

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

224

LPA-1305-2018 (O&M)
Decided on : 07.12.2022

Suresh Kumar

....Appellant

Versus

State of Haryana and another

.... Respondents

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

Present: Mr. Brijender Kaushik, Advocate for the appellant.

Mr. Sharan Sethi, Addl. AG, Haryana

G.S. Sandhawalia, J.(Oral)

Present Letters Patent Appeal is directed against the order of the learned Single Judge dated 17.04.2018 passed in CWP No.9041 of 2018 'Suresh Kumar Vs. State of Haryana and others, wherein the writ petition filed by the appellant/writ petitioner was dismissed. In the writ petition challenge had been raised to the order dated 27.03.2018 (Annexure P-13), whereby his representation for consideration of his candidature for selection to the post of Heavy Vehicle Driver had been declined.

It is pertinent to notice that the learned Single Judge did not call for any response and had dismissed the writ petition at the initial stage without any reply having been filed. The reasoning which weighed with the learned Single Judge was that the last date for submission of online application form was 24.06.2017 and the experience certificate which had been relied upon was dated 14.09.2015 (Annexure P-6) which showed the experience of 1 year and 4 months and, therefore, he failed to possess the

requisite three years experience and he did not produce the experience certificate dated 03.06.2017 (Annexure P-4). It was noticed that he had made a representation to the respondent-Commission on 05.03.2018 and had furnished the certificate dated 03.06.2017. Since he was required to furnish the experience certificate alongwith his online application form and produce the original at the time of scrutiny in terms of the advertisement, he himself had to be blamed. At the time of interview between 25.02.2018 to 01.03.2018, the process of selection has been held and the appointments were made. Therefore, in such circumstances, the learned Single Judge did not choose to interfere.

We are of the considered opinion that it had escaped the notice of the learned Single Judge that the experience certificate dated 03.06.2017 (Annexure P-4) had been uploaded at the time of submission of application form against Advertisement No.4 of 2017 for the post of Heavy Vehicle Driver. The same as noticed is appended as Annexure P-4. It was before the cut-off-date also which was of 24.06.2017 and is also from the same employer Bharti Middle School, Noonni-Awal, P.O. Barkoda, Tehsil, Narnaul, District Mohindergarh (Haryana). The earlier certificate was dated 14.09.2015 (Annexure P-6) is from the said employer, wherein it has been mentioned that he had worked as a Driver during 15.05.2014 till that date @ Rs.6,500/- per month. The subsequent certificate increased the period of experience till 03.06.2017 and, thus, he had the requisite experience of 3 years and 1 month, which he had filled in the online application form. This aspect had missed the notice of the learned Single Judge.

It is not disputed that vide order dated 22.04.2019, the

applicant was to be interviewed provisionally, however, his result was not

to be declared without leave of this Court. The State has also produced the result as such which would go on to show that he being a SC category candidate obtained 124 marks in the written examination and 15 marks in the interview with the grand total of 139. The list of final result which was declared on 03.06.2019 would go on to show that the cut-off for SC category is 88 marks. In such circumstances, we are of the considered opinion that the judgment of the Apex Court in **Dolly Chhanda Vs. Chairman, JEE, 2004 (4) SCT 546** would come into play, wherein it has been held that the production of document are rules of procedure and, therefore, merely on account of the fact that at the time of scrutiny he could not produce the original certificate would not be a ground to deny him the appointment. Relevant para of the said judgment reads 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 also to be noticed that immediately after the interview for which he had been called in February, 2018, he had approached this Court in CWP No.6349 of 2018, wherein an order was passed on 14.03.2018 that his case would be considered on a concession given by the State Counsel. Vide order dated 27.03.2018 (Annexure P-13), the Secretary, Haryana Staff Selection Commission keeping in mind the non-production of the certificate at the time of seniority relied upon the certificate dated 14.09.2015 and rejected the case of the appellant. Accordingly, in such circumstances the rejection is not justified and learned Single Judge should have in the facts and circumstances given the benefit of appointment. It is also to be noticed that the appellant belongs to a SC category and having made the cut, it would be unfair as such to deny him the benefit of appointment.

Accordingly, the respondent-Commission is directed to proceed ahead and forward the name of the appellant for appointment to the post of Heavy Vehicle Driver against Advertisement No.4 of 2017. It is, however, made clear that he will not be entitled for any arrears of salary but would be granted notional benefits of seniority etc. as given to the similarly situated persons of the same selection.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

07.12.2022
Naveen

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No