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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 03.06.2022

+ **W.P.(C) 9230/2022**

MS CHARU KAIN

..... Petitioner

Through: Mr K.C. Mittal, Mr Yugansh Mittal,
Mr K.P. Singh Shekhawat, Mr Sachin
Kaushik and Mr V. Eashwar,
Advocates.

Versus

HIGH COURT OF DELHI

..... Respondent

Through: Mr Gautam Narayan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (ORAL)

CM No. 27671/2022

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 9230/2022 & CM No. 27672/2022

3. Issue notice.
4. Mr Narayan, learned counsel appearing for the respondent, accepts notice.
5. With the consent of the respondent, the petition is taken up for

hearing.

6. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent to consider the petitioner's application for the Delhi Judicial Service Examination, 2022 in the reserved category of Scheduled Caste (SC) instead of the General Category for the purposes of the Delhi Judicial Services Examination - 2022.

7. The petitioner is currently posted as an Additional Civil Judge, Junior Division, Uttar Pradesh Judicial Services. She had appeared for the Delhi Judicial Service Preliminary Examination, 2022 as a General Category candidate. The Delhi Judicial Service Mains Examination is scheduled to be held on 11.06.2022 and 12.06.2022. In the event the petitioner is considered as a reserved category candidate (SC), the petitioner would make the cut off for appearing in the Mains examination. The petitioner has secured 119.5 marks, which is admittedly above the cut off (115.5 marks).

8. The Delhi Judicial Service Mains Examination is conducted in three stages. The Delhi Judicial Service Preliminary Examination; Delhi Judicial Service Mains Examination and Viva-Voce. In the first stage – the Preliminary Examination – the candidates numbering ten times the number of vacancies are selected to appear for the next stage (Mains examination).

9. There are eight vacancies for the Reserved Category and therefore, the cut off mark for the appearing was fixed on the basis of

eighty candidates clearing the preliminary examination. However, in all eighty-one candidates have been selected. This is because the last two candidates in the order of merit had scored 115.5 marks. The petitioner was not considered in this category as she had applied under the General Category and the cut off for the General Category was higher than 119.5.

10. The petitioner claims that the admit cards were issued on 20.04.2022 and at that stage, she realised her mistake in applying under the General Category. She did not take any immediate steps to correct the said error as according to her, the time was too short. She appeared for the preliminary examination and filed the present petition only after discovering that she would make the cut off, if she was considered as a Reserved Category candidate. Although it is stated in the petition that there was some glitch in filling the application, it is clear from the petition that there was no such glitch. The error committed is entirely on account of the petitioner incorrectly filling her details. It is also pointed out that the petitioner had appeared in Delhi Judicial Service Examination on three prior occasions (examinations held in the year 2017, 2018 and 2019) as a reserved category candidate. She had also cleared the preliminary examination held in the year 2018 as a reserved category candidate. Thus, she was aware of the procedure.

11. Mr Mittal, learned counsel appearing for the petitioner, readily accepts that there has been an error. He, however, contends the petitioner should not be penalised at this stage since no prejudice is

caused to any other person. He also submits that there is no dispute that the petitioner belongs to a SC and is entitled to appear as a SC category candidate.

12. Mr Narayan has countered the aforesaid submissions. He states that if the petitioner had correctly filled her application form and applied under the reserved category, she would have been placed on the order of merit after the candidate ranked at number 58 in the order of merit. He submits that, resultantly, the two candidates presently at Rank nos. 80 and 81, would not qualify for appearing in the mains examination. He also submits that since they are not a party to the present petition, they cannot be prejudiced.

13. In the given facts, the limited question that falls for consideration before this Court is whether the petitioner should suffer the consequence of her mistake, which she has admittedly committed, or ought to be given a chance to rectify the same.

14. The petitioner has relied upon the decision of the Division Bench of the High Court of Rajasthan in the case of ***Kavita Choudhary v. Registrar (Examination): 2017 SCC OnLine Raj 3612***, wherein the court had taken a liberal view that the mistakes which do not prejudice any other person, should be permitted to be rectified. The perusal of the said decision indicates that the court had also followed several decisions passed by this Court to the aforesaid effect.

15. This Court concurs with the aforesaid view. Clearly, a person committing a *bona fide* mistake, which does not cause prejudice to any

person, should be given an opportunity to rectify the same.

16. In the present case, it is clear that the petitioner's mistake is a *bona fide* one; she derived no benefit from submitting an incorrect application disclosing her category as the general category. She had further compounded the mistake by not seeking immediate rectification as soon as she became aware of the same.

17. Notwithstanding the same, this Court finds that there is no prejudice caused to any person and the matter regarding the examination has not proceeded to a stage, which renders it inapposite to correct this mistake.

18. Mr Narayan is right in his contention that two candidates, who are now placed at Rank nos. 80 and 81, who would otherwise not have cleared the preliminary examination, cannot be prejudiced.

19. In view of the above, this Court considers it apposite to allow the present petition. The petitioner shall during the course of the day, submit an undertaking to the respondent requesting the respondent to permit her to rectify the application to disclose her category as an SC category instead of General category and to treat her candidature accordingly. The respondent shall on receipt of the said application process the same and issue admit cards to the petitioner along with other candidates. It is clarified that the respondent shall also issue admit cards to candidates currently listed at Rank nos. 80 and 81, who would after inclusion of the petitioner, would be ranked at Rank nos. 81 and 82.

20. Before concluding, we must appreciate that the stand of the respondent has not been adversarial but accommodative.

21. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JUNE 3, 2022
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