

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26679 of 2015(O&M)
Date of decision:7.10.2016

Vijender Kumar

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jasbir Mor, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

The result of selection has been produced in sealed cover by learned Law Officer for State of Haryana. It has been opened in court. The merit list of SC Category is contained in the papers. The petitioner has secured 47.15 out of 100 marks whereas the candidate at No.1 position (Brijpal) has secured 50.75 marks while the last candidate Vishnu has obtained 44.25 marks. The papers are taken on record as Mark 'A'.

It is not disputed that there are sufficient vacancies of drivers available to accommodate the claim of the petitioner in the Reserved Category (SC). Brijpal and Vishnu have been appointed as Drivers against the advertisement No.01/2015/DST, dated August 14, 2015 in a direct recruitment process of Drivers. The petitioner's candidature got stumbled due to technical infirmities in his application form for the post. The stumbling block was lack of clarity whether the driving licence was issued for heavy vehicles; which was the essential requirement in the criteria of selection. The closing date of the applications was September 17, 2015 and for removing the objections by the applicants the last date was up to

October 26, 2015. The petitioner applied in time but did not remove objections till October 26, 2015 despite opportunity given to remove doubts. He approached the Regional Transport Authority, Hissar, vide application dated December 28, 2015 for seeking clarification with regard to his driving licence. It is confirmed by the authorities that the driving licence was legal and valid and duly issued to drive heavy vehicles.

By an interim order, the petitioner was permitted to participate in the selection process and the driving proof test, the result of which has been produced today in sealed cover and presently is on record as Mark 'A'.

In my considered view, it would be unfair to jettison the bona fide claim of the petitioner on hyper technical considerations to non-suit him for not removing the objections within time. It may be that coming from a disadvantaged class of citizens; he may not have been placed in a position to access information readily through the online process from the Net. Everyone in India cannot be assumed to be computer savvy or computer friendly or everyday users or even owners of computers with expensive access through Net providers and therefore, the stringent standards may have to be relaxed somewhat suitably to accommodate cases of this type in the transition that is taking place in the country in information technology while the bulk of the population lives in poverty and jobs in Government service hard to get by. A strict view taken on removal of doubts may result in travesty of justice, if the petitioner is turned out of court only on the plea that the objections were not removed in time even when the name of the petitioner was in the merit list. The defect was eminently curable and when remedied would entitle the petitioner to the right of consideration for appointment as a Driver when a person lower in merit has been appointed,

namely, Vishnu. In addition thereto, the petitioner has a right against non-discrimination of which Article 14 of Constitution of India is all about.

I would, therefore, allow the petition and issue a direction to the respondents to consider appointing the petitioner as a Driver. In the event of appointment, the petitioner would take his seniority from the date the person lower in merit was appointed from the same selection. His benefits will be notional till the date of decision in this petition and actual from the date of appointment after which the petitioner will be entitled to all consequential benefits flowing therefrom. The respondents would undertake the process of completion of formalities including medical checkup and character verification etc. and consider offering appointment to the petitioner in terms of this order on or before 29.10.2016.

(RAJIV NARAIN RAINA)
JUDGE

7.10.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *Yes*