

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

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LPA-779-2020 in CWP-5084-2018

Date of Decision: February 22, 2022

Secretary, Haryana Staff Selection Commission, Bays No.67-70, Sector 2,
Panchkula.

.....Appellant

Versus

Sombir and others

.....Respondents

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

Present: Ms. Shruti Jain Goyal, DAG, Haryana
for the appellant.

Mr. Rajat Mor, Advocate for respondent No.1.

VIKAS SURI, J.

The present Letters Patent Appeal has been filed against the judgment dated 13.01.2020 passed by the learned Single Judge in CWP No.5084 of 2018. While allowing the said writ petition, directions had been issued to the Haryana Staff Selection Commission (appellant herein) to recommend the case of the petitioner for appointment while further directing that he will be given appointment notionally from the date persons juniors to have been appointed along with all consequential benefits.

The issue raised in the present intra-court appeal lies in a very narrow compass. It is urged that on a bare perusal of the documents

available on record, the writ petitioner did not possess the requisite 3 years' experience of driving heavy transport vehicle as on 24.06.2017 i.e. the last date fixed for purpose of applying online; the closing date.

The relevant facts for addressing the issue at hand may be tersely noticed. The appellant-Commission vide Advertisement No.4/2017 dated 18.05.2017 had advertised, besides other posts, 2038 posts of Heavy Vehicle Driver under category No.1 (Annexure P-1), including 345 posts under SC Category. The essential qualification prescribed for the said post as per the advertisement, reads as under:

- i) Matric;
- ii) Should hold driving License of heavy transport vehicle with three years experience of driving heavy transport vehicle;
- iii) Should have passed the driving tests conducted by the Haryana Staff Selection Commission;
- iv) Should not be a colour blind;
- v) Knowledge of Hindi/Sanskrit up to Matric Standard or higher education.

The last date to apply was specified as 24.06.2017, which is also called as the closing date, for submission of the online applications. It is pleaded by the writ petitioner that pursuant to the advertisement, online application (Annexure P-3) was submitted under the Scheduled Caste (SC) category within the prescribed time and Roll No.1704037226 was issued. The written test was held on 06.08.2017, result of which was declared on 10.11.2017. As per the result declared by the Commission (Annexure P-5) the writ petitioner was declared pass in the said written test. Initially, the

date for scrutiny of documents-cum-driving proficiency test was scheduled to be conducted from 27.11.2017 onwards but the same was revised. By another notice, scrutiny of documents-cum-driving proficiency test was then scheduled to be conducted in 16 different districts in the State of Haryana from 04.12.2017 onwards. By a separate notice dated 01.12.2017, the Commission had also notified that eligible candidates only falling within twice the number of vacancies on merits shall be called for interview. The petitioner was to report for scrutiny of documents-cum-driving proficiency test on 12.12.2017 at 9:00 AM in the Workshop of Haryana Roadways, Gurugram Depot, Gurugram. It is stated by the writ petitioner that after his documents were found in order, he was allowed to participate in driving proficiency test, which he successfully cleared and qualified. Vide notice dated 12.02.2018 (Annexure P-8) the list of candidates called for interview was announced. Roll number of the petitioner did not find mention therein. A perusal of the aforesaid notice dated 12.02.2018 also reveals that the last candidate in the Scheduled Caste category called for interview had secured only 20 marks. As per the writ petitioner, by comparison of OMR sheet with the Answer Key issued by the Commission, the petitioner would have secured approximately 96 marks.

Aggrieved against the action of the Commission and not having been called for interview, though candidates securing lower marks had been called, which implied rejection of his candidature for the post in question, the petitioner represented to the Commission. Even the written request dated 25.02.2018 (Annexure P-11) to include the name of the petitioner in

the list of candidates called for interview, yielded no positive result.

Immediately thereafter, petitioner approached the writ Court with a twofold prayer challenging the aforesaid action of the Commission and seeking mandamus to the Commission to call the petitioner for interview. As an interim measure, the writ Court vide order dated 01.03.2018, directed the appellant herein and other official respondents to interview the petitioner provisionally and it was further ordered that the result be not pronounced till further orders. The said result of the petitioner was produced in a sealed cover before the writ Court on 10.04.2019. As per the result, the petitioner had secured 94 marks in written examination and 11 marks in viva voce under SC category, which was higher than the last candidate who had secured 79 marks.

After the result in a sealed cover was opened in the Court, time was sought to file a response with regard to the eligibility of the petitioner. Accordingly, on 15.04.2019 a short reply was filed by the Commission, wherein it was stated that the petitioner was held ineligible as he was not having three years' experience of driving heavy transport vehicle, which was the prerequisite qualification for filling up the form. Along with the said short reply dated 15.04.2019 a copy of the driving licence of the petitioner [valid upto 14.08.2020 (TR) and 11.08.2022 (NT)] was appended as Annexure R-2/1, to submit that as the holder of the said licence was authorised to drive transport vehicle from 15.08.2014 and the last date for filling up the form was 24.06.2017 and as such, the petitioner possessed licence for less than 3 years to drive transport vehicle. Hence, on that basis,

petitioner did not possess the essential qualification of three years' experience of driving heavy transport vehicle.

Perusal of the record goes on to show that the Commission along with the affidavit dated 07.01.2020 had also placed on record copy of the scrutiny format, as Annexure R-2/1. The said Annexure collectively included the respective copy of the scrutiny format, registration slip, renewed driving licence (valid upto 14.08.2017) filed at the time of submitting the application, driving licence [depicting validity 14.08.2020 (TR)], experience certificate dated 18.06.2017 issued by the Bahadurgarh Public Carrier Union, Aadhaar Card, detailed marks sheet of matriculation examination (held in March, 1996), Haryana Resident Certificate dated 29.05.2017 and Scheduled Caste Certificate dated 29.05.2017.

The documents placed on record before the learned Single Judge, as appended with the LPA paper-book before this Court, are not in dispute.

Vide the judgment under challenge the learned Single Judge held, after thoroughly examining the records of the case, that the candidature of the petitioner cannot be rejected on the ground that he was not having experience of three years. Further, keeping in view the marks obtained by the petitioner i.e. 105 (94 marks in written examination and 11 marks in viva voce), which is higher than those of the last candidate who secured 79 marks, the petitioner was found fully eligible for the post of Heavy Vehicle

Driver. Accordingly, the writ petition was allowed and a direction was

issued to the Commission to recommend the case of the petitioner for appointment within 15 days from the date of receipt of the certified copy of the order and thereafter respondent No.3-General Manager Haryana Roadways, Gurugram was to issue appointment letter within the next 15 days and the petitioner was to be given appointment notionally from the date persons juniors to him have been appointed along with all consequential benefits.

We have heard learned counsels for the parties at length and with their able assistance perused the record of the case.

It has been strenuously argued by learned counsel for the appellant-Commission that the driving licence produced by the writ petitioner at the time of scrutiny of documents, records authorisation to drive the different category of vehicles, wherein under category PSVBUS and Transport the date of issue is depicted as 15.08.2014 while that of Light Motor Vehicle (LMV) is depicted as 12.08.2002. The validity of the said licence for non-transport is 11.08.2022 and for transport it is 14.08.2020. On the aforesaid basis, it has been argued that the petitioner does not meet the criteria of three years' experience from 15.08.2014 upto 24.06.2017 i.e. the last date for applying for the post of Heavy Vehicle Driver under the Advertisement (Annexure P-1). Thus, it has also been argued that on the relevant date i.e. the closing date, the petitioner did not have the prescribed experience as per the licence that was produced at the time of scrutiny of documents-cum-driving proficiency test. It has also been emphasized that the essential qualification is to be seen as on 24.06.2017.

Per contra, the finding returned by the learned Single Judge has been strongly defended. It is submitted that the driving licence relied upon by the appellant in the short reply dated 15.04.2019, was not even in existence as on 24.06.2017 i.e. the closing date. The said licence came to be issued only on renewal of the licence uploaded with the application form, after its expiry on 14.08.2017, and that was submitted to the examining authorities on 12.12.2017 only to show that the petitioner still holds a driving licence of Heavy Transport Vehicle.

It has been pointed out that the essential qualifications prescribed under advertisement dated 18.05.2017 (Annexure P-1), referring to clause (ii), requires the candidate to hold driving licence of heavy transport vehicle with three years' experience of driving the said category vehicle. It is also pointed out from the application form (Annexure P-3) that a copy of the driving licence having validity upto 14.08.2017 issued on renewal vide endorsement No.RDL/14920/06-07 dated 25.08.2014, was submitted and for work experience the certificate dated 18.06.2017 issued by the Bahadurgarh Public Carrier Union, Bahadurgarh, had been relied upon. The said work experience certificate was for the period of 14 years and 1 month, from 10.05.2003 upto 18.06.2017 i.e. upto the date of the said certificate. Reliance has also been placed on the certification given on verification from the official record issued by the Licensing Authority-Cum-Secretary RTA Jhajjar at Bahadurgarh [Annexure P-2 (Colly.)] to demonstrate from the record available before the Court that the petitioner held a valid driving licence for Heavy Transport Vehicle, since 12.08.2002.

Reference has also been made to the driving licence issued on 12.08.2002 (valid upto 12.08.2005), to point out the licence number being N/120/J/2002, has also been duly recorded on the driving licence issued on renewal that was valid upto 14.08.2011 and also on its subsequent renewal valid upto 14.08.2014, as well as the one submitted alongwith application form that was valid upto 14.08.2017 [Annexure P-2 (Colly.)].

It is further submitted that the driving licence issued in August 2017, on renewal of the one submitted along with the online application form was having the chip based driving licence card and the licence number had been depicted in the standard centralized format prescribed by the Ministry of Road Transport and Highways (MoRTH) to read as HR63 2002 0000120. It is sought to be explained that under the centralized system, the first two alpha characters denote the State i.e. HR for Haryana, the next two numerical denote the RTO/RTA in that State i.e. 63 for RTO Jhajjar (TR) at Bahadurgarh, the next four numerical denote the 4-digit year of first issuance of the Driving License for the class of motor vehicle(s) i.e. 2002 and the licence number is denoted as 7-digit number i.e. 120 would be written as 0000120. A perusal of the driving licence bearing DL Number HR6320020000120, would also go to show that it has been issued on renewal of the earlier renewed licence with the same licence number as was given in the old format. However, the driving licence having validity upto 14.08.2017 was to be taken into reckoning being the only licence then in existence as on the closing date i.e. 24.06.2017. Thus, it is argued that the appellant could neither ignore the driving licence nor the work experience

certificate uploaded with the online application form. Moreover, the original of the said licence could not possibly be produced in original for scrutiny on 12.12.2017, as the same had to be submitted (in original) to the issuing authority at the time of its renewal, as mandated by law.

There is much substance in the submissions made on behalf of the writ petitioner. As per the ratio of the judgment of the Hon'ble Apex Court in *Dolly Chhanda v. Chairman, JEE and others, (2005) 9 SCC 779*, it has been held that the general rule is that eligibility qualification must be possessed on the last date fixed for purpose of applying. Possession of requisite qualification(s) by the date fixed has to be established by producing necessary certificates etc. It is also the categorical stand of the learned State counsel that the essential qualification is to be seen as on the closing date. As such, the driving licence and work experience certificate that was in existence, as on the last date for making the application online i.e. 24.06.2017, only has to be taken into consideration. The same have also been brought on record by the appellant-Commission, as Annexure R-2/1 (Colly.) with the Affidavit dated 07.01.2020 filed on its behalf, before the writ Court.

A perusal of driving licence uploaded along with the application form, which was valid upto 14.08.2017 (Annexure R-2/1 with the affidavit dated 07.01.2020), distinctly records that it was renewed on 25.08.2014 vide endorsement No. RDL/14920/06-07.

Section 14 of the Motor Vehicles Act, 1988 provides for the currency of licenses to drive motor vehicles. With regard to licence to drive

transport vehicle, the relevant provision as it is stood prior to its amendment brought about by the Indian Parliament Act No.32 of 2019 w.e.f 01.09.2019, would be relevant. The aforesaid un-amended relevant provision reads as under:

14. (1) xxx xxx xxx

(2) A driving licence issued or renewed under this Act shall,—

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) xxx xxx

(i) xxx xxx

(A) xxx xxx

(B) xxx xxx

(ii) xxx xxx

Provided that every driving licence shall; notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry.

Rule 18 of the Central Motor Vehicles Rules, 1989 provides for the manner in which an application for renewal of driving licence is to be made. The said provision reads as under:

18. Renewal of driving licence.—(1) An application for the renewal of a driving licence shall be made in Form 2 to the licensing authority having jurisdiction over the area in which the applicant ordinarily resides or carries on business and shall be accompanied by—

(a) appropriate fee as specified in rule 32,

- (b) applicant's recent passport size photograph,
- (c) the driving licence,
- (d) the medical certificate in Form 1A,
- (e) a certificate in Form 5A if renewal is for a licence to drive a heavy goods vehicle and a heavy passenger motor vehicle.

(2) Where the driving licence authorises the holder of such licence to drive a transport vehicle as well as any other vehicle, then the licensing authority shall, subject to the production of medical certificate, renew such licence for the appropriate period as specified in sub-section (2) of section 14.

(3) xxx xxx

Reference may also be made to Section 6 of the Motor Vehicles Act, 1988 to notice that a person can hold only one licence during its validity except for a learner's licence or a licence to drive motor vehicles belonging to the Central Government, which is issued under Section 18.

A perusal of aforesaid provisions as applicable at the relevant time establishes that the writ petitioner was required under law to append the driving licence (copy of which was uploaded with the online application) with Form 2 while applying for its renewal, in terms of Rule 18(1)(c). As such, the said driving licence could not be produced in original for scrutiny on 12.12.2017, as the same had already been since renewed after its validity ended on 14.08.2017. However, as on the closing date i.e. 24.06.2017, the driving licence held during the years 2014–2017 was the one that was to be taken into reckoning.

Thus, the writ petitioner on the relevant date i.e. 24.06.2017 as well on the date of scrutiny of documents-cum-driving proficiency test on

12.12.2017 and on the date of interview on 12.02.2018, possessed the eligibility condition mandated by clause (ii) of the essential qualifications i.e. the candidate was holding a driving licence of heavy transport vehicle and as per the work experience certificate had more than three years' experience of driving heavy transport vehicle. Learned counsel for the appellant is not in a position to deny the work experience certificate or the driving licence held by the petitioner, which has been renewed from time to time as per the provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder.

A perusal of the record also reveals that the writ petitioner had successfully established before the writ Court that he held a driving licence for heavy transport vehicle since 12.08.2002 and the same was validly renewed from time to time. Therefore, while referring to the driving licence held at the time of scrutiny of documents i.e. on 12.12.2017, which incorrectly recorded the date of last renewal as the date of issue against authorisation to drive Transport Vehicle and PSV Bus, being contrary to the record can not be legitimately used to disentitle the petitioner by erroneously holding him ineligible, on the ground that he was not possessing the essential qualification regarding 3 years' experience of driving heavy transport vehicle. If the eligibility of the writ petitioner was to be examined by the appellant as on the closing date i.e. 24.06.2017, on the basis of the driving licence and work experience certificate uploaded along with application form, then there would have been no difficulty in accepting the eligibility of the petitioner as such.

It is also not the case of the appellant-Commission that the driving licence appended with the online application form having validity till 14.08.2017, was not issued upon renewal under Section 15 but had been issued for the first time under Section 9 of the Motor Vehicles Act, 1988.

In view of the above discussion, no legal infirmity can be found in the judgment dated 13.01.2020 passed by the learned Single Judge and the directions given therein.

Accordingly, the present intra-court appeal being bereft of any merit fails and is thus, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

February 22, 2022
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Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No