

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CWP-584-2021 (O&M)

Date of decision: 17.03.2021

Suman Rani

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Jasbir Mor, Advocate and
Mr. Govind Chauhan, Advocate for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

Mr. Deepak Balyan, Advocate for respondent No.2.

(the aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court on account of restrictions due to COVID 19)

GIRISH AGNIHOTRI, J. (Oral)

Petitioner-Suman Rani, stated to be aged 33 years, has filed the present petition *inter alia* with a prayer for issuance of writ in the nature of certiorari for quashing the impugned order dated 31.12.2020 (Annexure P-13).

Records of the case show that on 12.01.2021, this Court had issued notice of motion. In response thereto, on behalf of respondents No.1, 3 & 4, short reply along with Annexure R-1, has been filed by Shri Krishan Kumar Dhanda, District Sports & youth Affairs Officer, Bhiwani.

I have heard learned counsel for the parties.

For the facts and reasons noticed hereunder, I am of the view that the prayer made by the petitioner deserves to be allowed.

Learned counsel for the petitioner, by making reference to the pleadings in the petition, submits that on 25.08.2018 (Annexure P-1), Haryana Staff Selection Commission, Panchkula (hereinafter called as HSSC), had advertised 18218 posts of Group 'D' in different departments of the State of Haryana.

In the advertisement under 'Eligible Sports Persons' Category (hereinafter called as ESP), certain number of posts were reserved. The pleaded case of the petitioner is that she is an outstanding Sports woman and had played and participated in different games at the National level, State level and District level. Details of the said Games with further particulars have been given in paragraph 3 under serial numbers 7-8. The petitioner is stated to have submitted the application to the Sports Department for issuance of Sports Gradation Certificate in the game of Kabaddi at the Inter University Level and on the basis of the said achievement, the Sports Department had issued the Gradation Certificate by mentioning 'C'-ONE grade. Copy of the said certificate dated 26.07.2010, has been appended with the writ petition as Annexure P-3.

The petitioner had submitted application form for the post of Group 'D' under ESP General Category in pursuance to the advertisement. She had submitted this application on the basis of Sports Gradation Certificate dated 26.07.2010 (in the Game of Kabaddi). The petitioner accordingly participated in the selection process. In the result declared by the HSSC, the petitioner was declared selected on the post of Chowkidar-cum-Peon and accordingly formal appointment letter was issued to her on 23.01.2019 (Annexure P-5) by the Haryana Board of School Education, Bhiwani

(respondent No.2). It is further the pleaded case of the petitioner that under the letter dated 24.07.2019 (Annexure P-6), issued by the Office of Chief Secretary to Government of Haryana, to all Heads of the Department/Boards and Corporations of Haryana State, all candidates were given an opportunity to submit Sports Gradation Certificate as per Notification dated 25.05.2018, issued by Sports and Youth Affairs Department. They were directed to submit the same within one month i.e. by 31.08.2019. It is a matter of fact that certain similarly situated employees filed writ petitions before this Court being aggrieved of the aforementioned letter dated 24.07.2019. The petitioner is also stated to have filed CWP-22705-2019. The said writ petition is stated to have been heard and disposed of along with LPA-1332-2019 vide judgment dated 09.10.2020 (Annexure P-7). Thereafter, another memo/circular dated 10.11.2020 (Annexure P-8) was issued instructing all the Heads of the Department and Boards and Corporations that all the Group 'D' candidates who applied under ESP Category and have been selected/appointed on the post of Group 'D', are required to submit the requisite Gradation Certificate, duly issued in terms of new policy dated 25.05.2018, within a period of one month. It was further stated that Sports Gradation Certificate shall be issued by the Sports Department within a period of one month and accordingly certificate so issued was required to be produced by the candidate upto 31.12.2020. Accordingly on 18.11.2020 (Annexure P-9), respondent No.2 had also directed the petitioner to do the needful. The petitioner accordingly submitted application to the District Sports and Youth Welfare Officer, Bhiwani. She had requested the office of District Sports and Youth Welfare, Bhiwani, for issuing her Sports Gradation Certificate in the Sports Discipline: 'Basketball'.

Accordingly, vide certificate dated 24.12.2020 (Annexure P-10), she was issued Sports Gradation Certificate by the concerned Authority. It is the specific pleaded case of the petitioner that she had duly submitted the said Sports Gradation Certificate with the office of Secretary Board of School Education, Haryana on 24.12.2020 through a representation. It is the specific pleaded case of the petitioner that a perusal of the said representation (Annexure P-11) would show that it had dairy number also, which has been given by the office of respondent No.2 on 24.12.2020. The grievance therefore of the petitioner is that the Authorities-respondent No.2, inspite the above, however proceeded to issue another letter dated 27.12.2020, directing the petitioner to submit the Sports Gradation Certificate before 31.12.2020. Thereafter on 31.12.2020 (Annexure P-13), an order of termination was passed thereby terminating the services of the petitioner. It was only by verbal communication that the petitioner learnt that the respondents are insisting upon the petitioner to submit the Sports Gradation Certificate in the same field/game qua which she had submitted Gradation Certificate along with the application form for appointment. In the present case, the certificate that the petitioner had initially submitted, was in the game of Kabaddi, whereas, under the fresh letter of October-November 2020, she had submitted the Gradation Certificate dated 24.12.2020 in the field of Basketball.

In the short reply filed by respondents No.1, 3 & 4, it has been *inter alia* submitted that the instructions dated 30.11.1993 (Annexure R-1) for issuance of Sports Gradation Certificate, were superseded vide Notification dated 25.05.2018 (Annexure P-15), further amended vide Notification dated 15.11.2018 (Annexure P-16). In paragraph 5 of the short reply, reference of

the Division Bench judgment dated 09.10.2020, passed by this Court, has also been made. Thereafter, in paragraph 6 of the short reply, it has been mentioned that on 26.07.2010, a Gradation Certificate was issued in favour of the petitioner by the then Deputy Director Sports Haryana, Chandigarh, in the game of Kabaddi. It is then submitted that the petitioner thereafter applied for issuance of Sports Gradation Certificate for her another achievement i.e. 1st position in Haryana State Basketball Championship held at Gurgaon from 05.09.2008 to 07.09.2008. Respondent No.4 issued Sports Gradation Certificate of Grade 'D' to the petitioner on 24.12.2020 and reference has been made to Annexure P-10 dated 24.12.2020. A specific stand has been taken by the respondents in para Nos.7 & 8 of the short reply, which is reproduced hereunder:-

....“7. That it is respectfully submitted that the Department of Sports & Youth Affairs, Haryana, Panchkula only grades the participation certificates of the sportspersons as per prevailing instructions of the State Government. However, whether such certificate can be considered for selection/appointment under a particular recruitment process can only be seen by the recruiting agency of the indenting department.

8. That the selection process is in the pervue of the Haryana Staff Selection Commission, Panchkula and answering respondents have no role in the selection and appointment of the petitioner. Moreover, the petitioner has not challenged any order of the answering department and no relief has been claimed for answering department.”

With the assistance of learned counsel for the petitioner, this Court has perused the paragraph 45 of the judgment dated 09.10.2020, passed by the Division Bench of this Court. In the said judgment, the situation as in

the present case has been dealt with by the Division Bench of this Court. It has been observed that some of the candidates had submitted the requisite certificates in respect to a different game than the one qua which they had uploaded the certificates at the time of applying for Group 'D' post. It is then observed that in case, a candidate has achieved a recognizable level of performance in two or more games, then he should not be deprived of the benefit on the ground as mentioned above because he can avail the benefit to apply and to get selected on the strength of excelling in any of such games which entitles him or her to obtain requisite certificate especially in the circumstances when vide aforementioned letter dated 24.07.2019, the selected candidates were granted concession to submit the Gradation Certificates in a time frame manner. Direction was given by the Division Bench of this Court to the respondents to consider the Sports Gradation Certificates for ascertaining eligibility of the petitioners therein, in accordance with law/Rules. The Division Bench had even given one more opportunity to such like candidates to apply for issuance thereof as mentioned in paragraph 34(iv). Paragraph 45 of the said judgment is reproduced hereunder:-

.... “45. CWP Nos.19524 & 22829 of 2019 (Bunch-J) (2 cases)

In both these petitions, the petitioners are aggrieved for not being allowed by the respondents to join the duty on the ground that they have submitted the requisite certificates in respect of a different game than the one qua which they had uploaded the certificates at the time of applying for Group-D post. The Sports Gradation Certificates issued to the petitioners are annexed as P/11 in both these petitions. However, in case a candidate has achieved a recognizable level of performance in two or more games, then he should not be

deprived of the benefit on the ground as mentioned above because he can avail the benefit to apply and to get selected on the strength of excelling in any of such games which entitles him/her to obtain the requisite certificate especially in the circumstances when vide aforesaid letter dated 24.07.2019, the selected candidates who had not submitted the requisite certificates earlier, were granted the concession to submit the same within the time frame mentioned therein. Therefore, the respondents are directed to consider the Sports Gradation Certificates, i.e. Annexure P-11 for ascertaining the eligibility of both the petitioners for the said posts in accordance with Law/Rules. In case these certificates are also not found to be issued in terms of new policy dated 25.05.2018, then the petitioners will be at liberty to apply for the issuance thereof as mentioned in para No.34(iv).”

In view of the facts and grounds noticed above, this court therefore deems it appropriate to **allow** the present writ petition. It is apparent that the Competent Authority has not acted in accordance with directions given by the Division Bench of this Court in its judgment dated 09.10.2020. From the stand of the respondents No.1, 3 & 4 through the short reply, it is evident that the second certificate dated 24.12.2020 issued by the authorities, in favour of the petitioner has not been found to be invalid on any count. It has been the stand of respondents No.1, 3 & 4 that the certificate so issued can be considered for selection/appointment under particular recruitment process by the Recruiting Agency or the Indenting Department. In other words, In the present case, it was the legal duty of respondent No.5 and respondent No.2 respectively, to examine the certificate dated 24.12.2020 submitted by the petitioner in accordance with the directions given by the Division Bench of this

Court in its judgment dated 09.10.2020, especially Paragraph 45 as reproduced above.

Accordingly, the impugned order dated 31.12.2020 (Annexure P-13) is set aside. The petitioner would be deemed to be in continuous service in pursuance to her initial appointment. The petitioner is also entitled to all consequential benefits, continuity of service, seniority and arrears of pay, in accordance with law.

Ordered accordingly.

(GIRISH AGNIHOTRI)
JUDGE

17.03.2021
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Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No