

**C.M. NO.7033 C OF 2018 &
R.S.A. NO.2674 OF 2018**

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

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**C.M. NO.7033 C OF 2018 &
R.S.A. NO.2674 OF 2018**

DATE OF DECISION: NOVEMBER 20, 2019

Manoj

.....Appellant

VERSUS

Union of India and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sandeep Parkash Chahar, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.7033 C of 2018

Prayer in this application is for condonation of delay of 60 days
in refiling the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit of the counsel, the same is allowed and delay of
60 days in refiling the appeal stands condoned.

R.S.A. No.2674 of 2018

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division), Jhajjar, dated 30.05.2016, whereby the
suit preferred by the appellant-plaintiff, claiming himself to be the son of an
ex-serviceman and, therefore, entitled to 20 additional marks as he had
participated in the selection process for Soldier, General Duty in Army on

28.09.2007, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Jhajjar, vide judgment dated 27.02.2017.

It is the contention of learned counsel for the appellant that as per the advertisement issued, the candidates who belonged to Jhajjar District were to appear for the process of selection on 26.09.2007. The date fixed for dependent of ex-servicemen and other reserved categories was 28.09.2007 but since the appellant-plaintiff was only interested with regard to ex-serviceman (ESM) category, the said date is relevant and, therefore, on the said date he participated in the selection process. He asserts that on 29.09.2007, the appellant-plaintiff could not have participated in the selection process as the said date was exclusively fixed for the candidates of District Rohtak and Sampla Tehsil and he belongs to Jhajjar. It was clearly mentioned in the advertisement that the candidates would only be examined as per the schedule fixed and no other candidate of any other District/Tehsil would be examined on the other dates except for which have been assigned for a particular District/Tehsil. He, on this basis, asserts that the appellant-plaintiff had participated in the selection process on 28.09.2007 being a dependent of ex-serviceman and, thus, was entitled to relaxation of 20 marks and since he has obtained 153 marks in the physical test as well as written test and the cut off marks fixed for the ex-servicemen category was 167 and if he is granted the benefits of 20 marks, he would obtain 173 marks and, therefore, would be within the 'cut off' marks fixed for determining the merit and would, therefore, be selected in the Army for the post of Soldier, General Duty. He, thus, contends that the Courts below having failed to appreciate these aspects have wrongly proceeded to dismiss

the suit of the appellant-plaintiff. Prayer has, thus, been made for setting-aside the judgments and decree passed by the Courts below and for decreeing the suit of the appellant-plaintiff.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgments as well as the documents, which have been produced by him in Court.

There is no doubt with regard to the assertion of counsel for the appellant that dates were specifically fixed for particular districts/tehsils. For Jhajjar District, to which the appellant belonged, the date fixed was 26.09.2007 and on 29.09.2007, it was for District Rohtak and Sampla Tehsil. The date on which, the ex-servicemen category candidates were to be examined was 28.09.2007. At the first blush, this assertion of counsel for the appellant appears to be correct in case, he is actually dependent of an ex-serviceman but unfortunately, the appellant-plaintiff has not been able to produce any document to substantiate his contention with regard to he being a dependent of an ex-serviceman. Although it has been asserted by him that he did produce a certificate, which was the discharge book of his father from 17 JAT Regiment but there is nothing on record to substantiate such a contention.

Apart from that, evidence has been led by the respondents which demonstrate that the appellant, while filling his bio-data, had left the column blank with regard to reserved category to which he belonged, although he had mentioned his father's Unit as 17 JAT Regiment. That apart the Master Data Sheet of the recruit, which has been produced in Court, also indicates that the appellant-plaintiff had not filled up the ex-serviceman

category or the dependent thereof. In the absence of any certificate substantiating his relationship with an ex-serviceman and further the documents being against him, especially the bio-data, which has been filled by the appellant-plaintiff, which contained his signatures and depicts the date as 29.09.2007, the contention of appellant-plaintiff has rightly been rejected by the Courts below. The appellant-plaintiff has, therefore, failed to prove any of his assertions which he had made with regard to he being a dependent of ex-serviceman as well as the date of his examination.

It would not be out of way to mention here that dependent certificate, which has been produced during trial, is of a subsequent date and, therefore, the same could not have been relied upon by the courts below to hold that the appellant-plaintiff had indeed submitted some documents on the date on which he had participated in the selection process.

In the impugned judgments concurrent findings have been returned by both the Courts below, which being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court as there is no misreading or non-consideration of the material available on record nor is there any perversity or illegality in the same.

Further, there being no substantial question of law involved in the present appeal, no interference in the appeal by this Court is called for. The appeal, therefore, stands dismissed.

November 20, 2019
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No