

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

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Civil Writ Petition No.5609 of 2021

Date of Decision: March 25th, 2021

Gantavya Vasisht

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Tanvir Singh Attariwala, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, Advocate
for respondent No.1.

Mr. Balwinder Sangwan, Advocate
for respondent No.2.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Petitioner, who is an aspirant of being appointed as Civil Judge (Junior Division) in the Haryana Civil Services (Judicial Branch) (hereinafter referred to as 'HCS (JB)') in pursuance to an advertisement dated 13.01.2021 (Annexure P-1), wherein online applications were invited from eligible candidates for filling up 256 posts (239 actual posts + 17 anticipated posts), initiated the process of filling up her online form.

2. She created her profile for HCS (JB) application form in pursuance to the advertisement as per the procedure prescribed in instructions and information for candidates (Annexure P-2). In response whereof Haryana Public Service Commission (hereinafter referred to as 'HPSC') vide communication dated 28.01.2021 (Annexure P-4) intimated about the online profile having been created for application form. Petitioner was allotted the

application No.1018599. Petitioner upon completing her online application form, submitted the same to the HPSC as per the procedure prescribed, on 14.02.2021. It would not be out of way to mention here that the last date for submission of the application form was 15.02.2021, therefore, the application form, complete in all respects, stood submitted much prior to the last date of submission of the applications.

3. The next step, as prescribed, was that the candidate was required to pay the online application fee through online payment portal. This is apparent from the General Instructions to Candidates (Annexure P-3), which were provided on the website of the HPSC. Relevant excerpt from the General Instructions with regard to the steps to be taken after the successful submission of the online application form are Clauses 12 and 13, which read as follows:-

“12. After submitting Online Application Form, Application No. and Password will be generated.

13. After successful submission of online Application Form, the applicants are advised to pay application fee through net banking/debit card/credit card and thereafter ensure to take out the print of Online Application Form.”

4. According to this procedure, on submission of the online application form, the application number and the password were generated. Petitioner thereafter proceeded to pay the online application fee on 14.02.2021 itself. Efforts were made by the petitioner for making the online payment through the online portal as she being a female candidate of General category was required to pay ₹250/- as her application fee. Despite various efforts being made by her, she failed in completing the transaction on account of technical error in the online payment portal. Since she had one more day, she continued to make efforts for payment on the next date i.e. 15.02.2021 as well. However, she was not successful in doing so due to

some technical error. She tried to contact the office of respondent No.2-HPSC on phone on 15.02.2021 itself but without any response. The next day i.e. 16.02.2021 being a holiday on account of Basant Panchmi, her efforts again failed. On 17.02.2021, she contacted the office of respondent No.2 on the phone number, which was given for the said purpose, when she was informed that she should drop an email highlighting the difficulty she had faced in submitting her fee. On the said very date i.e. 17.02.2021, she immediately sent the email, copy whereof has been appended as Annexure P-6. Response thereto was received from the helpdesk that the last date for filing the application form was 15.02.2021. The next email was sent by the petitioner inquiring for the procedure for pending payment. Copies of these emails have been appended as Annexure P-7. After waiting for some time when no response was received, petitioner sent an email on 23.02.2021 (Annexure P-8) to the Chairman, HPSC, Panchkula, seeking permission to pay the fee highlighting therein the reasons for non-payment of the fee. When that also did not yield any result, petitioner has approached this Court by way of the present writ petition.

5. Petitioner asserts that she had been vigilant enough to take all precautions and make efforts as per the procedure prescribed for filling in the application form and for submitting the required fee. It is asserted that the process for filling up of the application form i.e. for allotment of the application number in pursuance to the advertisement dated 13.01.2021 was initiated on 28.01.2021, which was well in time. Communication was received from respondent No.2-HPSC on the same day assigning her the application number i.e. 1018599. Thereafter the petitioner had submitted her application form complete in all respects on 14.02.2021, whereas the last

date for submission of the same was 15.02.2021. Petitioner had been making all efforts since 14.02.2021 to deposit fee online as per the procedure prescribed but because of technical error in the online payment portal, she was not successful. No fault can, therefore, be attributed to her as she was not successful to make the payment of fee even on 15.02.2021 i.e. the last date of submission of the application. Without any fault on the part of the petitioner, she should not be penalized, especially when there was no other mode of payment prescribed except for the one, which has been referred to and provided in the details in 'the Instructions and Information for Candidates' (Annexures P-2 and P-3). The inability to pay the fee through online portal would lead to the petitioner missing an opportunity to participate in the selection process, which she is keen to do so and her *bona fides* can be assessed from the fact that she had made all efforts to pay the fee, which was in any case a nominal amount of ₹250/- only. Great prejudice would be caused to the petitioner as the petitioner has been very vigilant and careful and has taken all steps well in time to fill in the application form and the fee with no alternative mode of payment provided and there being technical error on the part of the online payment portal, petitioner should not be made to suffer. Prayer has thus been made for directing the respondents to accept the application fee of the petitioner and consider the application form of the petitioner submitted on 14.02.2021.

6. Reply has been filed to the writ petition upon notice having been issued. The facts as have been stated by the petitioner in the writ petition up to the stage of submission of online application by the petitioner on 14.02.2021 have not been denied. It is admitted that she had submitted her online application on the date as averred by the petitioner i.e.

14.02.2021.

What has been pointed out by the HPSC-respondent No.2 with regard to the pleadings of the petitioner regarding the efforts made by the petitioner to submit the fee online on 14.02.2021 and/or 15.02.2021 is that no proof has been produced by the petitioner like the screenshot of the webpage showing the technical error in submission of the online fee. These are bald averments made and in the absence of any evidence, the pleadings of the petitioner with regard to the pleadings and the reasoning given by the petitioner for non-payment of application fee appear to be concocted and fictional. Respondent No.2 asserts that a total of 10,380 candidates have applied for the posts in question and submitted their online fee successfully. Had there been a technical error causing problem in the online payment of the application fee, the other candidates would not have been successful. The plea, which has been taken by the petitioner of there being a technical error resulting in non-payment of the fee is just a cover up for non-payment of the fee within the stipulated period.

Another fact, which has been mentioned in the short reply is that respondent No.2 has received 10,021 application forms for the posts in question, where the candidates have not deposited the application fee. In case petitioner is allowed to deposit the application fee, prejudice would be caused to the other similarly situated candidates, who had filled the application forms online but have not deposited the requisite application fee.

In any case, it is asserted that in case the petitioner is permitted to deposit the application fee, it would amount to breach of the condition as stipulated in the advertisement and instructions to the candidates, which is

not permissible. The application fee could be paid online up to 11:55 PM on the closing date i.e. 15.02.2021. Point No.6 of Annexure P-3, which are the General Instructions to Candidates, clearly specify that incomplete application or application without fee will be rejected straightway and no correspondence will be entertained by the Commission. On this basis, it is asserted that the application of the petitioner has been rejected. Prayer has thus been made for dismissal of the writ petition.

7. Petitioner has filed replication to the written statement, wherein it has been stated categorically that after uploading the signed printout of the application form on 14.02.2021, petitioner went ahead immediately to pay the application fee. Upon clicking the payment option, three modes were there i.e. debit card, credit card and NEFT. She proceeded to make the payment through her HDFC debit card. Whenever she tried to make the payment, the website used to show a redirecting page and thereafter an error. Petitioner after the reply has been filed by the respondents has been able to get the screenshots of her browsing history, which shows she had repeatedly tried to make payment of the application fee but the payment could not be proceeded with due to some technical error in the website. Copies of the screenshots have been appended as Annexures P-9 to P-11. She has further stated that Annexure P-11 shows the date expired on the link now as the petitioner had made an effort for depositing her fee on 15.02.2021. This is apparent because of the fact that the link is no more available due to the last date to make payment being over. Petitioner has tried her level best to make the payment of the application fee well within time and had taken all necessary steps immediately including approaching the helpdesk of respondent No.2 and thereafter, on getting information from

there, sent an email on the same very day. This shows her *bona fides* in making payment and that she had been fully vigilant and prompt in highlighting her grievance with regard to her being unsuccessful in making payment of the application fee.

8. We have heard the counsel for the parties, who have put forth their respective submissions on the basis of the pleadings and with their assistance, we have gone through the records of the case.

9. Counsel for the petitioner has on the basis of the pleadings and especially with reference to the browsing history, which has been appended along with the replication as Annexures P-9 to P-11, asserted that the petitioner has been able to demonstrate not only her *bona fides* but also the efforts made by her to pay the application fee and that too well within time. The petitioner cannot be made to suffer because of a technical glitch, where the online portal has not responded. In any case, he asserts that by allowing the petitioner to submit her application form, no prejudice would be caused to the other candidates, especially in the light of the fact that the tentative schedule for preliminary examination has been mentioned to be in the month of April 2021. The intent and purpose of holding the selection for appointment to the post of Civil Judge (Junior Division) through open competition is to attract talent so that the best candidate can succeed. The petitioner, where despite her best efforts, has not been able to pay the application fee, should not be taken as a reason to deprive her of an opportunity to participate in the selection process because of the technical glitch, especially when the petitioner had submitted her complete application form on 14.02.2021, which is a day prior to the last date of receipt of the applications i.e. 15.02.2021. Prayer has thus been made for

allowing the present writ petition.

10. On the other hand, counsel for respondent No.2-HPSC has submitted that the candidates were made well aware of the factum of the steps to be taken by them and that too well within time. General Instructions to Candidates, especially points No.6 and 7 made it amply clear that incomplete applications or applications without fee would be rejected straightway and no correspondence will be entertained. Advisory was also given to the candidates to complete the application form without waiting for last date of submission of online application. Once each and every aspect has been clearly spelt out to the candidates, failure to comply with the same would result in the consequences, which in this case is rejection of the application. Challenging the assertion of the petitioner with regard to failure or a technical error with regard to the submission of the application fee, he points out that 10,000 candidates have made online fee payment on 14/15.02.2021 and, therefore, it cannot be said that there was a technical error, which is the cause for non-payment of fee, rather it is an excuse and concocted assertion to cover up her own mistake of non-payment of fee within the stipulated period, which cannot be accepted. Respondent No.2 has no option but to reject the application of the petitioner as the same being incomplete and without application fee having been paid. Prayer has thus been made for dismissal of the writ petition.

11. The facts as have been stated above to the extent of the petitioner having applied in pursuance to the advertisement dated 13.01.2021 for filling up 256 posts of Civil Judge (Junior Division) in the HCS (JB) for which the initiation of process for filling up the online form by the petitioner on 28.01.2021 has not been disputed. It has also been

admitted that the profile of the petitioner was created for the HCS (JB) application form on 28.01.2021 and she was allotted application No.1018599 vide communication dated 28.01.2021 (Annexure P-4). Submission of the application form on 14.02.2021 (Annexure P-5) has also not been disputed. The fact is that the last date for receipt of the application form was 15.02.2021 up to 11:55 PM meaning thereby that the application and the application fee had to be submitted online prior to the said time stipulated. Petitioner, who belongs to the female General category was required to pay ₹250/- as her application fee as laid down in Clause 6 Category 2 (i) of the advertisement.

12. The dispute starts at this stage when the petitioner asserts that after the submission of the online application on 14.02.2021, petitioner started the process of the online payment through the online portal and her application fee, which according to the petitioner despite her various attempts made and best efforts, she failed to pay the fee till 15.02.2021. It is worth mentioning here that the petitioner immediately having failed in the said process, made an effort by approaching the office of respondent No.2 on phone for pointing out her inability to pay the fee online. Assertion of the petitioner is that she did not get any response. 16.02.2021 being a public holiday on account of Basant Panchmi, she was unsuccessful in contacting the office of the HPSC. The very next day i.e. 17.02.2021, she again called up on the phone number, which was provided as helpline when the helpdesk advised her and suggested her to send an email highlighting her grievance. She, immediately wrote an email to the office of respondent No.2 informing about the grievance regarding the inability despite various attempts for payment of fee and requested that her application fee be accepted as the

same could not be paid on account of a technical error on the online payment portal. This email is dated 17.02.2021 (Annexure P-6). Response was prompt from the side of respondent No.2, which stated that the last date for application form was 15.02.2021 and, therefore, the obvious consequence thereof was that her request was not accepted. Petitioner enquired as to whether there was any other procedure for pending payments which is reflected from Annexure P-7 but no response thereto has been received.

Petitioner did not stop here. She again approached the Chairman, HPSC, on 23.02.2021 (Annexure P-8) through email making a request for permission to pay the fee for HCS (JB). When the same did not succeed as no response was received, petitioner approached this Court to which the basic objection on the part of the respondents is that the terms and conditions were made clear to one and all and especially to the candidates, according to which the last date for receipt of the applications complete in all respects i.e. complete application form along with the fee was by 11:55 PM on 15.02.2021, which is reflected from point No.6 relating to the General Instructions to Candidates (Annexure P-3). Apart from this, the *bona fides* on the part of the petitioner have been questioned with regard to the averments regarding there being no proof presented by the petitioner that she had indeed made efforts to pay the application fee on 14/15.02.2021 as asserted by her. No screenshot of the webpage showing any technical error is submitted nor has any other evidence submitted. Absence of any evidence leads to a conclusion, according to the respondents, that it is an excuse and an attempt on the part of the petitioner to falsely cover up her negligence with regard to non-payment of fee within the stipulated period,

which was clearly mentioned in the advertisement and made clear in the instructions to all the candidates, which admittedly the petitioner also does not dispute. A plea has also been taken to rebut the assertion of the petitioner that there was a technical error on 14/15.02.2021 in the online portal because of which she was unable to make the payment of her fee that more than 10,000 candidates had made online payment of fee on those days.

13. The above facts make it amply clear that no doubt the last date for submission of the online applications complete in all respects including the application fee was 15.02.2021, which obviously was known to everyone and especially the candidates in the light of the stipulation in the advertisement as well as the General Instructions to Candidates and was also available on the website of respondent No.2-HPSC. There can be no dispute that where a candidate fails to adhere to the above schedule as per point No.6 of the General Instructions to Candidates (Annexure P-3), the application form is to be outrightly rejected but it cannot be lost sight of that the only mode for submitting an application form and for paying the application fee is online and no other option or mode is available to the candidates. Petitioner obviously was also well aware of this fact.

14. The question in these circumstances which craves consideration of this Court is whether the petitioner was really interested in filling the application form as it has been mentioned in the reply filed by respondent No.2-HPSC that 10,021 applications have been received online, where candidates ultimately have not deposited the application fee. Answer to this question lies in finding out as to whether there has been any effort made on the part of the petitioner to pay the fee, which would show that the petitioner was really interested, cautious and had made sincere

effort on her part to complete the requirement of filling in an application in all respects and to participate in the selection.

15. As the above stated facts depict that the petitioner had uploaded her online application form on 14.02.2021, which is well within time, rather leaving a grace day at hand as the last date for submitting an online application complete in all respects including fee was 15.02.2021.

16. The onus is on the petitioner to project and establish that she had indeed made efforts firstly on 14.02.2021 and in any case on 15.02.2021 for online payment of application fee, which aspect has been highlighted and pointed out by respondent No.2-HPSC and has rather questioned not only the *bona fides* of the petitioner but the correctness of the pleadings with regard to the efforts made by the petitioner as projected in the writ without any proof thereof. Replication which has been filed by the petitioner and especially Annexures P-9 and P-11 attached thereto, which although are the screenshots of the browsing history of the petitioner but it clearly shows that she had repeatedly tried to make payment of application fee online. Annexures also indicate that the petitioner had proceeded to make an effort for payment of her application fee through her HDFC debit card. Annexure P-10 shows that the petitioner had repeatedly tried to make payment on 15.02.2021 and on one of the occasions, the website proceeded towards the OTP page i.e. 'CCAvenue.Oo', however, thereafter again the page showed an error which is clear from Annexure P-11. All these documents which have now been placed on record by the petitioner leaves no manner of doubt that the petitioner had made efforts whatever possible at her end to pay the application fee online. She is, therefore, a person, who had acted *bonafidely* and her pleadings cannot be said to be false or made

up and without any basis. That apart, the petitioner has been vigilant and alert taking immediate necessary steps for bringing to the notice of the competent authority with regard to the difficulty, which she had faced resulting in her being not successful in making her online payment of the fee, which is apparent from the fact that the petitioner promptly called the helpdesk and the moment she came to know that she should send an email, she had done so forthwith. She had even approached the Chairman of the HPSC through an email detailing therein her grievance and highlighting her helplessness thus projecting her clear intention of taking part in the selection process. It cannot be, therefore, said and accepted that the petitioner had been negligent, careless or sleeping over her unsuccessful attempts to pay the application fee, rather the position is otherwise as the petitioner had made all efforts initially within her domain to make payment of the fee and thereafter to approach the authorities concerned.

17. Article 226 of the Constitution of India has given ample power to this Court to exercise its equitable jurisdiction, where the Court is satisfied and convinced that the petitioner has approached the Court *bonafidely* and there has been failure of justice because of no fault on the part of the petitioner, especially when no stone has been left unturned by the petitioner for claiming the relief as sought. In the facts and circumstances of the present case, we are convinced that the present is such a case, where the equitable jurisdiction of this Court need to be exercised, where a candidate who is keen to participate in a selection process, would fail to do so because of a technical error and that too relatable to deposit of fee, which may be a small amount of ₹250/- only, especially when the petitioner had taken all care and caution to ensure in normal circumstances to complete the process

of payment of the application and the application fee well within time.

18. A plea, which has been taken by respondent No.2-HPSC that there are candidates, who had submitted their applications i.e. 10,021, who have not deposited the fee despite having so submitted the applications in time and, therefore, it would be giving the undue benefit to the petitioner, suffice it to say with reference to the above that in the reply which has been filed by the respondent No.2-HPSC, not a word has been uttered or mentioned as to any other candidate has approached the HPSC making a request for permitting deposit of application fee. This would indicate that those applications were although submitted but the candidates were not serious to take the challenge of the competition. Petitioner should reap the fruits of her efforts and should not be deprived of the same by clubbing her with others, who have chosen not to deposit the fee. In any case, clubbing up of the petitioner with others also is not acceptable and the case of the petitioner is distinguishable for the facts as stated above.

19. In view of the above, the present writ petition is allowed.

20. Directions are issued to the Secretary, HPSC-respondent No.2 to accept the application fee of the petitioner and proceed to consider candidature of the petitioner in accordance with law.

21. The above order has been passed by this Court in the peculiar facts and circumstances of the present case and, therefore, shall not be treated and cited as a precedent in any manner.

(AUGUSTINE GEORGE MASIH)
JUDGE

March 25th, 2021
Puneet

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No