

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

**CWP No. 12643 of 2020(O&M)
Date of Decision: 18.11. 2020.**

Sunil Kumar

..... PETITIONER

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. A.K.Singh Goyat Advocate
for the petitioner.

Mr. AShish Yadav, Addl.A.G., Haryana

Mr. D.S.Rawat, Advocate
for respondents no.2 and 3.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This writ petition has been filed by the petitioner seeking a direction to the respondents to afford him the benefit under 'Orphan Category' for the post of Lab-Attendant as per amended Policy dated 11.06.2019 (Annexure P-6). There is a further prayer to direct the respondents to allow the petitioner to provisionally submit his original documents for scrutiny and to participate in the interview.

The petitioner has pleaded that he is an 'Orphan' as defined in the revised instructions issued by respondent-State on 11.06.2019. His father died on 21.08.2003 and 'orphan certificate' has been issued by the State, itself, on 23.04.2019 (Annexure P-9). It is further stated that due to an inadvertent mistake, the petitioner omitted to mention in the relevant column of his application form

that he was an orphan, but the same should not be held against him.

It is to be noted that vide order dated 24.08.2020, passed in this writ petition, a Coordinate Bench of this Court, directed that the petitioner be allowed to appear provisionally before the University along with all relevant certificates to prove that he is an orphan and that on his appearance on 26.08.2020, he would be considered provisionally under the said category. Documents of the petitioner were accordingly scrutinized and the petitioner was considered under the 'orphan' category. It was brought to notice of the Court on 09.09.2020, that even after addition of 10 marks i.e., 5 marks on account of the petitioner being an orphan and another 5 marks under the Socio Economic Criteria and experience, the petitioner would still be below the last candidate selected in the general category, the total marks obtained by the petitioner being 80. Though, the relief claimed in the writ petition regarding consideration of the petitioner as an 'orphan' stood afforded, however, the matter was kept pending as it was stated before the Coordinate Bench, that the candidates who were placed in the waiting list, had obtained marks equal to that of the petitioner i.e., 80 but the petitioner was illegally not being placed in the waiting list. A specific affidavit on behalf of the University was directed to be filed in this respect. As per short reply by way of affidavit dated 20.09.2020, of Dr. Parveen Goel s/o Jagdish Chander Goel, Director Research, Lala Lajpat Rai University of Veterinary and Animal Sciences, Hisar, on behalf of respondent no.3, it is explained, that as per condition no. 29 of the Instruction attached with the advertisement, the petitioner could not be placed in the waiting list, as the three candidates placed in the waiting list had secured more marks than the petitioner in the written examination. Condition no.29 is reproduced hereunder:-

“Condition No. 29. In case of tie in a particular post, the tie will be resolved as under:-

If more than one candidate(s) obtains equal marks in the written examination, the merit will be fixed on the basis of marks obtained in the essential qualifying examination of that post, meaning thereby if the essential qualification for the post of Lab Attendant is 10+2, the deciding factor will be the marks obtained in 10+2 examinations. If in the qualifying examination also the marks are equal, the merit will be on the basis of next lower examination. If still the marks in the lower examination are equal then the older in age will be senior on merit.”

The selection criteria and syllabus for the written examination has been attached as Annexure R-3/1 and the relevant thereof is reproduced as under:-

“The written exam shall be divided into two portions comprising (90 Marks).

1. 75% weightage for General Awareness, Reasoning, Math, Science, English, Hindi and concerned or relevant subjects, as applicable;
2. 25% weightage for History, Current affairs, Literature, Geography, Civics, Environment, Culture etc., of Haryana.

To qualify point (2) above, the candidates would have to score minimum 50% marks and the proportion of question shall be decided by the University at its own level.

(for details, see Govt. notification No. G.S.R.-25/ Const./Art. 309/ 2017 dated 13.12.2017)

Socio economic criteria and experience (10 marks)

The marks for experience and some objective socio-economic criteria will be allocated as follows:-

- a. If no person from among the applicant's father, mother, spouse, brothers, sons and daughters is, was or has been a regular employee in any Department/ Board/ Corporations/ Company/ Statutory Body/ Commission/ Authority of Government of Haryana or any other State Government or Government of India.

(5 Marks)

- b. Orphan/Widow:-

- i. If the applicant is a Widow; or
- ii. If the applicant is the first or the second child and his father had died before attaining the age of 42 years; or

iii. If the applicant is the first or the second child and his father had died before the applicant had attained the age of 15 years.

(5 Marks)

c. If the applicant belongs to such a denotified tribe (vimukt jatis and Tapriwas jaties) or Nomadic tribe of Haryana which is neither a Scheduled Caste nor a Backward Class.

(5 Marks)

d. Experience: One-half (0.5) marks for each year thereof exceeding six months of experience, out of a maximum of 10 years, on the same or a higher post in any Department/ Board/ Corporations/ Company/ Statutory Body of Government of Haryana. No marks will be awarded for any period less than six months.

(Minimum of 5 Marks)

No applicant shall be given more than 10 marks under any circumstances.”

The detail of marks obtained by those in the waiting list were also placed on record by way of affidavit dated 01.10.2020 of Dr. Parveen Goyal son of Jagdish Chander Goel, Director, Research, Lala Lajpat Rai University of Veterinary and Animal Sciences, Hisar. The details as mentioned therein read as hereunder:-

WAITING LIST CANDIDATES (GENERAL CATEGORY)

Sr. No.	Name and Roll No.	Marks in written Exam.	Marks in Socio Economic	Total
1.	Sanjay Kumar (21733)	81	0	81
2.	Manoj Jain (21567)	75	5	80
3.	Vikesh Kumar (22893)	75	5	80
	<u>PETITIONER</u>			
1.	Sunil Kumar	70	10	80

Learned counsel for the petitioner submits that the instructions relied upon in the affidavit, from which Condition no.29 has been reproduced, are contrary to the UGC norms and guidelines. He had earlier sought time to place on record UGC guidelines or any statutory rules relied upon by the respondent-University, with the further averment that the instructions were not annexed with the advertisement. However, learned counsel for the petitioner is unable to substantiate the said submission, whereas learned counsel for respondents no.2 and 3, on specific instructions has submitted that the instructions were duly available online along with the advertisement itself.

I do not find any merit in the argument raised by learned counsel for the petitioner that marks of the written examination would constitute and mean the total marks of 80 obtained by the petitioner and the other candidates or that marks awarded on account of other criteria prescribed in the amended policy dated 11.06.2019, should be included to constitute marks of the 'written examination'. It is vehemently argued that it is not open to the respondents to bifurcate the marks awarded on account of other criteria from the actual written examination. Learned counsel submits that as per the said instructions, total marks of 80 including the marks awarded for the criteria over and above the written examination should be considered and once all the four candidates had the same total marks, it was incumbent upon the respondent-authority to have referred to the marks of the qualifying examination i.e., 10+2 for drawing up the waiting list. However, I am unable to agree with this contention. As per the selection criteria attached as Annexure R-3/1, written examination carrying 90 marks, is specifically mentioned. The weightage given to the various subjects is also detailed therein. In such a situation, I do not find any infirmity in the decision taken by the respondents in considering the marks obtained by the various candidates in their written examination. Admittedly, three candidates kept in the

waiting list have obtained more marks than the petitioner in the written examination, as is evident in the detail as reproduced in the foregoing paras.

There is further no merit in the argument raised by learned counsel for the petitioner that as the petitioner has higher qualifications than the other candidates, he should be considered for being kept in the waiting list in preference to the other candidates. It is a settled position that until and unless specifically provided in the criteria, no extra weightage can be afforded for superior qualifications, if any, of a candidate. Though, the scope of this writ petition was only for consideration of the petitioner's case in the orphan category, it is clear that the same stood extended by various orders passed by the Coordinate Bench earlier. Therefore, the subsequent issue of the petitioner not being kept in the waiting list and validity of the criterion followed, has been taken up for consideration and decision.

No other argument has been raised.

Accordingly, I do not find any ground whatsoever to interfere in the decision taken by the respondent-authority.

Writ petition is accordingly dismissed with no order as to cost.

November 18, 2020.

's.khan'

**(LISA GILL)
JUDGE**

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