in any case has to be accepted for another reason also. Para 5 of the advertisement dated 27th October 2006 (Annexure P-7) postulates that the candidates, who are seeking reservation, were required to produce their certificates by the competent authority before issuance of appointment letters. Therefore, even the certificate dated 22nd December, 2006 (Annexure P-3) could not have been ignored.

(17) For the reasons stated above, this petition succeeds. The impugned order dated 25th July, 2007 (Annexure P-12) as well as the corrected order dated 10th March, 2008 (Annexure R-1) are hereby quashed. The petitioner is declared eligible and is also held entitled to the benefit of reservation for Backward Class category. It is admitted position that the petitioner has secured 73.463% marks in the Backward Class (Female) category which are higher than the last candidate, who has secured 69.933% marks. Accordingly, the respondents are directed to issue appointment letter to the petitioner for the post of Mathematics Mistress in respect of the post advertised on 27th October, 2006 with effect from the date a person lower in merit than her, has been issued appointment letter. These directions shall be given effect within a period of three weeks from today. However, we make it clear that the petitioner shall not be entitled to any arrears of salary but would be entitled to all other benefits.

(18) The writ petition stands disposed of in the above terms.

(19) A copy of this order be given *dasti* on payment of usual charges.

R.N.R.