

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Civil Writ Petition No.15616 of 2013
Date of Decision: February 23, 2017

Pardeep Singh Guleria

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Virender Partap Singh, Advocate
for the petitioner.

Mr. Avinit Awasthi, AAG Punjab.

Mr. Gagandeep Singh, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

The challenge in the instant petition is to the impugned order dated 11.06.2013 vide which the claim of the petitioner for being appointed as computer faculty has been rejected, with the prayer for quashing of the impugned order.

In brief, the facts of the case are that the Director General School Education, Punjab, invited the applications for filling up 700 Computer Faculty posts on contractual basis through an advertisement dated 03.12.2011. Out of these 700 posts, 49 posts were to be filled up by ex-

serviceman or their wards. The petitioner applied in the category of Ex-

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Servicemen Dependent by filling up the online form and while filling in the application mentioned that he had not passed Punjabi at 10th level. The petitioner sat for the said examination and was awarded 34.50 marks out of 100. Thereafter, he appeared for counseling on 11.03.2013, but was rejected on account of not having passed Punjabi at 10th level. Petitioner preferred a CWP No.12611 of 2013 which was disposed of by directing the respondents to consider his claim. The respondents after consideration rejected the claim on account that Lineal Descendant Certificate was not available with the petitioner. Aggrieved, the instant writ petition has been filed.

Mr. Virender Partap Singh, Advocate, appearing on behalf of the petitioner contends that though the petitioner had mentioned in the application form that he had not cleared Punjabi, he undertook matriculation examination keeping Punjabi as an additional subject in September, 2012 and was declared passed by getting 167 marks out of 300 as on 23.11.2012. On the date of counseling, he had the necessary qualification of having passed Punjabi, to be considered for appointment. It is argued that the petitioner had applied as a ward of an ex-servicemen and ignoring his candidature was unwarranted.

Per contra, Mr. Avinit Awasthi, AAG Punjab and Mr. Gagandeep Singh, Advocate, appearing on behalf of the respondents argue that since at the time of verification of documents during scrutiny, the petitioner failed to produce the lineal descendent certificate of ex-servicemen, therefore, he was declared ineligible by the committee.

I have heard learned counsel for the parties.

The claim of the petitioner was initially rejected on account of the fact that he had not cleared Punjabi upto 10th level, however, notification dated 04.05.1994 permits the dependent of an ex-servicemen to clear the

examination of Punjabi upto the level of matriculation within a period of two years from the date of appointment, which find mention in the order dated 30th May, 2013 passed in CWP No.12511 of 2013. Therefore, the candidature of the petitioner could not be rejected on the ground that he did not have the necessary qualification to be considered for appointment. The question that would remain would be whether the candidature of the petitioner could be rejected on account of not producing lineal descendant certificate? .

A perusal of the admit card issued shows the petitioner was to be considered in the category of ex-servicemen. Scrutiny form, which is Annexure R1 on the record, column No.5 specified that certificate of reserved category from the competent authority, against which a candidate had applied, was to be annexed and in that column, on verification by the committee, it had been written that *“lineal descendent certificate not available”*.(as translated)

Annexure P-6 is a Public Notice contains the general information for the successful candidates, who were to appear in the counseling. Para 2 of the Public Notice contains the urgent note regarding required documents for the counseling, which is reproduced as under:-

“2. Urgent Note:

(i) xxxxx

(ii) Only those candidates be present for counseling who have been called as per cut-of-merit list. **If any document will be incomplete or not properly available with any candidate then he/she will be declared ineligible and he/she will not be considered for the appointment** and seat will be given to the next candidate of him/her.

(iii) xxxxx

(iv) Required Documents for the Counseling:

Roll Number Slip, Two Attested Passport Size Photographs, All The Original Documents And Attested Photocopies, Caste Related Certificate, ***Category Related Certificate***, Punjab Domicile Certificate, Photo Identity Card (Voter Card, Driving Licence or Aadhar Card etc.) and three attested photocopies.”

Public notice specified that if any document is found to be incomplete with the candidate, he/she will be declared ineligible and will not be considered for appointment. Furthermore, it also specified that the category related certificate should be produced.

On applying under the ex-servicemen category, it would be incumbent upon a candidate to either have the ex-servicemen category certificate with him or in case claiming to be a dependent, a certificate to that effect. The petitioner happened to annex a “*relationship certificate*” as issued by the OIC, JAK Rifles, which would establish that he is a ward of an ex-servicemen. The argument that the lineal descendent certificate was not annexed in terms of the Punjab Recruitment of Ex-servicemen Rules, 1982, is without merit solely on the ground that the advertisement/public notice were silent as to the requirement of furnishing the lineal descendent certificate by ward of the ex-servicemen. A reading of the notice only mentions that *category related certificate* is to be annexed, without mentioning that certificate is to be furnished as per Punjab Recruitment of Ex-servicemen Rules, 1982 where the requirement is of furnishing lineal descendent certificate.

It has been held in CWP No.14876 of 2010 titled as '***Manjit Singh vs. State of Punjab and others***' that:-

“In the list of documents, Lineal Descendent Certificate of an ex-serviceman is not mandated to be produced at the time of verification of the documents. Petitioner,

therefore, was quite justified in not producing the same at the time of his appearing before the competent authority in pursuance to the communication dated 12.05.2010. In any case, when such a certificate was called upon, petitioner did obtain the same on 25.05.2010 (Annexure P-8) which has been duly issued by the District Sainik Welfare Officer, Hoshiarpur which proves beyond doubt that the petitioner furnished the requisite documents which were called upon by the respondents for issuance of the appointment letter to him much prior to the declaration of the final selection, which was done on 07.06.2010. Non-consideration of the claim of the petitioner when he had already produced the relevant document which was although not mandated to be produced as per communication dated 17.05.2010 but was produced subsequently is not in accordance with law and, therefore, the action of the respondents cannot be sustained. Petitioner being more meritorious than respondent No. 4 and fulfilling the mandate of the Statute as also the requirement of producing the relevant documents at the time of counseling on 17.05.2010 and in any case, producing the relevant called upon documents at a subsequent date much prior to the date of finalization of the selection persuades this Court to pass an order in favour of the petitioner.”

In the instant case, even though there was no requirement by the respondents that a lineal descendent certificate must be furnished at the time of counseling, there was a “relationship certificate” on the record, which would establish the fact that the petitioner is a ward of an ex-servicemen. The petitioner obtained Lineal Descendent Certificate from District Sainik Welfare, Gurdaspur on 14.05.2013 i.e. after two months.

It has been held in the case of '**Dolly Chhanda vs. Chairman, Jee and others, AIR 2004 SC 5043**, that the general rule is that while

applying for any course of study or a post is that 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. It was also held that 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 mark sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. It was further held that 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.

In the absence of a specific requirement to produce only a lineal descendent certificate, the petitioner herein relied upon a “*relationship certificate*”, which was enough proof that he was a ward of an ex-servicemen. As per the written statement, the petitioner was given an opportunity to produce the lineal descendent certificate by 13.03.2013, but it is not established that this information was given to the petitioner. The certificate was issued by District Sainik Welfare Officer on 14.05.2013 i.e. after two months and in the meantime, the counseling was over. If the petitioner had obtained the certificate and submitted it within a reasonable time frame, this court might have been inclined to interfere, but certain rights have accrued to the selected persons by the time the certificate was produced, which cannot be withdrawn at this stage.

Therefore, this petition is being disposed of by giving a direction to the respondents herein to consider the case of the petitioner for

appointment within a period of three months from date of receipt of a certified copy of the order, in case there is any vacancy available.

The petition stands disposed of accordingly.

February 23, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No