

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**LPA No.515 of 2020(O&M) in
CWP-4391-2018.**

Date of Decision: February 04, 2022

The Haryana Staff Selection Commission

....Appellant

VERSUS

Rajbir and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Palika Monga, D.A.G. Haryana
for the appellant.

Mr. Surinder Singh Duhan, Advocate
for respondent No.1.

G.S. SANDHAWALIA, J.(Oral)

CM-1348-LPA-2020

The application for condonation of delay in filing the appeal is allowed in view of the averments made therein, supported by affidavit of officer of the appellant-Commission. Delay of 176 days in filing the appeal is, hereby, condoned.

CM stands disposed of.

LPA-515-2020

The present Letters Patent Appeal by the Commission is against the judgment of the learned Single Judge in CWP No.4391 of 2018 decided on 19.08.2019, whereby the writ petition filed by the writ petitioners was allowed. Learned Single Judge directed the appellant-

Commission to consider the candidature of the writ petitioner in EBPGC category in view of the certificate dated 27.12.2013 (Annexure P-12) in his favour. It was, accordingly, held that because another certificate of the same category had been issued in the year 2017, which was different from one mentioned in the application form, the rejection of the candidature of the writ petitioner was not justified. The finding given on the veracity of the certificate dated 27.12.2013 (Annexure P-12) having not been disputed, the writ petition was allowed.

Counsel for the appellant-Commission has placed reliance upon Civil Appeal No.7677 of 2021 (*The State of Bihar & Ors. vs. Madhu Kant Ranjan & Anr.*) decided on 16.12.2021 in support of her contention that certificate of 2017 was post cut off date and therefore, could not have been taken into consideration. The certificate of 2013 was not produced by the writ petitioner, when the petitioner was called on 04.07.2017 to 06.07.2017 at the time of scrutiny.

Counsel for the writ petitioner-respondent No.1, on the other hand, justifying the impugned order dated 19.08.2019, submitted that a technical objection has been raised by the appellant-Commission to reject the case of the writ petitioner. It is submitted that in the application submitted, the reference of certificate of 2013 has clearly been given and only on account of another certificate having been issued in favour of petitioner at subsequent point of time, which was produced by him at the time of scrutiny, would not give right to the Commission to reject the case of the writ petitioner. It is submitted that the rules and procedure are

handmaids of justice as per the settled principles and the Commission has to make selection from the candidates who are duly qualified and have the requisite documents as per prescribed criteria and the action was unjustified on the part of the Commission. Reliance has also been placed upon the decision of LPA No.785 of 2020 (***Haryana Staff Selection Commission vs. Dusyant Sharma and others***), now placed on record as Annexure A-1, to submit that in similar circumstances, for the same selection, similar view has been taken by this Bench regarding the same advertisement dated 30.12.2016 for the same post of Water Pump Operator Grade-II.

A perusal of the paper book would go on to show that the petitioner had applied for the said post in the reserved category of EBP GC and as per the application form he had appended certificate dated 27.12.2013, which has been placed on record by the writ petitioner with his replication as Annexure P-12. Perusal of this certificate would go on to show that petitioner was an economically backward person of general castes, belonging to 'Brahmin' caste (EBP GC) and the certificate was issued by Tehsildar-cum-Executive Magistrate, Sampla. The cut off date concededly for submitting the application along with requisite certificates was 15.02.2017 and the certificate relied upon by the writ petitioner, which has been attached with the application and reference has been given, is admittedly prior to the said cut off date.

Merely because at the time of scrutiny, he had produced a fresh certificate in his anxiety, which has been issued by the same authority and which has now been placed on record by the Commission as Annexure

R-1/1 and was issued on 18.05.2017, the rejection had taken place. In ***Dusyant Sharma's case (supra)***, position was identical and this Court had relied upon the observations of a three Judges Bench of the Apex Court in case of ***Dolly Chhanda vs. Chairman, JEE, 2004 (4) SCT 546*** and come to the conclusion that the writ petitioner belonged to the said category and had the requisite certificate on the cut off date, which was issued on 16.07.2014 in the said case. He had mentioned about the said certificate in the application form, which is also the case of the writ petitioner-respondent No.1. The observations made in the said judgment read as under:-

“It is not disputed that the eligibility of the petitioner was very much there on the strength of certificate dated 16.07.2014, which was well before the cut off date. Reliance on that the documents had to be uploaded as a mandatory condition, is diluted by the judgment of the Apex Court in ***Dolly Chhanda vs. Chairman, JEE, 2004 (4) SCT 546***, wherein, a three-Judge Bench of the Apex Court held that the eligibility qualification on the last date fixed for the purpose has to be seen and the necessary certificates and documents produced or marks secured can be relaxed and it would not be proper to apply the rigid principle of cut off date as it pertains to the domain of procedure. In the said case, the candidate, as such, belonged to reserved MI Category and the certificate issued by the Zila Sainik Board was not satisfying the requirement of the reservation. She was higher in merit but on account of the said fact, she was not given chance at the time of counseling. She had got a fresh certificate which showed disability of the ex-serviceman but her candidature was

not considered on the ground that the second certificate was dated 16.07.2003 and it was post the date when she was called for counseling. Resultantly, it was held as under:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

It is not disputed that petitioner belongs to the said category and had the requisite certificate on the cut off date. On account of anxiety, a subsequent certificate dated 11.04.2017 showing his same category

as EBP GC was also shown to the authorities. The authorities on account of this certificate having been issued after the cut off date, had rejected his case.

Accordingly, there is no merit in the present appeal. The same is dismissed.

Keeping in view the fact that there is certain lapse on the part of candidate also, part of the order imposing costs of Rs.25,000/- upon the appellant-Commission, is set aside.

Pending applications also stand disposed of.”

The above appeal, as noticed, was dismissed and the part of the impugned order imposing costs of Rs.25,000/- upon the appellant-Commission was set aside.

In case of ***Madhu Kant Ranjan*** (*supra*), learned Single Judge had refused to issue any direction to the candidature in question on the ground that there was no pleading in the writ petition that the petitioner had annexed NCC 'B' certificate and given liberty to the petitioner to approach the authorities. The appeal was filed after 3 years before the Division Bench and the same was allowed, which was set aside by the Apex Court by noticing that only those documents, which were submitted along with the application form, were required to be submitted as per the advertisement and had to be considered. The said certificate was submitted after a period of 3 years of the cut off date and that too after the physical test. Therefore, the judgment of the Division Bench was held not to be sustainable.

In the present case as noticed above, a specific pleading in the replication that the certificate had been appended along with the application

and had already been supplied to the Commission, while applying for the said post. This fact is further verified from the application form itself, which was appended in the writ petition. It is settled principle that replication is part of the pleadings and therefore, counsel for the State is not in a position to deny this legal aspect and therefore, the judgment relied upon by the counsel for the appellant is not applicable to the facts and circumstances.

In such circumstances, once a certificate had been mentioned in the application and appended along with the application form and only at the time of scrutiny, a subsequent certificate had been relied upon, this Court is of the considered opinion that the Commission had taken a technical stand to reject the valid case of an economically backward person , who was hankering for public employment.

Accordingly, there is no merit in the present appeal and the same is dismissed.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURJ)
JUDGE

February 04, 2022
Sachin M.

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