IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

271 **CWP-9600-2021**
DATE OF DECISION: 05.08.2022

SWATI **… Petitioner(s)**

Versus

HARYANA STAFF SELCTION COMMISSION AND ANOTHER

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Vivek Khatri, Advocate for the petitioner.

Mr. Sharad Aggarwal, AAG, Haryana.

Mr. B.R. Mahajan, Senior Advocate with
Mr. Hitesh Pandit, Advocate for respondent No.2.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. S.S.Kaushik, Advocate for respondent No.3.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has impugned the result declared by the respondents for the post of Lower Division Clerk on 30.04.2021. She has also sought a direction to consider and select the petitioner as she is more meritorious than the last selected candidate in the general category.

Learned counsel for the petitioner submits that the petitioner has applied for the post of Lower Division Clerk in EWS category in pursuance to the advertisement issued by the respondents on 05.07.2019. The petitioner had secured 89 marks in the written examination and has erroneously not being awarded 5 marks under the socio economic criteria. The petitioner had submitted the EWS certificate along with the application form and had later submitted a fresh certificate at the time of the scrutiny. If the petitioner had been awarded 5 marks on account of socio economic criteria then she would have 94 marks which are more than the marks secured by the last selected candidate in the general category. The last selected candidate in the general

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category has secured 93 marks while the last selected in the EWS category has secured 90 marks.

Learned counsel for respondent No.2 in response to the order passed by this Court on 09.05.2022 has filed an affidavit wherein it is stated that 2 posts in the EWS category are vacant and there is no post in the general category which is vacant at present.

Learned counsel for respondent No.1 states that the certificate which the petitioner has appended with the application form was valid for only one year and the petitioner at the time of scrutiny did not present the original of that certificate although she had presented another certificate which was issued after the last date of the submission of application form. He also states that as per Condition 3.2 of the advertisement the candidates who had submitted the certificates along with the application form were required to submit the original thereof at the time of scrutiny.

Learned counsel for respondent No.3 submits that respondent No.3 is the last selected candidate in the EWS category having secured 90 marks and in case the writ petition has to be allowed the candidates who have been selected in the EWS category who are having the merit to qualify in the general category should be shifted to the general category and the seats which fall vacant in the EWS category as a result thereof be offered to the petitioner. Respondent No.3 having been appointed in the year 2021 and found to be meritorious in the EWS category should not be disturbed. In support of his submission, he has relied upon the judgment of the Supreme Court in the case

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of **R.K. Sabharwal and others Vs. State of Punjab and others reported as 1995 (2) SCC 745**.

Heard.

The petitioner had applied for the post of Lower Division Clerk under the EWS category. She had secured 89 marks while the last selected candidate in this category has secured 90 marks. It is stipulated in the advertisement that the candidate would be entitled to 5 marks on account of socio economic criteria if no member of his/her family has a job in the Government/public sector undertaking. The petitioner had uploaded a certificate in this regard along with his application form. There is no dispute with regard to the factum of petitioner not having any family member in government/public sector undertaking. The petitioner had uploaded a certificate in this regard along with the application form. This certificate is stated to have been valid for one year and therefore, when the petitioner had appeared for the scrutiny of documents on 15.03.2021, she had submitted a fresh certificate. The previous certificate was valid at the time of the submission of the application form. The validity had expired after one year and in the period of interregnum after the last date of the submission of application form but before the scrutiny of documents. She had submitted the requisite certificates in this regard which was valid at the time when she appeared for the scrutiny of documents. In the event of the petitioner being awarded 5 marks under the socio economic criteria she would obtain 94 marks which is more than the marks obtained by the last selected candidate

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in the general category and the last selected candidate in the EWS category.

There is merit in the contention of respondent No.3 that the candidates who had been selected on their own merit should be considered in the general category and not in the EWS category. However, at this stage when the appointments have already been made and the selected candidates are working for over a year, I do not intend to disturb any successful candidate. There is no vacant post in the general category while there are two vacant posts in EWS category. The petitioner has admittedly secured more marks than the last selected candidate in the EWS category and therefore, she would be entitled for appointment in the EWS category. This would also be equitable as no candidate who has been selected would be required to be disturbed at this stage.

Consequently the petition is allowed. Respondent No.1 shall recommend the case of the petitioner to respondent No.2 for appointment under the EWS category. Respondent No.2 after receiving the recommendation would offer appointment to the petitioner subject to verification of her documents. The appointment of the petitioner would relate back to the date when the other candidates who have secured lower marks in the EWS category have been appointed. The petitioner would be entitled to notional benefits.

(ANUPINDER SINGH GREWAL)
JUDGE

05.08.2022
SwarnjitS

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

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