

Kiran Bala Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 22, 2014

Citation: (2014) 3 SCT 803

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Sukhdeep Singh Sandhu, Advocate for the Appellant; Aman Bahri, Addl. Advocate General, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Rajesh Bindal, J.

The petitioner, who is belonging to Schedule Caste (R & O) category, has filed the present petition with a grievance that

her candidature for the post of Assistant Librarian has been considered in General Category, though she applied in the reserved category. Learned

counsel for the petitioner submitted that vide advertisement dated 23.9.2009, applications were invited for 316 posts of Assistant Librarian, out of

which 64 posts were reserved for Schedule Caste category. The last date for submission of applications was 13.10.2009. The petitioner, being

fully eligible for the post, submitted her application online in the category of Schedule Caste (R & O) category. The provisional list was prepared in

which merit position of the petitioner was at Sr. No. 18 having 59.1% marks. For the purpose of preparation of merit list, 80% marks were

earmarked for eligibility qualification, whereas certain benefits were given for higher qualification and experience as well. Vide public notice dated

27.11.2010, the candidates were called for counseling on 13.12.2010. The petitioner appeared on that date along with all the requisite documents.

She was asked to fill in scrutiny form, where the petitioner specifically mentioned that her rank in the provisional list displayed was at Sr. No. 18 in

the category of Schedule Caste (R & O). She annexed all the requisite certificates. Despite this fact, when the result was declared, the name of the

petitioner was mentioned in General Category at Sr. No. 41 and declared ineligible, being over-age.

2. The submission is that the petitioner had specifically mentioned in her application and in the documents submitted at the time of counseling that

she belongs to Schedule Caste (R & O) category, hence, consideration of her candidature in General Category and rejecting the same treating her

overage, is totally illegal. There is relaxation upto 5 years in age for the candidates of reserved category. It was further submitted that at the time of

counseling, the Scrutiny Officer was fully satisfied with the documents furnished by the petitioner and never raised an issue regarding the same. No

objection was raised regarding the certificate produced by the petitioner showing her to be a candidate of Schedule Caste (R & O) category. Had

any objection been raised, the same could have been clarified by the petitioner at that stage itself. He further submitted that if the candidature of the

petitioner is considered in reserved category as she falls in the merit list considering the number of posts, she deserves to be appointed. He further

submitted that at the time of issuance of notice of motion, one post in the category of Schedule Caste was directed to be kept reserved. Learned

counsel further submitted that in case the petitioner is appointed, she will not claim any benefit from a date prior to her appointment.

3. On the other hand, learned counsel for the State submitted that candidature of the petitioner was rightly not considered in the category of

Schedule Caste (R & O), as she had not produced the certificate in support of her claim. The certificate, which was produced by her, was

showing that she is married. A person marrying a person of reserved category does not acquire his caste as the same is acquired by birth. The

certificate, which has been placed on record as Annexure P-1 along with the writ petition, was not produced by the petitioner at the time of

counselling, hence, there was no occasion for the Scrutiny Committee to consider the same. In the absence of a supporting document showing that

the petitioner belonged to Schedule Caste (R & O) category, her candidature was rightly considered in general category and she being overage,

was rejected. Even otherwise, she had secured marks less than the last selected candidate in general category. Under these circumstances,

rejection of the candidature of the petitioner cannot be said to be erroneous.

Heard learned counsel for the parties and perused the paper book.

4. In the case in hand, the petitioner applied for the post of Assistant Librarian in response to an advertisement issued on 23.9.2009. Out of 316

total posts, 64 posts were reserved for Schedule Caste category. The applications were to be submitted on-line. The petitioner claimed that she

belonged to Schedule Caste (R & O) category. When the provisional merit list was prepared, the petitioner was placed at Sr. No. 18 having

59.1% marks. Vide public notice dated 27.11.2010, the candidates were called for counselling on 13.12.2010. The petitioner appeared along

with all requisite certificates. In the scrutiny form, which is required to be filled up by every candidate at the time of scrutiny, in column No. 2, the

petitioner mentioned her rank as 18 and in column No. 4 of category "Schedule Caste (R & O)" was mentioned. The certificates in support of the

claim made were annexed, which were received by the Scrutiny Officer. At the time of counselling, what was required to be checked was only the

certificates in support of the claim made by a candidate in the application submitted online. There were no separate marks prescribed for interview.

In the scrutiny form, there were columns to be filled in by the Scrutiny Officer which included deficient documents and further as to whether the

candidate was eligible or ineligible for the post. In the case in hand, all the aforesaid columns were left blank by the Scrutiny Officer, though he

appended his signatures below these columns. As the petitioner in the present case had made her claim in the category of Schedule Caste (R & O)

and on the basis of the certificate produced by her, it was found that she was not eligible in that category, the defect could have been pointed out

there and then asking her to justify the claim, but in the present case that exercise was not done. Even if the petitioner had not annexed the

certificate (Annexure P-1) issued in her favour on 4.7.1988 showing that she being daughter of Mukand Lal belongs to Ad-Dharmi caste, which is

a Schedule Caste, and had annexed a certificate which had been issued to her after her marriage, this deficiency could have been pointed out and

in case the petitioner was able to satisfy the Scrutiny Officer with support of any other document, her candidature could be considered accordingly,

but in the present case, neither the column of deficiency in documents nor the column of remarks as to whether the petitioner was eligible or

ineligible were filled. On their own, at the time of preparation of final merit list rejecting the candidature of the petitioner in reserved category, she

was treated in general category and her candidature was rejected being over-age. The caste to which a person belongs is not acquired on a

particular day as is the qualification. It is something which is acquired at the time of birth.

5. A similar issue was considered by Hon"ble the Supreme Court in Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, wherein for

admission to a Post Graduate Course in Medicine, rule provided for addition of 10% marks if a candidate possessed qualification of diploma in the

relevant subject. It was opined therein that having a qualification is different than producing the proof thereof. Relaxation of the date on the first is

illegal but not on the second. Mode of proof is geared to the goal of the qualification in question. What is essential is the possession of qualification

before the given date; what is ancillary is the safe mode of proof of qualification. The relevant paragraph thereof is extracted below:

20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be

obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it.

Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question.

It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so

on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later,

yet before the date of actual selection. The emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is

not an independent factor. The prospectus does say:

(4)(b): 10% to diploma holders in the selection of candidates to M.S., and M.D. Courses in the respective subjects or sub-specialities.

13. Certificates to be produced:- In all cases true copies of the following documents have to be produced:- (k) Any other certificates required

along with the application.

This composite statement cannot be read (sic in a) formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is

subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What

is essential in the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between

a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application

makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this

merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the

prospectus, but still above board, is to make procedure not the hand maid but the mistress and form not as subservient to substance but as

superior to the essence.

[Emphasis supplied]

6. The aforesaid judgment was followed in Dolly Chhanda Vs. Chairman, JEE and Others,

7. The issue was recently considered by Hon"ble the Supreme Court in Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi and Others, , wherein

it was opined that the date of declaration of result is the date on which a qualification is acquired. For the reasons mentioned above, in my opinion,

rejection of the candidature of the petitioner in the category of Schedule Caste (R & O) is erroneous. The petitioner being higher in merit than the

persons appointed in the category to which the petitioner belongs, deserves to be offered appointment. At the time of issuance of notice of motion,

one post of Assistant Librarian in the category of the petitioner was directed to be kept reserved. Learned counsel for the petitioner had fairly

stated that in case she is found entitled to appointment now, she will not claim any benefit from the date prior to her appointment. Considering the

aforesaid facts, the respondents are directed to offer appointment to the petitioner within one month from the date of receipt of copy of the order.

However, as stated by learned counsel for the petitioner, the petitioner will be entitled to all the benefits from the date she joins service.

The writ petition stands disposed of.