

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11894 of 2021
Date of Decision:30.07.2021

Nisha

...Petitioner

Versus

Haryana Staff Selection Commission

....Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr.Vikram Sheoran, Advocate, for the petitioner.

Mr.Shruti Jain, DAG, Haryana,

HARSIMRAN SINGH SETHI, J. (ORAL)

The present writ petition has been filed challenging the order dated 22.6.2021 (Annexure P-8) by which 5 marks under the socio-economic criteria, has been declined in favour of the petitioner while considering her claim for appointment to the post of Lower Divisional Clerk [hereinafter referred to as the 'LDC'] advertised by the respondent-Commission vide Advertisement No.11 of 2019.

The facts leading to filing of the present petition are as under:

The respondent-Commission published an advertisement dated 05.07.2019 bearing No.11/2019 for inviting applications for 495 posts of LDC to be filled up in Uttar Haryana Bijli Vitran Nigam Limited [hereinafter referred to as 'UHBVNL']. The last date mentioned in the advertisement for submitting the application form for the said posts was 25.7.2019, which kept

on extending upto February, 2020. The petitioner, considering herself eligible as per the qualifications mentioned in said advertisement, applied for the post of LDC under the General category. She filled the application form and attached the documents claiming 5 marks, which were to be awarded to the candidates who fulfill the socio-economic criteria. The selection was to be made on the basis of a written examination and the candidates qualifying in the written examination were to be called for scrutiny of their documents and candidates found eligible, were to be appointed on the basis of the merit obtained in the written examination as per the criteria envisaged by the respondent-Commission. The petitioner appeared in written test conducted by the respondent-Commission and as per the result declared on 12.3.2021, petitioner qualified the same. As per the result, the petitioner secured 89 marks in the written examination and as the petitioner was also claiming 5 marks awarded on the basis of the socio-economic criteria, she contemplated her marks to be 94. The petitioner was called for scrutiny of the documents on 16.3.2021 where all her documents were scrutinized.

Final list of selected candidates was declared by the respondent-Commission on 30.4.2021 wherein the name of petitioner did not figure. As per the said final result, the last candidate selected in the General category secured 93 marks.

As the petitioner contemplated her marks to be 94, she approached the respondent-Commission seeking reasons for her non-selection to which she was informed by the respondent-Commission that her score has been detailed as 89 marks and she was found ineligible for grant of 5 marks under the socio-economic criteria as she had submitted the required certificate

i.e. Annexure P-6 attached with this petition, after the last date of submission of application, therefore, as the last selected candidate against the General category for the post of LDC secured 93 marks, the petitioner could not make it to the selection list.

The challenge in the present petition is to the non-grant of 5 marks to the petitioner under the socio-economic criteria with a further prayer for direction to the respondent to grant her 5 marks under socio-economic criteria and consider her for appointment to the post of LDC with her marks as 94 instead of 89.

Learned counsel for the petitioner argues that the grant of 5 marks under the socio-economic criteria started in the year 2017. At that time, an orphan certificate issued by a Naib Tehsildar was good enough for grant of marks under the socio economic criteria and as the father of the petitioner, namely, Rajpal Mor, died on 27.7.1994, when the petitioner was not even 3 years old, the petitioner was issued an orphan certificate, a copy of which has been attached as Annexure P-5. Learned counsel for the petitioner submits that Annexure P-5 was in the form of Annexure A-II as it existed at that time, which was issued by the authorities concerned on a printed proforma to the candidates depicting that they are entitled for the grant of marks under the socio-economic criteria which certificate i.e. Annexure P-5 was duly attached by the petitioner along with her application form.

Learned counsel for the petitioner further argues that the nomenclature of the “orphan certificate” was changed by the respondent/Commission vide notification dated 11.6.2019 (Annexure P-7) to “Certificate for an applicant whose father had died”. Along with the said

notification, two annexures were also issued being Annexure A-I and Annexure A-II. In the Annexure A-II, which was issued along with the instructions dated 11.6.2019 was similar to the one that existed earlier but contained two additional clauses for additional information i.e. 'whether the applicant is first or second child' and 'what was the age of applicant at the time of birth of the father'. Rest of the clauses of proforma Annexure A-II which existed prior to 11.6.2019 remained the same. Learned counsel for the petitioner submits that as the petitioner already had a certificate issued by the competent authority in the form of Annexure A-II as it existed on 17.9.2018 (Annexure P-5), petitioner attached the said certificate along with her application form. Learned counsel for the petitioner further submits that the application form which the petitioner was required to fill already had a clause 'whether the petitioner is the first or the second child' and the petitioner filled the required information that she qualifies the condition of being the first/second child and therefore, all the information required for being eligible for getting 5 marks under the socio-economic criteria was already submitted by the petitioner with the respondent-Commission on the last date of submission of application form. Learned counsel for the petitioner further submits that in order to be doubly sure that the petitioner is not caused prejudice on any account, she also applied for a clarificatory certificate in the format of Annexure A-II, as attached with the instructions dated 11.6.2019, and the same was given to her on 15.3.2021 (Annexure P-6) which was submitted by the petitioner to Commission in March 2021, at the time of scrutiny of documents.

Learned counsel for the petitioner argues that once the petitioner had submitted an orphan certificate issued to her on 17.9.2018 (Annexure P-5) along with her application form and also gave the factual aspect while filling the application form that the petitioner qualifies the condition of being the first/second child, submitting Annexure A-II as attached with the instructions dated 11.6.2019, though after the last date of submission of the application but at the time of the scrutiny, cannot be a ground to reject the claim of the petitioner for grant of marks under the socio-economic criteria.

Upon notice of motion, the respondent-Commission has filed the reply in which the respondent has justified its action. As per the respondent, the petitioner submitted the certificate dated 15.3.2021 (Annexure P-6), after the last date of submission of application form and therefore, no benefit of the same could have been extended to the petitioner for grant of 5 marks under socio-economic criteria under any circumstances keeping in view the fact that even in the advertisement it was mentioned that all the documents required for claiming any benefit, have to be submitted prior to the last date of submission of the application form and therefore, once the petitioner did not attach the certificate i.e. Annexure A-II attached with instructions dated 11.6.2019, required for claiming 5 marks under the socio-economic criteria at the time of submission of application form, her claim in this petition is totally misplaced and is liable to be rejected. Learned counsel appearing on behalf of the respondent-Commission submits that the certificate attached by the petitioner dated 17.9.2018 (Annexure P-5) was an orphan certificate but after 2019 when the definition of an orphan was amended and a fresh proforma i.e. Annexure A-II was attached with the instructions dated 11.6.2019, the petitioner was

required to attach the certificate in the fresh proforma/Annexure-II, which admittedly was done by the petitioner after the last date of submission of application form and hence, the grievance raised by the petitioner in the present petition is contrary to the terms of the advertisement and the prayer of the petitioner is liable to be rejected.

I have heard learned counsel appearing on behalf of the parties and have gone through the record with their able assistance.

The question which arises before this Court for determination in the present petition is *'whether, the petitioner, in the facts and circumstances of this case, is entitled for the grant of 5 marks as being claimed by her under the socio economic criteria'?*

It is a matter of fact, which is not disputed, that the petitioner had attached the orphan certificate issued to her by the authorities dated 17.9.2018 (Annexure P-5) as Annexure A-II existed on the said date along with the application form, which clearly depicted her date of birth and the date of the death of her father. It is also a conceded fact that while filling the form, a copy of which has been appended along with the petition as Annexure P-2, the petitioner gave the information while claiming the benefit of socio-economic criteria that she qualifies the condition of being first/second child and her father died before she had attained the age of 15 years. That being so, the only objection which the respondent-Commission is raising for non grant of 5 marks under socio-economic criteria, is that the petitioner had not appended the proforma Annexure A-II which has been attached by the Government of Haryana along with the instructions dated 11.6.2019 (Annexure P-7) before the last date of submission of application form. As per the respondent, in the

amended Annexure A-II, the additional information was required to be given about the age of the applicant at the time of death of the father as well as whether the applicant is the first or the second child and the same was submitted by the petitioner after the last date of submission of application form which disentitles the petitioner to claim 5 marks under socio-economic criteria.

This Court has to opine whether, the said certificate Annexure P-6 though admittedly given by the petitioner after the last date of submission of application form but at the time of scrutiny of documents, is to be treated as a fresh document or a clarificatory document in the facts and circumstances of this case. It is not disputed that even the orphans were entitled for claiming benefit of 5 marks under the socio-economic criteria which benefit was initiated by the Government of Haryana in the year 2017 concededly. It is also not disputed that the petitioner was granted an orphan certificate by the competent authority, on the prescribed Annexure A-II, as it existed at that time, a copy of which has been attached as Annexure P-5 with this present petition and was attached by the petitioner with application form. The said orphan certificate underwent a nomenclature change vide instructions dated 11.6.2019 to be read as 'certificate for an applicant whose father had died' and also included additional information 'as to what was the age of the applicant at the time of death of her father' and 'whether the applicant is the first or the second child'. The only difference being pointed out by the learned counsel for the respondent is that Annexure A-II, attached with the instructions dated 11.6.2019, had additional clauses of information which were missing in previous certificate submitted by the petitioner i.e. Annexure P-5 dated

17.9.2018, hence cannot be treated as valid for the grant of 5 marks under socio-economic criteria.

In my opinion, certificate Annexure P-6 dated 15.3.2021, issued on amended annexure A-II, is only a clarificatory certificate for the reason that even Annexure P-5, which was issued to the petitioner on 17.9.2018 and was attached by the petitioner along with the application form, depicted her date of birth as well as the date of death of her father, which could easily clarify what was the age of the applicant on the date of death of her father. Regarding the second issue that Annexure P-5 did not include the information 'whether the petitioner is the first or the second child', the same can also be taken care of as the petitioner had given the said information while filling up the application form wherein the petitioner was required to furnish the said information and the same was provided by the petitioner. It is not a case where the information, for which the amended certificate i.e. Annexure P-6 was given by the petitioner on 15.3.2021, was not submitted by the petitioner or was not available with the authorities before the last date of submission of application form. Hence, the certificate Annexure P-6, given by the petitioner on 15.3.2021, was only a clarificatory certificate regarding the information which was already on record of the respondent-Commission before the last date of submission of application form. The treatment of certificate Annexure P-6 as a fresh document submitted after the last date of submission especially in view of the facts and circumstances of this case, by the respondent-Commission, cannot be termed as correct. Once all the information, which is depicted in the certificate dated 15.3.2021 (Annexure P-6), was mentioned in the certificate dated 17.9.2018 (Annexure P-5), read with the information

given by the petitioner while filling the application form hence, the objection being taken by the respondent-Commission that the required certificate was submitted by the petitioner after the last date, is not a correct factual aspect.

Once, the information which makes the petitioner eligible for the grant of 5 marks under socio-economic criteria was available with the respondent-Commission along with required certificates, merely supporting the said information/certificate by another clarificatory certificate, though given after the last date of submission of form, cannot oust the petitioner from the grant of the said marks so as to deny her claim. The law on this aspect is also clear. Hon'ble Supreme Court of India in ***Civil Appeal No.6506 of 2004 (arising out of SLP (Civil) No.21153 of 2003)*** titled as "***Dolly Chhanda Vs. Chairman, JEE***" decided on 5.10.2004, settled this question of law in somewhat similar circumstances. Hon'ble Supreme Court of India 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.

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9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in the JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

A bare perusal of the above would show that Hon'ble Supreme Court held that where a candidate has the requisite eligibility to his/her credit on the last date of submission of the application form, submitting a corrected certificate, after the said date cannot come in the way to be treated as eligible especially when the candidate has already been allowed to compete.

In the present case, the petitioner is on a better footing. All the required information was submitted by the petitioner before the last date of submission of application form along with the certificates and it was only a clarificatory certificate depicting the said information, which was submitted after the last date but at the time of scrutiny of the documents. Once the petitioner has been allowed to compete and all the information required to get 5 marks under the socio-economic criteria was available with the respondent-Commission in one form or the other i.e. on combine reading of the information given by the petitioner in the application form and the orphan certificate issued to her by the competent authority of the Government of Haryana dated 17.9.2018, it cannot be said that the respondent-Commission was not having the required information adjudging the admissibility of the petitioner with regard to grant of 5 marks under the socio-economic criteria.

In the facts and circumstances of this case, once the information required to get 5 marks under the socio-economic criteria was already with the respondent-Commission before the last date of submission of application form and only a clarificatory certificate for the said information was submitted by the petitioner though after the last date of submission of application form but at the time of scrutiny of documents, non-grant of 5 marks to the petitioner under the socio-economic criteria cannot be sustained and is liable to be rejected.

The writ petition is allowed with a direction to the respondent-Commission to grant the petitioner 5 marks under the socio-economic criteria and thereafter, consider her for appointment to the post of LDC, in accordance with law. In case, it is found that on the basis of the total marks (i.e. marks

obtained in written examination + 5 marks of socio-economic criteria) the petitioner is eligible to be selected against the post of LDC, keeping in view the posts advertised in General category, for which she was competing, she be selected and consequentially appointed against the post, which was directed to be kept reserved in the General category, as per the order dated 23.7.2021.

(HARSIMRAN SINGH SETHI)
JUDGE

30.07.2021

Vivek

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No