

Before DR. S. Muralidhar & Avneesh Jhingan, JJ.

VINOD KUMAR—*Petitioners*

versus

**KURUKSHETRA UNIVERSITY THROUGH ITS REGISTRAR
AND ANOTHER**—*Respondents*

CWP No.8343 of 2020

November 10, 2020

Admission to Ph.D.—Reservation for Other Backward Class (OBC) candidates —When can a reserved category candidate be considered against general category vacancies?—Of the 3 seats, 1 reserved for Haryana Open General Category (HOGC) and 2 for OBC candidates—Student Anil Marle secured the highest marks (141.40) and selected against OBC category—The second candidate selected against HOGC secured 137.10 marks—Third candidate securing 108.78 was shown in OBC quota—Petitioner raised the plea that Anil Marle should be considered against HOGC and not against OBC quota, since he scored higher marks than the candidate selected against HOGC quota—And petitioner having secured second highest marks in OBC quota would be able to get admission—Respondent University informed that Anil Marle scored the highest as he was given weightage of 15 marks under OBC category having qualified National Eligibility Test (NET)—Held, as per settled legal position a reserved category candidate, who makes the cut on account of some relaxation given, cannot be considered to have qualified ‘on his own merit’—Consequently, cannot be considered against general category quota/vacancies—Petition dismissed.

Held, that the corollary that emerges from the position noted above is that if the reserved category candidates make the cut on account of some relaxation given to them, obviously, they cannot be considered to have qualified on their own merit and in which case they cannot be considered against the general category quota. This legal position has been explained both in *Deepa E.V.* (*supra*) and in the recent judgment of the Supreme Court in *Pradeep Kumar* (*supra*). In the last-mentioned judgment of the Supreme Court, it was noted that the Respondents in that case were able to qualify only because they availed relaxation as OBC candidates and therefore, the Supreme Court did not “think it is proper to consider them to be eligible for the general category vacancies”.

(Para 9)

Rajesh Tushar, Advocate, *for the Petitioner.*

Prateek Mahajan, Advocate for Respondents No. 1 and 2.

DR. S. MURALIDHAR, J.

(1) The Petitioner's grievance is about not having secured admission to the Ph.D (Public Administration) programme in the Respondent No.1 University, which he applied for as an OBC candidate. Admittedly, he secured 103.26 marks in the selection process.

(2) It appears that there were three seats on offer. One being reserved for Haryana Open General Category ('HOGC') and two for the OBC category. In the merit list that was issued by the Respondent No.1 in respect of the three selected candidates, the person securing the highest marks of 141.40 i.e. Anil Malre (Respondent No. 5) was shown as having been selected in the OBC category. The second candidate Mr. Jaswinder Singh who secured 137.10 marks was shown in the HOGC category. The third candidate who got 108.78 marks was shown in the OBC category.

(3) The case of the Petitioner is that since Mr. Malre had secured 141.40 marks, which was higher than the marks secured by the candidate selected in the HOGC quota, Mr. Malre should be considered against the HOGC quota and not against the OBC quota. If that prayer is acceded to, then the Petitioner, having secured the second highest marks in the OBC category, would obviously be able to make the cut.

(4) The short question that arises is whether Mr. Malre should be considered under the HOGC quota in place of Mr. Jaswinder Singh, thereby making way for the Petitioner to secure admission in the Ph. D programme under the OBC quota?

(5) Relying on the decisions of the Supreme Court in *Ritesh R. Sah versus Dr. Y.L. Yamul*¹ and *Samita Aandolan Samiti versus Union of India*² it is contended by Mr. Rajesh Tushar, learned Counsel for the Petitioner, that Mr. Malre should be considered against the HOGC quota.

¹ AIR 1996 SC 1378

² (2014) 14 SCC 745

(6) On the other hand, it is pointed out by Mr. Prateek Mahajan, learned Counsel appearing for the Respondent Nos. 1 and 2/University that Mr. Malre qualified in the National Eligibility Test (NET), which was given a weightage of 15 marks, under the OBC category. He has referred to a copy of the NET certificate issued to Mr. Malre, enclosed with the reply of Respondent No.1 as Annexure-R5, which clearly shows Mr. Malre having qualified in the NET “securing marks at par with the qualifying cut-off for OBC category”. In other words, the stand of the Respondents is that the weightage of 15 marks that Mr. Malre received was only because he was considered qualified in the NET in terms of a relaxed standard applicable to the OBC category.

(7) Mr. Prateek Mahajan, has also placed reliance on the decisions of the Supreme Court in *Deepa E.V. versus Union of India*³ and *Government of NCT Delhi versus Pradeep Kumar*⁴ to contend that since Mr. Malre did not qualify on his own merit, he cannot be considered against the HOGC category.

(8) The legal position in regard to considering a reserved category candidate against the general category quota is fairly well settled. In the recent judgment in *Samta Aandolan Samiti* (supra), the Supreme Court after summarizing its previous decisions crystallized the legal position as under:

“15. It is now well entrenched principle of law that those members belonging to reserved category who get selected in the open competition on the basis **of their own merit** have right to be included in the general list/unreserved category and not to be counted against the quota reserved for Scheduled Caste...” (emphasis supplied)

(9) The corollary that emerges from the position noted above is that if the reserved category candidates make the cut on account of some relaxation given to them, obviously, they cannot be considered to have qualified on their own merit and in which case they cannot be considered against the general category quota. This legal position has been explained both in *Deepa E.V.* (supra) and in the recent judgment of the Supreme Court in *Pradeep Kumar* (supra). In the last-mentioned judgment of the Supreme Court, it was noted that the Respondents in that case were able to qualify only because they availed relaxation as OBC candidates and therefore, the Supreme Court did not “think it is

³ (2017) 12 SCC 680

⁴ (2019) 10 SCC 120

proper to consider them to be eligible for the general category vacancies”.

(10) Although Mr. Rajesh Tushar, learned Counsel for the Petitioner sought to distinguish between a relaxed standard and weightage in awarding marks to a candidate on the basis of a qualifying examination, as far as the present case is concerned, the weightage of 15 marks, given to those who qualified in the NET, was available to Mr. Malre only upon his qualifying in the NET examination. He did so owing to the relaxed standard applicable to those who appeared for the NET under the OBC category. In that view of the matter, Mr. Malre cannot be considered against the HOGC quota 'on his own merit' and has rightly been considered against the OBC quota.

(11) Accordingly, there is not merit in the present petition and it is dismissed as such.

Tribhuvan Dhaiya