

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23182 of 2012
Reserved on:15.02.2016
Decided on :11.03.2016

Ram Kishore

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. B.S.Bajwa, Advocate for the petitioner.

Mr.Anshul Gupta, AAG, Punjab.

G.S. Sandhawalia , J.

Petitioner seeks consideration for appointment to the post of Senior Lab Attendant, as per the advertisement dated 03.09.2009, against the reserved posts for Backward Class/Ex-Serviceman candidates.

The case of the petitioner is that he had secured 45.16 marks and the last candidate selected had secured 34.8 marks. As per the terms of the advertisement, the cut-off date was 09.10.2009 and all the qualifications and the terms and conditions had to be qualified before the said date. Candidates who had to apply in the Reserved Categories had to submit the necessary certificates, issued by the competent authority. As per Clause 6, the Backward Class certificate had to be issued within a period of one year from the last date of submission of the application. The same had to be as per the specifications of the letter dated 17.01.1994 and 17.08.2005, issued by the Welfare Department,

Government of Punjab. Relevant clauses read as under:

“5. The candidates willing to take benefit of reservation of scheduled caste and backward class will produce the certificate regarding his caste duly issued by the competent authority. In this certificate the caste may be written clearly. The reservation for the scheduled caste candidate will be as per Punjab scheduled caste and backward classes (reservation in services) Act 2006.

6. The certificate regarding backward classes should be issued within the period of one year from the last date of submission of application as described in the advertisement and this certificate should be as per specification of letter dated 17.1.94 and dated 17.8.05 issued by the welfare department government of Punjab.”

It is the case of the petitioner that the certificate of Backward Class was of the year 1993-94 (Annexure P5) and had been renewed, thereafter, on 06.05.2010 (Annexure P6). It has been further averred that the posts are still lying vacant and the petitioner has more merit than the last candidate selected and had been wrongly considered in the General Category.

The defence of the State was that the Backward Class certificate dated 29.05.1996 was beyond the period of one year from the last date of applying and the Ex-Serviceman certificate had not been attached and accordingly, the petitioner had been considered in General Category and his merit was lower than the last candidate selected. The date of issuance of the subsequent certificate was 06.05.2010, which also did not fulfill the prescribed requirement. The selection process had been completed and the claim of the petitioner, thus, was not sustainable.

Counsel for the petitioner has, accordingly, argued that the certificate dated 06.05.2010 (Annexure P6) was only validating the earlier certificate and was as per the latest Government instructions dated 24.02.2009 and had been issued within the period of one year from the last date of submission of the application, as prescribed in the advertisement, which was 06.10.2009 and fulfilled the requirement of Clause 6 of the advertisement. Similarly, it was submitted that the Ex-Serviceman Certificate (Annexure P2), which was issued in May, 2010, also showed that the petitioner was a *bona fide* Ex-Serviceman, having served the Army from 24.04.1996 to 21.01.1997 and had been issued for securing employment for the post of Senior Lab Attendant in the Education Department.

Counsel for the State, on the other hand, has vehemently submitted that the cut-off date was a sacrosanct date and the certificate furnished at the time of counselling was not as per the advertisement. It was, accordingly, submitted that the certificates issued had not been produced at the time of counselling and therefore, the case of the petitioner had been rejected as they were issued after the last date of the advertisement.

A perusal of the initial certificate issued on 29.05.1995 (Annexure P5) would go on to show that it bears Sr.No.498 and was in the format of Government letter dated 17.01.1994. The

same was validated by the subsequent certificate dated 06.05.2010 (Annexure P6) and it was as per the subsequent instructions dated 24.02.2009, having been issued within the period of one year from the last date of submission of application. The petitioner's case, thus, is liable to be considered for appointment. It is not disputed that vacancy exists in the category in which the petitioner had applied and a specific averment has been made in para 17 of the writ petition, which has not been categorically denied. Merely because the selection process has closed, would not be a ground to deny the petitioner his right as he has approached this Court at the earliest, in the year 2012, for the redressal of his grievances.

Reliance can be placed upon the judgment of a Three Judges Bench of the Apex Court in **Dolly Chhanda Vs. Chairman, JEE (2005) 9 SCC 779**, wherein it has been held that if the candidate has the requirements, as prescribed in the advertisement and had only to furnish the proof and candidates lower in merit have been granted the benefit, then it would be technical to deny the relief to the petitioner. In the said case, the candidate belonging to Reserved Category had not been able to furnish the certificate issued and there was a mistake in the certificate issued by the Zila Sainik Board and the candidates lower in merit had been admitted. She produced the correct certificate at a subsequent stage of second counselling but was denied the

benefit on the ground that there was a cut-off date. It was noticed that those candidates who had secured lower rank than the appellant have already been admitted and therefore, denying the benefit to the said appellant would be unjust and illegal. Accordingly, the Apex Court held that there can be some relaxation in the matter of submission of proof, as it pertained to the domain of procedure. Relevant portion of the judgment read as under:

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct

certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.”

It is not the case of the respondents that the petitioner did not have the educational qualifications before the cut-off date and therefore, was ineligible to apply having obtained the eligibility criteria later on. As noticed, the petitioner is an Ex-Serviceman and also belongs to the Backward Class Category and the earlier certificate having been validated within the prescribed period, would entitle him for due consideration.

In similar circumstances, this Court in CWP-10866-2011 titled *Surjit Kumar Vs. State of Punjab & others*, decided on 01.09.2015, granted relief on the ground that the certificate had been validated and also on account of the fact that vacancies existed. Relevant portion of the judgment reads as under:

“Keeping in view the above facts, it is apparent that one vacancy remain unfilled in the category which the petitioner was entitled for appointment. A perusal of the vernacular of certificate issued for the Scheduled Caste and Scheduled Tribes in favour of the petitioner would gone to show that the original certificate was issued in the year 2006 by the Tehsildar Gurdaspur and, thereafter, the certificate was validated again on 30.03.2010. Thus, it is apparent that the petitioner was fully eligible and has been wrongly ignored on a technicality that the certificate was dated beyond the cut-off-date. Another aspect which is to be kept in mind is that it was not a case of backward class, where the certificate had to be of a band of income which the petitioner was earning for the period prior to the advertisement. The petitioner is born as a Ramdasia which

is an recognized Scheduled Caste by the State and, therefore, the submission made that the certificate was after the cut-off-date would also have no weightage. The said certificate attached also shows that it was issued way back on 26.07.2006 and validated on 30.03.2010 by the Tehsildar also shows the factum of residence of village Rawal District Gurdaspur.

In such circumstances, specially keeping in view the fact that the said post has also not been filled up as respondent No.5 did not join and the petitioner had approached this Court in the year 2011 prior to the decision being taken by the State to cancel the waiting list would have no affect. The petitioner was legitimately agitating for his grievance and, therefore, his right cannot be shut out on the account that the selection process has come to an end as argued by the State counsel.

In such circumstances, the present writ petition is allowed with the direction to the respondent to appoint the petitioner as Vocational Master (Civil), within a period of 2 months from the receipt of certified copy of this order.”

Accordingly, the present writ petition is allowed. A direction is issued to the respondents to consider the case of the petitioner for appointment to the post of Senior Lab Attendant in the Backward Class category/Ex-Serviceman, within a period of 2 months from the date of receipt of a certified copy of this order. However, it is made clear that the petitioner is responsible for not strictly complying with the directions of the advertisement and therefore, he will not be entitled for any relief of seniority etc., in the eventuality of the letter of appointment being issued to him.

MARCH 11, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE