

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

(1) **LPA-658-2017**
Haryana Public Service CommissionAppellant
VERSUS
Rajwati & othersRespondents

(2) **LPA-649-2017**
Poonam KumariAppellant
VERSUS
Haryana Public Service Commission & othersRespondents

**Reserved on : 26.04.2022
Pronounced on: 25.05.2022**

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

Present:- Dr.Neha Awasthi, Advocate, for the appellant in LPA-568-2017
and for respondent No.1 in LPA-649-2017.

Mr.Satya Vir Singh Yadav, Advocate, for the appellant in
LPA-649-2017 and for respondent No.3 in LPA-658-2017.

Mr.D.S.Rawat, Advocate, for respondent No.1
in LPA-658-2017 and for respondent No.4 in LPA-649-2017.

Mr.Hitesh Pandit, Addl.A.G., Haryana.

G.S. SANDHAWALIA, J.

The present appeals are directed against the order of the learned Single Judge whereby CWP-13891-2012, filed by the respondent-Rajwati was allowed on 07.03.2017. Resultantly, the appointment of one of the appellant's, Poonam Kumari who was arrayed as respondent No.3 was set aside for the post of Hindi Lecturer (School Cadre) on the ground that her DESM certificate had been issued on 21.02.2012 which was beyond the cut off date i.e. 31.05.2010. Resultantly, on account of

quashing of the selection of the said respondent, directions were issued to re-consider the selection and appointment of the writ petitioner to the said post within a period of 3 months. A sum of Rs.50,000/- was directed to be paid by the appellant-Commission on account of the fact that the representations of the 3rd and 4th respondents beyond the revised screening test result i.e. 21.12.2011 were entertained and their candidature for selection beyond the last date was considered in their favour which led to the denial of the petitioner's selection.

2. The reasoning which weighed with the learned Single Judge was that the Selection Committee had not included the private-respondents in the select list which had been notified on 31.12.2010 (Annexure P-3) pursuant to the test conducted on 26.12.2010 and their roll numbers were not reflected. When the revised select list had been issued on 21.12.2011, the earlier result had not been modified or revised in so far as the DESM category and at the time of issuance of the revised select list, the private-respondents had never been considered. Thus their result had been manipulated and that no reasons had been given as to why respondent Nos.3 & 4 were not called for interview between 23.01.2012 to 28.01.2012.

3. While issuing notice of motion on 25.08.2017, operation of the impugned order passed by learned Single Judge had been stayed.

4. Counsels for the Commission and for appellant-Poonam Kumari have submitted that the applicant might not have the certificate issued by the competent authority but she had attached the proof of being dependent of an Ex-serviceman and the same had been mentioned in the

forms and the result also shows that. Similarly, it is contended that her result had been wrongly shown in the General Category and therefore, she had failed. A representation was made on 12.01.2011 (Annexure R-3/1) which was considered and thus, she was declared successful which would be clear from the communication dated 27.01.2012 (Annexure R-3/3) whereby the said benefit had been granted. Reliance was placed upon the certificate dated 21.02.2012 (Annexure A-6) to submit that it had been issued by the Zila Sainik Board, Palwal and the certificate issued of the writ petitioner was also after the cut-off date i.e. 17.03.2011 (Annexure A-7) which was issued by the Zila Sainik Board, Faridabad. It is thus submitted that the petitioner was admittedly more meritorious having secured 64 marks and that the OMR sheets filled up also did not have the requisite columns of DESM which had led to the dispute of the petitioner not being considered under the said category which had also been admitted by the Commission in para No.6 of the written statement. In such circumstances, it is submitted that the learned Single Judge was not correct in coming to the conclusion that the Commission had in any manner with an intention to favour the appellant, accommodated her and that it was not that the writ petitioner was more meritorious and therefore, reconsideration of the issue by the learned Single Judge was not justified, in the facts and circumstances.

5. Counsel for the Commission has also adopted the same lines of arguments and referred to the record which had been produced at an earlier point of time which had been directed to be retained in sealed cover on 04.07.2017.

6. Mr.D.S.Rawat has supported that the order of the learned Single Judge and tried to raise another issue that the appellant-Poonam Kumari's educational qualifications were not from a recognized institute and therefore, she was not liable to be retained on the post and the writ petition had rightly been allowed in accordance with law.

7. The factual matrix of the case is that advertisement No.3 dated 17.06.2009 (Annexure P-1) was issued wherein the cut-off date was prescribed as 17.07.2009 in which 1317 temporary posts of Lecturers (School Cadre) HES-II (Group-B) were advertised. The 240 posts in question of Hindi Lecturers were notified out of which there were 149 were under the General Category and within which, 100 fell to male candidates and 49 were to be of female candidates. ESM category had total of 12 posts notified out of which there were 8 from male candidates and 4 for female candidates (for which we are concerned for the purpose of the appeal). A corrigendum was issued on 30.04.2010 whereby the last date was extended upto 31.05.2010. Appellant-Poonam Kumari applied vide application dated 20.05.2010 (Annexure A-5) wherein she filled up the column of DESM apart from filling up of the category of General candidates also. She also filled up the form whereby she claimed that she was a dependent of Ex-serviceman being the daughter but did not furnish the requisite certificate from the concerned Zila Sainik Board. It is not disputed that her father is an Ex-Subedar which would be clear from the certificate given of the Senior Record Officer for OIC Records dated 10.01.2010 (Annexure A-3) which was prior to the cut-off date. On the basis of the screening test held on 26.12.2010 which was declared on

31.12.2010 (Annexure P-3), the writ petitioner who had secured 43 marks was short-listed for interview whereas roll number of the appellant-5331 was not there in the result and resultantly she was not called for the interview.

8. A litigation had ensued regarding male and female candidates' merit list whereby the General Category female candidates prayed that if they secured more marks than the last male candidate, then they should be interviewed and directions were accordingly issued in CWP-767-2011 titled *Preeti Vs. State of Haryana*. On 21.12.2011, as per the revised result, there was no change in the category of ESM and resultantly, interviews were held. The appellant, Poonam Kumari however had filed application on 12.01.2011 that though she had applied under the DESM category but her result had been shown in the General Category and resultantly, attached her certificate of dependency and proof of ex-serviceman for consideration in the said category. Interviews were held between 23.01.2012 to 28.01.2012 and on the final declaration of the result on 11.04.2012 (Annexure P-4), the appellant Poonam Kumari's name figured along with other private-respondent namely Sunita.

9. It was in such circumstances, the writ petition came to be filed on the ground that the said candidate had been selected who even failed in the screening test and the stand of the Commission before the learned Single Judge was that none of the candidates of the Ex-serviceman (Female) came within the zone of consideration and therefore, the Dependents of Ex-serviceman (Female) to the extent of 3

times were to be called which was 12 in number since 4 posts had been advertised. 6 candidates had given representations including the appellant herein that they were dependents being daughters of the ex-serviceman and their result had been declared in the General Category (Female) and their names had not been mentioned in the 3 times zone in the reserved category and they had secured more than the cut-off marks for the Ex-serviceman (Female) category. The representations were duly considered by the Commission and it was noticed that they were clearly dependents of the Ex-serviceman but had also filled the OMR sheets as General Category while appearing for the screening test as there was no column of Ex-serviceman in the said OMR sheet. The Commission then found that candidates who have secured above 43 marks fixed as the cut-off and who claimed to be DESM in the application forms, had not written Dependents of the Ex-serviceman (Female) in the OMR sheet on account of no column and therefore it decided to call them for the interview. Accordingly, 5 candidates were called and duly considered and their roll numbers came within the zone of consideration and thus they were considered in the category earmarked for DESM. The writ petitioner had also been considered but her name did not come within the zone of consideration. The allegations of fraud were categorically denied in view of the stand taken and that there was no illegality or infirmity in the selection of the said respondents as the petitioner had also been duly considered.

10. The stand taken by the appellant was that she had secured 64 marks while the writ petitioner had only got 43 marks. The factum of

representations filed and that vide letter dated 27.01.2012 whereby the Commission had entertained their representations was highlighted. It was accordingly averred that she was interviewed on 06-07.03.2012 and ultimately the result was declared and she had joined on 25.08.2012. The press note dated 15.04.2012 (Annexure R-3/4) had also been issued by the Commission regarding this aspect clarifying that more marks had been secured by her and the representations had been found to be genuine and the defect in the OMR sheet had also been referred to.

11. It is in view of the above circumstances we are of the considered opinion that there was a valid explanation given by the Commission. We have also perused the OMR sheets of all the 3 candidates including the writ petitioner, the appellant and Sunita Kumari. In the category mentioned, Rajwati and Sunita had shown themselves as DESM (G) and also Rajwati blackened the ESM column whereas Sunita Kumari did not blacken the said column and the present appellant also did not blacken that column and further mentioned her category as General only. The certificates of both the writ petitioner and the appellant which have been placed on record as annexures would also go on to show that the certificate of the writ petitioner is also post the cut-off date of 31.05.2010 and is dated 17.03.2011, issued by the Zila Sainik Board, Faridabad. Similarly, the certificate of the appellant is also dated 21.02.2012 issued by the Zila Sainik Board, Palwal. As noticed earlier, she had also appended the proof of her father having retired as ex-serviceman as per the certificate dated 10.01.2010 which is prior to the cut-off date. Therefore, the writ petitioner cannot claim to be placed

at a higher pedestal on account of having the requisite certificate post the cut-off date also. The certificate issued on 10.01.2010 is also part of the record of the Commission and it is not disputed that in her application form also, she had also filled up that she belongs to the Ex-serviceman quota. The record would also go on to show that the matter was duly considered as per the files that 5 candidates namely Sunita-8392, Bina Devi-2262, Sunita Kumari-8403, Poonam Kumari-5331 and Maya Devi-4132 were duly considered by the competent authorities and the fact that they had filled the General Category column in their answer-sheets as no column of DESM category was available. The necessary communications dated 27.01.2012 were then issued to them on their representations and the fact that they were declared successful as DESM against the ESM category. Similar consideration had also taken place of the 2 candidates under the Freedom Fighter Category that they cannot be considered under the DSM category, namely of Sharmila and Saroj Kumari. Representations of another category of another candidate, Pradeep wherein he had claimed appointment against the DESM was also rejected on the ground that there were enough posts of ESM category available.

12. Thus, it is apparent that the Commission had acted upon on the basis of the record and also notified its decision by issuing a press note clarifying this position. There is no malice apparently on the record on the basis of which the Commission has acted to favour them in any manner. Admittedly, Poonam Kumari's merit is more than the writ petitioner and therefore, the learned Single Judge also did not appreciate

this fact in its true perspective. Counsel for the appellant is well justified in placing reliance upon **Dolly Chhanda Vs. Chairman, JEE & others, (2005) 9 SCC 779**, wherein also the wrong certificate had been issued by the Zila Sainik Board due to which her candidature had been rejected. It was noticed that the candidate came from a very humble background and her father was in the Armed Forces and that there can be a relaxation in the matter of submission of proof and it was not proper to apply any rigid principle as it pertains in the domain of procedure. The said principle can be applied herein also since both the writ petitioner and the appellant herein belong to the same category and their eligibility certificates were not in the format as required and issued lateron but sufficient proof was there that they were dependents of Ex-serviceman. Reliance can also be placed upon the judgment of the Apex Court in **Food Corporation of India Vs. Rimjhim, (2019) 3 SCT 5** that the non-production of the educational certificate in the application form was held not to be fatal while placing reliance upon an earlier judgment passed in **Charles K.Skaria & others Vs. Dr.C.Mathew & others, (1980) 2 SCC 752**.

13. Keeping in view the above facts, we are of the opinion that the learned Single Judge was not correct in coming to the conclusion that the appointment had been secured by fraud or that the Commission was at fault in any manner. Rather the Commission was redressing the grievance not only of the appellant but also of all the other similarly situated persons and if it was doing so with open mind, its conduct cannot be faulted. Therefore, the costs of Rs.50,000/- imposed upon the Commission is not justified in the facts and circumstances.

14. It is also to be noticed that the appellant herein stood appointed and is working since 25.08.2012 and therefore, setting aside her appointment after a period of a decade would not serve the ends of justice in any manner. It is a admitted fact that the requisite certificate in the format was issued after the cut-off date for both the writ petitioner and the appellant. The argument raised by counsel for the writ petitioner regarding her certificate being not issued from a recognized institute is an argument in desperation as it was not the argument before the learned Single Judge and therefore, we are not inclined to entertain the same.

15. Resultantly, both the appeals are allowed and the judgment of the learned Single Judge dated 07.03.2017 is set aside and the writ petition filed by the writ petitioner is dismissed.

16. The record of the Commission be handed over to counsel for the Commission, against proper receipt.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

MAY 25th, 2022
sailesh

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