

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

**CWP No. 18809 of 2017
DATE OF DECISION :06.09.2021**

Sukhbir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vikas Kuthiala, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

Petition herein, *inter-alia*, is for issuance of a writ in the nature of mandamus directing the respondents to consider the petitioner for appointment on the post of Statistical Assistant in Agriculture Department, Haryana, in General category or alternative in the category of Dependant of Ex-Serviceman (hereinafter referred to as "DESM"), with all consequential benefits.

2. Learned counsel for the petitioner contends that vide advertisement No.7/2015 dated 10.07.2015 (Annexure P-1) applications were invited for the post of Statistical Assistant and various other posts. There were 26 posts in General category and 06 posts in DESM General category. Being fully eligible, petitioner applied for the same and also cleared the written examination conducted on 18.12.2016. The petitioner

was once again asked to submit proof of being Dependant to Ex-Serviceman Certificate, which he duly furnished on 13.05.2017. However, he was still not called for the interview. On the other hand, petitioner has been denied the benefit of his merit even in the general category. He has secured 136 marks, which are more than the last selected candidate (130 marks) in the General category.

3. Learned State counsel submits that petitioner's candidature in the category of DESM was not considered since he did not have relevant proof thereof, as on the cut-off date. While on the other hand, learned counsel for the petitioner contends that it is totally incorrect to suggest that the petitioner did not have the proof, as is borne out from date of the certificate itself i.e. being dated 05.05.2017 (Annexure P-6). Its date of issuance is way prior to the cut-off date i.e. the slated date of interview on 18.05.2017.

4. Learned counsel for the petitioner further submits that the petitioner had duly submitted his DESM certificate at the relevant time and yet he has not been given the benefit thereof. As regards merit of the petitioner, it is not in dispute that he has secured 136 marks as against 130 marks obtained by the last selected candidate in the General category. He further argues that, therefore, it is completely irrelevant whether candidature of the petitioner is considered in DESM category or not. Once it is established that he has secured more marks than the last selected candidate in general category, he is entitled to be given the benefit of being considered in General category. His option of seeking benefit of reservation in any privileged category is to be overlooked as per settled principle of law.

5. After hearing rival contentions of learned counsels for the parties, I am of the view that there is merit in the contentions of learned counsel for the petitioner as noted herein above. It is settled principle of service selection that in case a candidate who is seeking reservation in any category has secured more marks than the last selected candidate in the General category, he is to be considered in the General category by overlooking his option in reserved category. Since the marks obtained by the petitioner are not in dispute as concededly he has secured more marks than the last selected candidate in General category, he cannot be denied the benefit of merit.

6. Another aspect of the matter is that, candidature of petitioner has neither been considered in general nor in reserved category on the ostensible ground of non-furnishing of reserved category certificate. Non furnishing of reserved category would at worse result in non being granted benefit of reserved category and not in rejection of the candidature altogether. In normal course also, in case of failure to furnish reserved category certificate, the candidature ought to have been treated as deemed general category. However, in the instant case the petitioner is left high and dry by rejection of his candidature even in the general category, which is legally not sustainable.

7. Accordingly the writ petition is allowed. Respondents are directed to consider the candidature of the petitioner in general category, *dehors* the fact that he had relevant DESM certificate or not on which ground his candidature was not considered in the reserved category.

8. Per para 3 of the written statement, it is since conceded position that one post of Statistical Assistant in General category is still lying vacant.

It is, therefore, expected of the respondents to consider the candidature of the petitioner and pass appropriate orders to accommodate the petitioner qua the said vacant post, in accordance with his merit.

9. Needless to say petitioner shall be entitled to seniority as per his merit, with effect from the date other candidates were selected.

SEPTEMBER 06, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No