

[113] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23800-2021

Date of Decision :03.12.2021

Manoj Kumar

...Petitioner

Versus

Haryana Staff Selection Commission and Ors.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Sachin Kaushik, Advocate for the petitioner.
Mr. Tapan Kumar, DAG, Haryana.

B.S. Walia, J. (Oral)

[1] Prayer in the writ petition under Articles 226/227 of the Constitution of India is for the issuance of a writ in the nature of certiorari for quashing final result, Annexure P/8 dated 31.10.2021 issued by the respondents on the ground that the result/marks of the petitioner were not considered for selecting him for the post of Sub Inspector in the category of Disabled Ex-serviceman, despite his having secured more marks than the candidate selected in the said category due to his having inadvertently applied and appeared for selection in the category of Dependent of Ex-serviceman (killed in action/disability beyond 50%) (General) Category instead of Disabled Ex-serviceman category.

[2] Learned counsel contends that the petitioner is a disabled ex-serviceman with disability of more than 50% and in response to advertisement No.3/2021 (Annexure P/1), the petitioner applied for the post of Sub Inspector and although he was eligible for consideration for

selection against the category of Disabled Ex-serviceman, inadvertently, the petitioner applied in the category, General - Dependent of Ex-serviceman (killed in action/disability beyond 50%) and was accordingly, issued admit card, Annexure P/5. Thereafter, the petitioner appeared in the written examination which was held on 26.09.2021 followed by Physical Screening Test and Physical Measurement Test in the General - Dependent of Ex-serviceman (killed in action / disability beyond 50%) category. Accordingly, at the time of scrutiny of documents, the candidature of the petitioner was considered for selection in the category of General - Dependent of Ex-serviceman (killed in action / disability beyond 50%) and not Disabled Ex-serviceman. Thereafter, the petitioner filed CWP No.22137 of 2021 which was permitted to be withdrawn with liberty to the petitioner to submit a comprehensive representation to the respondent within three days from the date of receipt of certified copy of the order and the respondent i.e. Haryana Staff Selection Commission was directed to consider and decide the same in accordance with law after taking into account all aspects of the matter within one week thereafter. The petitioner claims to have filed the representation but contends that the same was not decided, therefore, he has invoked the jurisdiction of this Court by way of the instant petition.

[3] Learned counsel has relied upon the decision of a Division Bench of this Court in ***Usha Dhillon vs. State of Haryana and Ors, 2014 (27) SCT 407***, decision of a Co-ordinate Bench (i.e. ***CWP No.14863 of 2017***) in ***Sarla vs. State of Haryana and Ors, 2019 (1) FLR 573*** as also decision of Hon'ble the Division Bench in ***LPA No.320 of 2019*** against the decision in Sarla's case (Supra) to contend that in view of the correct

could not be deprived of selection. However, the aforementioned submission has to be considered in the background that the petitioner attached certificate of Dependent of Ex-serviceman (killed in action/disability beyond 50%) bearing No.153201809828, dated 30.09.2019, with the application, as is evident from the application form, Annexure P/2, but now, in the writ petition the petitioner has attached disability certificate, Annexure P/3 dated 24.01.2020 showing his disability as 50 % lifelong i.e. rounded off 75 % w.e.f. 01 Feb 19.

[4] Admittedly, the petitioner applied under the category of Dependent of Ex-serviceman (killed in action/disability beyond 50%) by attaching certificate No. 153201809828, dated 30.09.2019 and not against the category of Disabled Ex-serviceman by attaching certificate Annexure P/3 which has been placed on record for the first time in the writ petition. Admit card, Annexure P/5 issued to the petitioner clearly mentions the category in which the petitioner had applied i.e. General - Dependent of Ex-serviceman (killed in action/disability beyond 50%). Thereafter, the petitioner appeared in the written test followed by Physical Screening Test and Physical Measurement Test all under the aforementioned category. It is only at the time of scrutiny of documents on 25.10.2021 when the petitioner realized that he had applied under a different category i.e. Dependent of Ex-serviceman (killed in action/disability beyond 50%) instead of category of Disabled Ex-serviceman that he thereafter, invoked the jurisdiction of this Court by way of CWP No.22137 of 2021 (Annexure P/7) leading to grant of liberty to file a comprehensive representation and the respondent being directed to decide the same in accordance with law.

[5] In Usha Dhillon's case (Supra), the petitioner who was a dependent of an Ex-serviceman applied online on 29.09.2014 but when she took out a print of the online application form, she realized that the category against which she had applied was shown as 'Special Backward Class' and in the circumstances on the same day i.e. 29.09.2014, she approached the Commission and apprised them of the aforementioned problem, whereupon she was told that she may submit an application through hard copy which she submitted on 01.10.2014 with a request to the Commission to consider her case under the Ex-serviceman Category as a dependent of an Ex-serviceman instead of Special Backward Class but the same was rejected by the Commission on 21.10.2014. Hon'ble the Division Bench allowed the writ petition by taking into account that the last date for filing of the application was 18.10.2014 and irrespective of the fact whether on 29.09.2014 there was or was not a computer glitch, the petitioner on 01.10.2014 i.e. much before the last date before which the application could be submitted, approached the Commission and moved an application requesting the Commission to consider her under the Ex-serviceman category as a dependent of an Ex-serviceman as also that there was no provision on the website of the Commission allowing correction in the online application form and the application of the petitioner had been rejected at the very threshold when the rights of no other candidate had been adjudged, therefore, rights of no other candidate would be effected if the application of the petitioner was permitted to be considered, as prayed for. Accordingly, in the light of the position noted above, the writ petition was allowed and the candidature of the petitioner i.e. Usha Dhillon was allowed to be considered in the category prayed for

[6] However, in the instant case, the last date for submitting applications as per the advertisement, Annexure P/1 was 02.07.2021 but it has been brought to the notice of this Court by learned State counsel that the last date for applying was extended and that the petitioner submitted the online form on 30.08.2021. The petitioner was issued admit card, Annexure P/5 in the category in which he had applied and appeared in the written examination as well as in the Physical Screen Test and Physical Measurement Test in the same category without any protest or demur and made no attempt whatsoever to get the category corrected by submitting an application prior to the last date for submission of the application form or for that matter even thereafter and agitated his grievance for the first time by filing CWP No.22137 of 2021 unlike in Usha Dhillon's case where the matter was agitated at the earliest. Thus, it is apparent that the decision in Usha Dhillon's case (Supra) is distinguishable and is of no avail to the petitioner.

[7] Learned counsel has also relied upon the decision of the Co-ordinate Bench of this Court in CWP No.14863 of 2017 in case titled as Sarla vs State of Haryana and others in which the petitioner had applied under the Economically Backward Person in General Castes (EBPG) category but her candidature was cancelled on the ground that she had filled the online form declaring her category as BCB whereas as per the certificate attached along with the application form, she belonged to the EBPG category. The petitioner invoked the jurisdiction of this Court during the pendency of the selection process and was provisionally allowed to participate in the selection process and the result produced before the Court revealed that the petitioner had secured more marks than

while observing that the case for all intents and purposes was a clerical mistake and it not being the case of the respondents that the certificate of the petitioner was not valid while relying on the decision in Usha Dhillon's case (Supra) allowed the writ petition and directed the respondents to consider the candidature of the petitioner under the EBPG category instead of BCB category and issue her appointment letter. The said decision was carried in appeal (i.e. LPA No.320 of 2019) by the Haryana Staff Selection Commission but the appeal was dismissed by Hon'ble the Division Bench by taking into account that as per the respondent-petitioner as soon as she realized the mistake committed in filling up of online application form, she immediately made a representation dated 27.04.2017 before the competent authority requesting for necessary correction in the application form and was assured that at the time of verification of the documents, she would be allowed to carry out necessary corrections and was permitted to appear in the written test but subsequently when she appeared for verification of documents on 03.07.2017, she was not allowed to participate in the interview and her candidature was cancelled. Hon'ble the Division Bench also took into account that in view of the prevailing socio-economic condition in the country as also that citizens were neither net savvy nor had a computer or laptop readily available for use and the candidate had to depend upon the cyber cafes providing net services to fill in online form and in such circumstances, if a mistake occurred, it would be wholly unrealistic and arbitrary to make such a candidate suffer, besides, there was no provision on the website of the Commission allowing correction in the online application form, as also that the respondent-petitioner was a poor widow lady etc.

[8] The decision in Sarlas's case (Supra) also is of no avail to the petitioner as in the said case also not only had the petitioner on realizing the mistake committed in filling up the online application form, made a representation to the authorities and thereafter approached the High Court during the pendency of the selection process and was granted interim relief for being provisionally interviewed, whereas in the instant case, the petitioner who is an ex-serviceman applied for the post of Sub Inspector, Police, in the category of *Dependent of Ex-serviceman (killed in action/disability beyond 50%) against certificate No. 153201809828 dated 30.09.2019*, maintained a stoic silence despite having been issued an admit card, Annexure P/5 clearly indicating the category and participated in the written examination followed by Physical Screening Test and Physical Measurement Test without a protest or demur. It is only after the selection process was over that the petitioner woke up and invoked the jurisdiction of this Court by relying on a different certificate.

[9] No doubt, the petitioner has attached disability certificate, Annexure P/3 dated 24.01.2020 indicating his disability to be more than 50% but the said disability certificate was not attached by the petitioner along with the online application form, Annexure P/2 and it was a certificate of Dependent of Ex-serviceman (killed in action/disability beyond 50%) bearing No.153201809828, Issuing Authority: Sandhyajit Basumatary, dated 30.09.2019, Issued District: Artillery, Nasik which was attached along with the application form, Annexure P/2. Even as per the certificate, Annexure P/3, the petitioner is not entitled to be considered for selection under the category of Disabled Ex-serviceman on account of his disability being more than 50% but would only be

per details given in Annexure P/1 as per which the reservation for ESM is to be made in the following order:-

- “i. Disabled ex-servicemen with disability between 20% to 50%.*
- ii. Up to two dependents of Service personnel killed/disabled beyond 50%.*
- iii. Other ex-servicemen.”*

[10] Result of the selection was declared on 31.10.2021. Accepting the prayer of the petitioner would result in unsettling the selection process which has attained finality. The petitioner not having been diligent in filling up the online application form with due care, by not attaching the correct disability certificate as also in not agitating his grievance before the last date for submitting of online application form or for that matter at any point of time prior to invocation of CWP No.22137 of 2021 and the result having been declared in the meantime, cannot be allowed to take advantage of his own mistake.

[11] In the light of the position noted above, finding no merit in the instant petition, the same is dismissed in limine.

(B.S. Walia)
Judge

03.12.2021

‘Amit’

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