

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

206

CWP No.14190 of 2020

Date of decision: 24.02.2021

Pawan

.....Petitioner

versus

State of Haryana and Anr.

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Pankaj Maini, Advocate, for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

*(the aforesaid presence is being recorded through video
conferencing since the proceedings are being conducted in Virtual Court
on account of restrictions due to COVID-19).*

GIRISH AGNIHOTRI, J. (Oral)

Petitioner-Pawan, stated to be aged 23 years, has filed the present writ petition *inter alia* with the prayer to set aside the notice dated 20.02.2020 (Annexure P-7) vide which documents of the successful candidates have to be scrutinized including the candidates belonging to economical weaker section like the petitioner, besides ignoring candidature of the petitioner; with a further direction to the respondents to treat the scrutiny process initiated by the respondents vide letter dated 20.02.2020 in respect of the candidates belonging the economical weaker section category as well; with a further direction to consider and select the petitioner by giving him proper weightage in the light of advertisement dated 15.06.2019 (Annexure P-1).

Learned counsel for the petitioner placed reliance to the advertisement (Annexure P-1 dated 15.06.2019), to submit that under the Clause 2.3 'Criteria for Selection', under sub clause (iii) (b), it has been mentioned as under:-

“b. if the applicant is:-

(i) a widow; or

(ii) the first or the second child and his father had died before attaining the age of 42 years; or

(iii) the first or the second child and his father had died before the applicant had attained the age of 15 years.

(5 marks)”

The positive case as projected by counsel for the petitioner is that the petitioner-applicant is entitled to 5 marks under Clause 2.3 (iii) (b). Under this sub clause, if the applicant is the first or the second child and his father had died before attaining the age of 42 years, the applicant is entitled to 5 marks. Learned counsel submits that the petitioner had as per his understanding marked 'Yes' against the said column. Learned counsel further submits that the petitioner is also entitled to 5 marks under Clause 2.3 (iii) (a).

Records of the case show that vide order dated 11.09.2020, notice of motion was issued and following order was passed by a Co-ordinate Bench of this Court:-

*“Present: Mr. Pankaj Maini, Advocate
for the petitioner.*

Mr. Sharad Aggarwal, AAG, Haryana.

Heard through video conferencing.

Learned counsel for the petitioner contends that the petitioner had obtained 51 marks out of 90 in the written examination and as per the socio-economic criteria and

experience, wherein 10 marks have been allocated, the petitioner would be entitled to full 10 marks as no other member of the petitioner's family is employed with the Government or any Board/Corporation. He further contends that the petitioner was 11 years of age when his father died. He also contends that in the event of the petitioner getting 10 marks for the socio-economic criteria and experience, the total marks obtained by him would be 61 while the last selected candidate in the Economically Weaker Section (EWS) to which the petitioner belongs had obtained 60 marks.

Issue notice to the respondents.

At the asking of the Court, Mr. Sharad Aggarwal, AAG, Haryana accepts notice on behalf of the respondents and prays for time to file reply.

List on 14.10.2020.

11.09.2020 **(ANUPINDER SINGH GREWAL)**
JUDGE"

Thereafter on 21.12.2020, this Court further passed the following order:-

"Records of the case show that on 11.09.2020, this Court had passed the following order:-

"Heard through video conferencing.

Learned counsel for the petitioner contends that the petitioner had obtained 51 marks out of 90 in the written examination and as per the socio-economic criteria and experience, wherein 10 marks have been allocated, the petitioner would be entitled to full 10 marks as no other member of the petitioner's family is employed with the Government or any Board/Corporation. He further contends that the petitioner was 11 years of age when his father died. He also contends that in the event of the petitioner getting 10 marks for the socio-economic

criteria and experience, the total marks obtained by him would be 61 while the last selected candidate in the Economically Weaker Section (EWS) to which the petitioner belongs had obtained 60 marks.

Issue notice to the respondents.

At the asking of the Court, Mr. Sharad Aggarwal, AAG, Haryana accepts notice on behalf of the respondents and prays for time to file reply.

List on 14.10.2020.”

Thereafter, on 14.10.2020, the case was adjourned for today i.e. 21.12.2020.

Today, on resumed hearing of the case, learned State counsel prays for time to file reply.

Learned State counsel makes reference to internal page 25 of the Advertisement dated 15.06.2019 to submit that as per 2.3 (iii) (b), in case, first or the second child and his father had died before attaining the age of 42 years, the applicant would be entitled 5 marks.

Learned counsel for the petitioner, however, submits that the specific case of the petitioner is that the petitioner/applicant is first child against column (3) it has been said 'Yes'. He then submits that Sr. No.2 would show that the applicant fulfils the requirements for getting 5 marks as his father had died when his age was less than 42 years and also that the applicant was the first child. He further submits that he is also entitled to 5 marks on account of para 2.3(iii)(a).

Learned counsel for the respondent submits that there is no supporting document in this regard submitted by the applicant.

In the meantime, if the petitioner submits, within one week from today, any supporting document based on which the petitioner is entitled to 5 marks under 2.3 (iii)(a) and also 5 marks under 2.3(iii)(b), the Competent Authority would consider the said documents.

It is directed that after examining the said documents, in case the petitioner is entitled, in accordance with law by the Competent Authority for grant of 10 marks, the petitioner be granted the claim prayed for i.e. for selection to the post of Junior Engineer. It is also directed that necessary exercise be done and report be submitted a week prior to the next date.

Adjourned to 05.01.2021.”

Learned State counsel in response thereto, submits that on 04.01.2021, a speaking order has been passed. In the said order, firstly, it has been clarified that the petitioner has already been found eligible as regards his qualification for the post in question is concerned. Secondly, it has been mentioned that so far with regard to claim of the petitioner regarding awarding him 5 marks under Clause 2.3 (iii) (a) and (b), it is mentioned that Orphan Certificate now submitted by the petitioner cannot be taken into consideration as the same is not as per the prescribed format. It has been further pointed out in the order that the petitioner was required to submit the Orphan Certificate as per following format, which is reproduced in the order.

Learned counsel for the petitioner, at this stage, makes specific submission that vide advertisement Annexure P-1 there were 617 posts of Junior Engineer (Civil). Out of these, 55 posts were meant for EWS category. It is the specific case of the petitioner that three or even more vacancies/posts are still lying vacant with the department.

Learned counsel also submits that the petitioner has been awarded 57 marks whereas the last candidate has got 60 marks. He further submits that if 5 marks under the clause 2.3(iii)(b)(ii) are granted to him, the

total marks would be 62 i.e. above the last selected candidates.

To support the submissions made by learned counsel for the petitioner, the petitioner also relies upon the documents of the respondents i.e. Attendance Sheet for Scrutiny of Documents (appended as Annexure R2/1 and R2/2) with specific reference to column under 'Socio Economic Criteria' and experience and also column No.3 to submit that as per own records of the respondents, the petitioner is actually eligible.

In the peculiar facts and circumstances of the case, as noticed above, the present writ petition is disposed of with the following directions:-

- i) The Competent Authority is directed to examine the issue by giving the petitioner an opportunity of hearing.
- ii) The petitioner would submit all the necessary documents supporting his plea [to be granted 5 marks under Clause 2.3(iii) (b) (ii)].
- iii) It is further directed that the Competent Authority would allow the petitioner to complete all such formalities including the filling of the performa and redraw the merit of the petitioner accordingly.
- iv) In case the Competent Authority finds that the petitioner is entitled to be selected having secured 62 marks, his case be considered for appointment against one of the vacancies which are lying vacant in pursuance to the advertisement dated 15.06.2019(Annexure P-1).

- v) Let the above exercise be completed within a period of *one month* from the date of receipt of a certified copy of this order.

(GIRISH AGNIHOTRI)
JUDGE

24.02.2021
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Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No