

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.22864 of 2013
Date of Decision:- 12.04.2016

Sangita

....Petitioner

Versus

Haryana Staff Selection Commission and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Sharma, Advocate,
for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General, Haryana.

RITU BAHRI, J. (Oral)

Petitioner is seeking quashing of the order dated 01.08.2012 (Annexure P-2) whereby the petitioner has been ignored under the category of DESM for the post of Female Supervisor, Women and Child Welfare Department, Haryana. The petitioner applied for the post of Female Supervisor in pursuance to the advertisement No.1/2011, Category No.3 dated 19.03.2011 (Annexure P-1). She was working as Anaganwari worker

for the last 15 years and was eligible for the advertised post. A criteria for short-listing the candidates was published in Dainik Bhaskar on 01.08.2012 wherein the petitioner being belonging to the SC/DESM category was eligible as per the criteria. The petitioner was not called for the interview as per the criteria dated 01.08.2012 (Annexure P-2).

Upon notice, the written statement filed on behalf of respondent No.1 and the stand taken therein that as per published notice dated 01.08.2012 (Annexure P-2), the Commission was short-listed the candidates for interview for the post of Female Supervisor. In the ESM (SC) category, no short-listing was made as there was only 7 candidates applied against the 6 advertised posts. Out of 7 candidates, 6 ESM/DESM (SC) candidates were not found eligible on the ground of not producing the Eligibility Certificate of the respective Sainik Board in respect of their claim of DESM category. Only one candidate bearing Roll No.4990 of Dependent of Freedom Fighter (SC) was found eligible and selected and 5 posts of ESM (SC) remained vacant due to non-availability of eligible candidates. The petitioner was found ineligible on account of not having the Eligibility Certificate to substantiate her claim in DESM (SC) category.

In a separate written statement filed by respondent No.2, the stand is that the petitioner had applied for the post of Female Supervisor and respondent No.2 had only sent a requisition to fill up 369 posts of Female Supervisors. The Haryana Staff Selection Commission advertised 278 posts, out of which 6 posts were meant for ESM-SC candidates. After receiving the recommendations made by the Commission of the suitable candidates, the appointments have been made.

In the replication filed by the petitioner, it has been stated that the copy of the certificate of dependent of Ex-serviceman dated 24.05.2012. The certificate was issued by Rajya Sainik Board after taking clarification. The certificate was submitted to the respondents before the interview but the respondents did not consider the same. The petitioner after the death of her husband became dependent upon her father, who is an Ex-serviceman.

The question for consideration in the present case is whether the certificate dated 24.05.2012, which has been issued by Secretary, Zila Sainik Board, Panipat on 24.05.2012, can now be taken into consideration by this Court to consider her eligibility for appointment to the post of Female Supervisor.

A perusal of the certificate dated 24.05.2014 shows that the entry with regard to this certificate has been made in the record of the Zila Sainik Board on 11.10.2001, which has been issued on 24.05.2012, for all intents and purposes at the time of advertisement an application the petitioner was dependent of the Ex-servicemen category. The petitioner at this stage cannot be blamed for not submitting the eligibility certificate as it was issued to her by Zila Sainik Board on 24.05.2012. Another fact which requires consideration is that out of 6 posts only one candidate has been selected bearing Roll No.4990 of Dependent of Freedom Fighter (SC) category and five posts of ESM (SC) are lying vacant with the department.

Reliance has been placed upon judgment of Division Bench of this Court in Surender Singh Vs. The State of Haryana and another, CWP No.20500 of 2008, decided on 12.12.2008 (Annexure P-5) whereby

the petitioner was dependent of Ex-serviceman and six posts were reserved for Ex-servicemen. He would be eligible only on account of non-availability of suitable Ex-servicemen. In the preliminary written examination, the candidates from the Ex-servicemen category have secured less than 50% marks and hence no candidate is eligible for the viva voce unless he obtains at least 50% qualifying marks. There was shortfall of 18 Ex-servicemen, who could not make the grade by obtaining 50% qualifying marks and in this background, the petitioner was allowed to participate in the main written examination.

In similar situation the LPA Bench of this Court in **Mohd. Shokeen Khan Vs. State of Haryana and another**, LPA No. 561 of 2009, decided on 27.07.2009 (Annexure P-4), has held that if against 65 posts, only 62 candidates participated in the interview, then no harm will be done if the appellant is also interviewed and considered. Consequently, the appeal was allowed and the respondent was directed to interview the appellant and consider his case candidature in accordance with law.

The ratio of above said judgments is that if there was shortfall of Ex-servicemen and likelihood of vacancy not being filled by that category, then the dependent Ex-servicemen should have been given an opportunity to compete for above said posts. In the present case, out of the 6 posts, only one post has been filled and the petitioner was not considered eligible solely on the ground that her eligibility certificate dated 24.05.2012 was not placed on record before the cut-off date.

Reference at this stage can now be made another judgment of Division Bench of this Court in **Ram Parkash Vs. State of Haryana and**

others, 2005(2) S.C.T. 630, where a dependent of Ex-servicemen had submitted his eligibility certificate late. Even though the certificate was prepared prior to the last date of submission of application but was issued later and the Division Bench held that the petitioner cannot be made to suffer on account of delay for getting the certificate from the Zila Sainik Board. The Division Bench has observed in para No.10 of the judgment, which is as under:-

“It is not possible to accept the plea of the respondents that the petitioner failed to produce the certificate dated 22.9.2004 at the time of his interview on 25.9.2004. The petitioner had nothing to gain by not producing the eligibility certificate. In the writ petition, he has meticulously set out the efforts made by him for obtaining the necessary eligibility certificate before 30.8.2004. A perusal of the eligibility certificate attached as Annexure P-10 with the writ petition, shows that it had been prepared on 25.8.2004. It was not issued to the petitioner till 22.9.2004 as the Secretary of Zila Sainik Board, Jhajjar was not available. We are of the opinion that for this lapse of the Zila Sainik Board, the petitioner cannot be made to suffer. The eligibility of the petitioner to be considered for selection in the Category of dependents of Ex-serviceman, S.C.-B is not in doubt, excepting the production of the eligibility certificate. In view of the peculiar facts and circumstances of this case, we are of the opinion that it would be wholly inappropriate to permit the respondents-State to ignore the candidature of the petitioner.”

Applying the ratio of above said judgments to the facts of the present case, the petitioner had made an application to the Commission in time. However, as per published notice dated 01.08.2012 (Annexure P-2), the candidates were short-listed for interview and the petitioner was not found eligible on the ground of not producing the eligible certificate of the respective Sainik Board in respect of his claim, being dependent Ex-serviceman category. The petitioner had nothing to gain by not producing the eligibility certificate dated 24.05.2012 to the authorities i.e. Haryana

Staff Selection Commission. Moreover, since five posts of the ESM (SC) category remained vacant on account of non-availability of eligibility certificate, the petitioner being eligible and is serving as Anaganwari worker for the last 15 years cannot be deprived her right for consideration of appointment to the said vacant post for which she was eligible as per advertisement dated 1/2011 in the category No.3 (Annexure P-1)

In view of above, the present writ petition is allowed and the respondent(s) are directed to consider the eligibility certificate dated 24.05.2012 and give her appointment to the post of Female Supervisor after verifying the other contents of her application form.

April 12, 2016
naresh.k

(RITU BAHRI)
JUDGE