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

CWP-4410-2021 (O&M)

Date of Decision: September 30, 2021

Sujata Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sunil Kumar Bhardwaj, Advocate for the petitioner.

Mr. Tapan Kumar, DAG Haryana.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Grievance of the petitioner herein, dependent of an Ex-serviceman, is against a speaking order dated 11.11.2020 (Annexure P-8) whereby her claim on the post of Clerk has been denied *inter alia* on the ground that priority has to be given first to the Ex-Serviceman (disabled category) and only after considering their merit position, if any seat in the said category is left vacant, then the claim of dependent of an Ex-serviceman is to be considered.

2. Brief facts first. Respondent No.2-Haryana Staff Selection Commission (HSSC) advertised 4858 posts of Clerk vide advertisement dated 20.06.2019 (Annexure P-1), subsequently, reducing the posts from 4858 to 4798. Petitioner also applied under the EWS-ESM Disabled Dependent (disability above 50% or killed) category. The Commission declared the result for written examination for the post in question vide public notice dated 18.12.2019. Eligible candidates equal to thrice the

number of posts were called for scrutiny of documents. Petitioner was shortlisted for scrutiny of documents. Accordingly, she appeared for scrutiny of documents on 18.01.2020. Final result pertaining to post in question was declared. However, Roll number of the petitioner was not found amongst the successful. Hence the writ petition.

3. Learned counsel for the petitioner argues that criteria adopted by HSSC is not tenable as merit has to be given preference. Merely because another ESM (dependant category) candidate is available who does not even have minimum cut off marks (52 marks), the claim of the dependents of ESM category cannot be negated. He argues that petitioner has since secured more marks and being more meritorious has to be given preference over the ESM candidate.

4. The said stand taken by him flies in the face of the short reply dated 28.05.2021 filed by respondent No.2 wherein categorical stand taken is that the petitioner has secured 45 marks and not 59 marks, as claimed by her in the writ petition.

5. Confronted with the situation, learned counsel for the petitioner submits that it is so stated in the speaking order that petitioner has secured 59 marks.

6. I have heard rival contention of learned respective counsels.

7. Relevant part of the speaking order dated 11.11.2020 (Annexure P-8) reads as under: -

“And whereas, an operative part of the grievance of the petitioner is reproduced here as under:

Our grievance is That we have secured as following marks respectively as per the OMR and Answer Key noted in the below table. It is surprising that the candidates who have secured the marks upto 35 and 23 in the examination have been selected. However our roll number has not been

mentioned in the aforesaid final result. It appears that the final result has been prepared hastily without proper scrutiny of the marks obtained by the candidates or it may be the mistake of digital service (Computer).

<i>Sr. No.</i>	<i>Name</i>	<i>Category</i>	<i>Cut-off</i>	<i>Obtain marks</i>
<i>2.</i>	<i>Sujata Devi</i>	<i>GEN LDESM disabled</i>	<i>35</i>	<i>59</i>

xxxxxxx

And whereas, in the present case, the entire quota reserved for ESM was duly filled form the suitable candidates and hence, no posts or quota for ESM category remained unfilled for the post in question. Therefore, the petitioner was not considered for the post in question as the petitioner applied for the post in question under ESM-DEP (Dependant of Ex-Servicemen) and ESM-DEP would only be considered for the post in question if quota or post meant for ESM (Self) remain unfilled, but it is not so in the present case as the entire quota and posts meant for ESM (Self) Category was filled by suitable candidates.

Hence, in view of above, due to the availability of suitable candidates from self ESM Category the petitioner being from DESM (Dependant of Ex-Servicemen) has rightly not been considered for the post in question and the petitioner is not entitled for any relief. In compliance of Hon’ble High Court order dated 24.09.2020 passed in CWP No.15289 of 2020 – Mandeep Kumar & Others Vs State of Haryana & Others, the Commission has decided the claim of the petitioner accordingly.”

8. A perusal of the speaking order reflects that the same seems to have been completely misread and misinterpreted by petitioner, inasmuch as, gathering the wrong impression that she has secured 59 marks alleging that it is so noted in the speaking order. Hence the grievance of petitioner is that she has secured more marks than the last selected ESM candidate. However, it is nowhere admitted by the respondents or stated in the speaking order that she had secured 59 marks. On the other hand specific stand is taken in short reply. Para-9 thereof reads as under: -

“It is pertinent to mention here that the petitioner wrongly alleges that she has secured 59 marks, whereas, the petitioner

has secured 45 marks. Therefore, the petitioner was not considered for the post in question as cut off for ESM-GEN (Self) was 52 marks and petitioner is DESM-GEN. It is pertinent to mention here that it was clearly mentioned in the advertisement that the dependents of ESM will be considered on merit for the post reserved for ESM to the extent of non availability of suitable ESM candidates as mentioned in para no. 4 above. It is pertinent to mention here that only ESM-Self candidates were selected and no DESM-GEN candidate has been selected for the post in question as all the posts for ESM was duly filled from the suitable candidates.”

9. This Court while sitting in an extra-ordinary writ jurisdiction cannot get into the disputed facts. Result of the petitioner is not under challenge in the present proceedings. Therefore, no ground for interference by this Court is made out.

10. Since the petitioner has secured less marks than the cut off marks. Whether or not, the claim of ESM or DESM has to be considered on priority over others, as alleged, is of no significance.

11. Dismissed.

(ARUN MONGA)
JUDGE

September 30, 2021
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No