

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

CWP No. 9694 of 2021

Date of Decision : 09.08.2021

Vipin Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kartar Singh, Advocate for the petitioner.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

Mr. Hitesh Pandit, Advocate for respondent No. 2-DHBNL.

Harsimran Singh Sethi J. (Oral)

1. Present writ petition has been filed challenging impugned order dated 15.04.2021 (Annexure P-10) by which the candidates have been selected in respect of Advertisement No. 11 of 2019 to the post of Lower Divisional Clerk in the category of Economic Weaker Section (hereinafter referred to as 'EWS'), to be appointed in Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as 'DHBNL').

2. The facts leading to the filing of the present writ petition are that the respondents issued an advertisement bearing Advertisement No. 11 of 2019 (Annexure P-1) by which 2978 posts of the Lower Divisional Clerk in DHBNL, UHBNL and HVPNL were advertised. Petitioner, who claimed

himself to be fully eligible, applied for the post of Lower Divisional Clerk in DHBVNL, in pursuance to the said advertisement against 14 posts, which were reserved in the category of EWS.

3. As per the criteria, the selection was to be made on the basis of the written examination and further, the candidates were entitled for grant of marks under the Socio Economic Criteria. Petitioner appeared in the online Computed Based Test (CBT), which was held on 25.02.2020. The result of the said examination was declared on 19.02.2021 and the candidates were called for scrutiny of the documents on 26.02.2021. As the petitioner had applied under the reserved category of EWS, he was required to attach the supporting certificate given by the competent authority of the State of Haryana. Petitioner attached a certificate issued to him on 25.06.2019, a copy of which has been attached with this petition as Annexure P-6.

4. In the written examination, petitioner scored 79 marks but he was not granted 5 marks under the category of Socio Economic Criteria and the petitioner was not able to make to the select list as the last candidate selected under the EWS category had secured 83 marks and the last candidate in the waiting list had 80 marks. The petitioner has filed the present writ petition challenging the said result on these two grounds.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. Learned counsel for the petitioner has argued that petitioner was entitled for the grant of 5 marks under the Socio Economic Criteria and the reliance was placed upon a certificate issued to him dated 25.06.2019 (Annexure P-6). Learned counsel for the petitioner submits that despite the

submission of certificate dated 25.06.2019 (Annexure P-6), petitioner has wrongly been declined the benefit of 5 marks under the Socio Economic Criteria and had the same been given to him, petitioner would have scored 84 marks and would have made it to the select list.

7. Learned counsel for the respondents submits that the reliance, which is being placed upon the certificate dated 25.06.2019 (Annexure P-6) is incorrect. Learned counsel further submits that the said certificate only relates to the jobs/admissions in the Government of India, which fact is duly depicted in the certificate itself and, therefore, no reliance can be placed by the petitioner on the said certificate for the grant of 5 marks under the Socio Economic Criteria.

8. During the course of hearing, it was conceded by learned counsel for the petitioner that the criteria for assessing the Economically Weaker Section as envisaged for the jobs/admissions in the Government of India is different than the one declared by the State of Haryana. Under the Government of India, the annual income of the family should be below 8 lacs whereas, the annual family income required to be eligible under Economically Weaker Section is below 6 lacs in the Government of Haryana.

9. This fact is also proven from the certificates, which the petitioner has attached as Annexures P-6 and P-8. Certificate Annexure P-6, which relates to the jobs/admissions in Government of India depicts the maximum annual family income as 8 lacs whereas, Annexure P-8, which relates to the State of Haryana, depicts that the annual family income should be less than 6 lacs. That being so, the reliance, which is being placed upon

certificate dated 25.06.2019 (Annexure P-6) by the petitioner to claim the benefit under the Socio Economic Criteria, cannot be sustained.

10. It is also a conceded position that Annexure P-8, which is the actual certificate required to be attached with the application form, was issued to the petitioner on 16.03.2021. The last date of submission of application form was 25.07.2019 and the written test in pursuance to the advertisement was also conducted by the respondents on 25.02.2020. The said certificate was procured by the petitioner even after the declaration of the result and the scrutiny of the documents, which was held on 26.02.2021.

11. That being so, any document, which was not in possession of the petitioner and was not even given to him even upto to the date of scrutiny, which actually ends the selection process, cannot be taken into consideration by the respondents to grant the benefit of 5 marks as being claimed by the petitioner. Learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court of India in Civil Appeal No. 6506 of 2004 titled as ***Dolly Chhanda Vs. Chairman, JEE***, decided on 05.10.2004, to contend that it is the eligibility which should be seen and not supporting documents. The reliance of learned Counsel for the petitioner on ***Dolly Chhanda's case (supra)***, is misplaced. In the said case, the candidate had attached a certificate required though it contained some incorrect facts and the said fault lied with the department issuing the said certificate and the correct certificate issued by the same department was submitted but after the last date of the application form. It was under these circumstances, the Hon'ble Supreme Court of India held that once, the certificate issued to the petitioner carried incorrect facts, for which the candidate was not at fault,

hence submitting the correct certificate, though after the last date, cannot oust the candidate from the zone of consideration.

12. In the present case, the facts are entirely different. Here, the certificate, which the petitioner submitted did not relate to the admission in the Government of Haryana but the same related to the appointment with the Government of India and the criteria for the issuance of the said certificate for Government of India is entirely different as compared to that of Government of Haryana. In the present case, even upto the last date of scrutiny, the correct certificate was not produced by the petitioner and, therefore, especially, in view of Clause-3.1 and 3.2 of the Instructions issued by the respondents regarding the selection to the post of Lower Divisional Clerk, the claim of petitioner cannot be sustained. Clause 3.1 and 3.2 are as under :-

“3.1 Documents to be uploaded with Application Form (MANDATORY)”

1. Scanned copy of Essential Academic Qualifications and Matriculation Certificate showing Date of Birth and other relevant details.
2. Scanned copy of SC/ BCA/ BCB/ EWS/ ESP/ ESM/ DESM/DFP/PWD (Person with Disabilities) certificate alongwith Haryana domicile Certificate issued by competent authority.
3. Scanned copy of Certificate claiming weightage/marks under socio-economic criteria and experience alongwith Haryana domicile Certificate issued by competent authority.
4. Scanned Photo duly signed by the Candidate.
5. Scanned signatures of the Candidate.
6. Scanned copy of all documents showing higher

qualification, experience etc. on which basis candidate claim marks.

3.2 Scrutiny of Documents :- Only those document which are uploaded by the candidates shall be considered. If there is any variation in the document uploaded and produced at the time of scrutiny candidature shall be liable to be cancelled. If any application is found without uploading requisite supporting documents are other relevant information, the candidate himself/herself shall be responsible for that and his/her candidature would be liable to be cancelled due to lack of proper or correct documents/information.”

13. Even otherwise, the present writ petition is not maintainable as petitioner is challenging the selection without impleading the selected candidates as a party. It is a settled principle of law that in the absence of the candidates, who have been selected and will be affected by the outcome of the writ petition being a party to the writ petition, no relief can be granted to the petitioner.

14. Reliance can be placed on the judgment of Hon'ble Supreme Court of India in Civil Appeal No. 6461 of 1998 titled as ***B. Ramanjini Vs. State of Andhra Pradesh***, decided on 26.04.2002, wherein, it has been held that the selected candidates are the most affected persons and petition challenging a selection cannot be maintained in the absence of persons selected. Relevant paragraph of the said judgment is as under :-

“18. Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that

view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the concerned respondents ought to have been dismissed which are more or less in the nature of a public interest litigation. It is not a case where those candidates who could not take part in the examination had challenged the same nor was any public interest, as such, really involved in this matter. It is only in the process of selection and standardisation of pass marks some relaxation had been given which was under attack. Therefore, the High Court ought not to have examined the matter at the instance of the petitioners, particularly in the absence of the parties before the court whose substantial rights to hold office came to be vitally affected.”

15. Hon'ble Supreme Court of India in Civil Appeal No. 2259 of 1998 titled as ***State of Kerala Vs. W.I. Services and Estates Limited and others***, decided on 24.04.1998, has also held that no adversely affecting order can be passed and no effective relief can be granted in favour of petitioner without impleading the selected person. Relevant paragraph of the said judgment is as under :-

“7. xx xx xx xx xx xx xx xx xx xx xx xx
In view of the said affidavit filed on behalf of respondent No. 4, we have to proceed on the basis that the liquid fuel quota that has been allotted to the State of Kerala as already been allocated for the I.P.Ps. of the applicants which had been selected and in the event of its being selected respondent No. 1 would be displacing one of the applicants who has been selected. Since none of the applicant has been impleaded as a party to the writ petition, we are of the opinion that the learned Judges on the Division Bench of the High Court were in error in granting relief to respondent No. 1 in the said writ petition.

We are in agreement with the judgment of the learned single judge in this regard.”

16. No ground is made out to interfere with the impugned order dated 15.04.2021 (Annexure P-10).

Dismissed.

August 09, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No