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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3189-2019 (O&M)

Date of decision: December 07, 2022

Rohit Sharma

.....Petitioner

versus

Haryana Staff Selection Commission

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Lalit Rishi, Advocate for the petitioner.

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to quash the action of the respondent-Commission in not considering the petitioner for the post of Heavy Vehicle Driver and Conductor, despite vacancy in category of ESM General.

2. Pledged case is that pursuant to advertisement dated 18.05.2017 (Annexure P-1) issued by the respondent-Commission for various posts, including 2038 posts of Heavy Vehicle Driver and Conductor, petitioner applied for the said post under DESM-General Category. Written examination was conducted and result (Annexure P-3) was declared on 10.11.2017, which petitioner successfully cleared. Petitioner appeared for the scrutiny of documents-cum-driving proficiency test on 27.11.2017 and got his documents verified.

2.1 On the date of scrutiny of documents, petitioner was in possession of Dependent Certificate dated 10.05.2013 (Annexure P-4). He was advised to get the same renewed before the date of interview. Schedule for interview was

announced vide notice dated 12.02.2018 (Annexure P-5), but roll number of the petitioner was not mentioned therein. Petitioner approached the respondent-Commission and he was informed that he does not possess the latest Dependent Certificate, therefore, his name was not included in the aforesaid list, and he would be considered, in case he brings the latest certificate. Petitioner got the same renewed and an Eligibility Certificate dated 22.02.2018 (Annexure P-6) was issued to him. Petitioner again approached the respondent-Commission, but no heed was paid to his request. Final result (Annexure P-7) was declared on 03.03.2018. 16 posts in ESM General Category are lying vacant, even if the petitioner is granted Zero Marks in the interview, still he is entitled to be selected.

3. I have heard rival contentions of learned counsel for the parties and gone through the record.

4. It transpires that while filling up the application form, candidates are not required to append therewith the Dependant Certificate, even if they had opted for benefit of belonging to Ex-Serviceman category. The said eligibility is required to be established at the time of interview. In this aspect, reference may be had to Note i) to iii) specifically given in the advertisement (Annexure P-1), which states as below:

***“Note:- i) The benefit of reservation will be given only to those SC/BCA/BCB/EBPG and ESM and outstanding sportsperson candidates who are domicile of Haryana State. The SC/BCA/BCB/EBPG candidates are required to submit SC/BCA/BCB/EBPG Certificate duly issued by the competent authority at the time of interview. Likewise the Outstanding Sports Person shall be required to produce the Sports Gradation Certificate as per Government instructions duly issued by the competent authority. DESM shall be required to produce the Valid Eligibility Certificate duly issued by the respective ZilaSainik Board at the time of interview.*”**

- ii) Qualification and other terms and conditions of eligibility will be determined with regard to the last date fixed for receipt of online applications.***
- iii) Candidates applying for a post must ensure that they fulfill all the eligibility conditions on the last date of application. If on verification at any time before or after the written examination or interview or appointment, it is found that they do not fulfill any of the eligibility condition or it is found that the information furnished is false or incorrect their candidature will be cancelled.”***

5. Perusal of the above thus, clearly shows that the Dependant of Ex-Serviceman has to produce a valid eligibility certificate issued by the respective Zila Sainik Board at the time of interview. As against the same, petitioner has made a specific averment in Para-6 of the writ petition that he had appeared in scrutiny of documents-cum-driving proficiency test on 27.11.2017 and got his documents verified. On the date of scrutiny of documents, he was very much in possession of the Dependant Certificate dated 10.05.2013 and after seeing the same, he was simply advised to get the same renewed before the date of interview. Said certificate is appended with the writ petition as Annexure P-4. The veracity of the said certificate has not been denied in the return filed to the writ petition. However, defence taken is that since renewed certificate dated 22.02.2018 (Annexure P-6) was after the cut-off date, therefore, petitioner cannot be given the benefit of Ex-Serviceman category. It was in this background that, while issuing notice of motion on 05.02.2019, my learned Sister Ritu Bahri, J. passed the following order:

“Pursuant to advertisement dated 18.05.2017, the petitioner participated for the post of Heavy Vehicle Driver in the DESM-General Category, vide Annexure P-2. The petitioner was declared successful in written examination and was called for scrutiny of documents on 27.11.2017. At the time of scrutiny, the petitioner was in possession of dependent certificate dated 10.05.2013 and was advised to get the same renewed before the date of interview. But the petitioner was not called for interview on the ground that he was not possessing the latest dependent certificate. The petitioner

got the certificate renewed and an eligibility certificate dated 22.02.2018 (P-6) but he was not called for interview. The final result has been declared on 03.03.2018 and out of 143 posts, 127 posts have been filled and the cut off of ESM General category was shown as 43.

Notice of motion for 29.04.2019.

Till the next date of hearing, the above 16 vacant posts of ESM category shall not be transferred to general category candidates.”

6. *Apropos*, even though return has been filed and averments made in the petition and observations made by this Court have been specifically dealt with, though in evasive manner, it has been stated that eligibility certificate dated 10.05.2013 (Annexure P-4) is only a true translated copy. Furthermore, reliance has been placed upon that very eligibility certificate (Annexure P-4), which was since valid for one year, has to be renewed year after year, and therefore, petitioner was rightly asked for renewal of his certificate. Facts thus emerge, that renewal is possible only if the petitioner is having earlier valid certificate. He complied by furnishing the renewed certificate dated 22.02.2018 (Annexure P-6). Despite this, the benefit was denied to him on the ground that petitioner did not have the renewed certificate as on the cut-off date.

6.1 I am unable to sustain the rejection of the petitioner's candidature. A true translated copy of renewed eligibility certificate (Annexure P-6) has been submitted in the present proceedings and the same can be verified by respondents from the respective Zila Sainik Board, which is the State functionary. In case, it is found that the certificate was validly issued, benefit of renewal has to be given to the petitioner since cut-off date of seeking the eligibility of Dependent of Ex-Serviceman was 24.06.2017, as per the advertisement and there is no reason why the certificate, which existed prior to the issuance of advertisement i.e., 18.05.2017, be not given due credence.

7. As is borne out from the notice of motion order, 16 posts of ESM category were directed to be kept vacant, it is expected of the respondents that in case they want to seek verification of the aforesaid certificate (Annexure P-6) from the Zila Sainik Board, the said exercise be done within a period of 30 days from today. Upon its being found validly issued, the petitioner's candidature shall be considered for appointment, subject of-course he being otherwise meritorious enough as per the merit-list.

8. In the parting, on a Court query, learned counsel for the petitioner in *arguendo* points out that even if the petitioner is assumed to have been awarded zero marks for interview, for which he appeared but marks are not disclosed, he would have still made it to the merit-list on the basis of his written examination performance alone.

9. Be that as it may, it is for the Department to determine the merit and accordingly, accord benefit thereof to the petitioner.

10. With the aforesaid observations, writ petition is disposed of.

11. Needful exercise be carried out within a period of 2 months from today.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 07, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No