

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

LPA No. 82 of 2021 (O & M)

Date of Decision: 13.12.2022

Pawan Kumar

.....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Mazlish Khan, Advocate,
for the appellant.

Mr. Anant Kataria, DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

CM-212-LPA-2021

Application for condonation of delay of 67 days in filing the appeal is allowed, in view of averments made in the application duly supported by affidavit of the appellant and in view of the fact that no reply has been filed to the application.

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Challenge in the present letters patent appeal is to the order of the learned Single Judge dated 20.11.2019 passed in CWP No. 6734 of 2019, Pawan Kumar vs. State of Haryana and others and also to the subsequent application for recall of the said order, which was dismissed on 29.01.2020. The learned Single Judge has dismissed the writ petition on the ground that in spite of the interim order, the writ petitioner has only secured 98 marks (84+14) whereas, the last selected candidate for the post of Auction Recorder has secured 106 marks and, therefore, he does not come within the zone of

consideration.

Counsel for the appellant has relied upon the judgment of the Apex Court in *Dilwan Singh vs. State of Haryana, (1996) 2 SCC 369* which is stated to have been filed alongwith the recalling application to submit that though not pleaded in the writ petition, an additional argument has been raised that being an Ex-serviceman, he was entitled for consideration over and above the dependants as such. Attention has been drawn to the result declared for the post in question which was of Auction Recorder on 12.07.2019 (Annexure P-14) wherein, it has been pointed out that for the 19 posts of ESM General, the cut off was 106 but for the DESM Category, it was 102. It is, thus, contended that the writ petitioner being available and if his certificate is to be considered and that he has the requisite qualifications, he had to be given preference over the dependants upon the Ex-serviceman.

It is not disputed that the State has also issued instructions to this effect. This aspect apparently, due to subsequent events, could not be brought to the notice of the learned Single Judge and neither there are any pleadings as such. Even otherwise, the person who has now been selected as a dependant of ex serviceman is not before us.

In such circumstances, we are of the considered opinion that the matter needs a re-look. Accordingly, the matter is remanded to the learned Single Judge. The case is restored to its original position. The appellant is given liberty to amend the writ petition to bring the facts in consonance with the argument raised and also to implead the necessary respondent. Accordingly, the validity issue also of the certificate which was disputed by the State for Computer Application will necessarily have to be considered on

merits.

Accordingly, the appeal is allowed to that extent.

(G.S. SANDHAWALIA)
JUDGE

13.12.2022
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(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No