

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
203**

**LPA No.785 of 2020 (O&M) in
CWP No.9110 of 2018.
Date of Decision: December 03, 2021**

Haryana Staff Selection Commission

....Appellant

VERSUS

Dusyant Sharma and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Palika Monga, D.A.G. Haryana for the appellant.

Mr. M.M. Pandey, Advocate for respondent No.1.

G.S. SANDHAWALIA, J(Oral).

The present Letter Patent Appeal by the State is against the judgment of the learned Single Judge in CWP No.9110 of 2018 decided on 13.01.2020. Learned Single Judge has returned a finding that the writ petitioner had secured more marks than the last selected candidate under the OSP-EBPG category and accordingly directed the appellant-Commission to recommend the case of the writ petitioner for appointment to the post of Water Pump Operator Grade-II within a period of 15 days from the date of receipt of certified copy of the order. Costs of Rs.25,000/- was also imposed upon the appellant.

The reasoning for the learned Single Judge to issue such directions was that the cut off date was 15.02.2017 qua the advertisement dated 30.12.2016 and the petitioner had applied against the said category on the strength of a certificate dated 16.07.2014, which was prior to the last

date of submitting the online application form of this category. The certificate had been attached and uploaded with the application form. A subsequent certificate bearing No.EBPG/2017/428 was issued on 11.04.2017, which was after the cut off date on account of which the case of the petitioner had been rejected and therefore, it was held that the benefit of the earlier certificate in his possession should have been given.

Counsel for the appellant-State has vehemently argued that the certificate dated 16.07.2014 had not been uploaded, which was the requisite condition, as such, of the advertisement dated 30.12.2016 (Annexure P-1) and therefore, the petitioner was declared ineligible and his case was rejected on 23.02.2018 (Annexure P-8).

The factual aspect is that the learned Single Judge has also noticed that if 20 marks of the viva voce were to be given along with 116 marks secured in the written examination, he would exceed the marks secured by the last selected candidate, which fact has not been disputed.

A perusal of the record would go on to show that in pursuance of the application form (Annexure P-3), which was submitted, the certificate dated 16.07.2014 finds mention. Counsel for respondent No.1 has also placed on record the said certificate along with the application for vacation of stay.

It is not disputed that the said certificate's authenticity, as such, was liable to be gone into at the time of scrutiny of documents. The writ petitioner admittedly was called on the basis of the result of written examination for the scrutiny of documents vide notice dated 28.06.2017 (Annexure P-5). The scrutiny was done from 04.07.2017 to 06.07.2017.

On the basis of the same, a notice (Annexure P-6) was issued on 12.10.2017, wherein the petitioner was called for interview.

Perusal of the said notice would go on to show that the candidates were asked to bring all original documents and a set of self attested copies thereof, for the interview, which was to be held between 02.11.2017 to 03.11.2017 in the Commission's office. Resultantly, the petitioner duly appeared but his case was rejected vide details given on 23.02.2018 (Annexure P-8) in the column of interview marks. The said rejection is stated to be at subsequent point of time, though the petitioner had been awarded 20 marks in the interview.

Though the counsel for the State has drawn the attention of this Court to various clauses in the advertisement to submit that in the absence of uploading of the original certificate dated 16.07.2014, the candidature, as such, of the petitioner was not required to be considered.

We, however, do not subscribe to the said view. Perusal of the advertisement would also go on to show that it is specifically mentioned that hard-copy of the application along with all required documents had to be brought at the time of verification/scrutiny-cum-interview as per general instructions. Even as per Note (i) on page 78 of the paper book, the benefit of reservation to be given to be to the reserved candidates was on the basis of certificate duly issued by the competent authority, required to be submitted at the time of interview. Note (ii) however, provides that qualification and other terms and conditions of eligibility were to be determined with regard to the last date fixed for receipt of online applications.

It is not disputed that the eligibility of the petitioner was very much there on the strength of certificate dated 16.07.2014, which was well before the cut off date. Reliance on that the documents had to be uploaded as a mandatory condition, is diluted by the judgment of the Apex Court in ***Dolly Chhanda vs. Chairman, JEE, 2004 (4) SCT 546***, wherein, a three-Judge Bench of the Apex Court held that the eligibility qualification on the last date fixed for the purpose has to be seen and the necessary certificates and documents produced or marks secured can be relaxed and it would not be proper to apply the rigid principle of cut off date as it pertains to the domain of procedure. In the said case, the candidate, as such, belonged to reserved MI Category and the certificate issued by the Zila Sainik Board was not satisfying the requirement of the reservation. She was higher in merit but on account of the said fact, she was not given chance at the time of counseling. She had got a fresh certificate which showed disability of the ex-serviceman but her candidature was not considered on the ground that the second certificate was dated 16.07.2003 and it was post the date when she was called for counseling. Resultantly, it was held as under:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order

to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

It is not disputed that petitioner belongs to the said category and had the requisite certificate on the cut off date. On account of anxiety, a subsequent certificate dated 11.04.2017 showing his same category as EBPGC was also shown to the authorities. The authorities on account of this certificate having been issued after the cut off date, had rejected his case.

Accordingly, there is no merit in the present appeal. The same is dismissed.

Keeping in view the fact that there is certain lapse on the part of candidate also, part of the order imposing costs of Rs.25,000/- upon the appellant-Commission, is set aside.

Pending applications also stand disposed of.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

December 03, 2021

Sachin M.

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No