

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

**CWP-3810-2022
DECIDED ON: 12.12.2023**

DINESHKUMAR

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rohit Mittal, Advocate
for the petitioner.

Ms. Dimple Jain, DAG Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of mandamus directing the respondents to consider the petitioner for appointment for the post 'Welfare Organizer' in view of the fact that he had secured higher marks in the written examination than the last selected candidate in the same category.

2. Learned counsel for the petitioner submits that the Respondent No.2-Haryana Staff Selection Commission advertised a total of 4322 posts including 77 posts of 'Welfare Organizer' to which the petitioner applied, however, on 01.02.2022 when the final result was declared, the roll number/ name of the petitioner was not reflected in the list despite the fact that the petitioner had secured 60 marks in the written examinations whereas the cut-off marks for the post of Welfare Organizer in ESM general category was shown as 48 marks.

3. On the other hand, the learned State counsel submits that the result of the written examination was declared on 16.08.2021 and the shortlisted candidates, including the petitioner, were called on 13.09.2021 for scrutiny of documents.

Prior to the scrutiny of documents, the respondent had also issued a notice dated

07.09.2021, calling upon the shortlisted candidates to upload all the original documents including photo, signatures, filled-up application form etc. on the online portal. Thereafter, the petitioner appeared for the scrutiny of documents on 13.09.2021 but the petitioner was found 'Not eligible' in the ESM-General Category as he had attached only ID Card and pay-slips with the application form and not NOC or Discharge book for the post in question.

4. Heard learned counsel for the parties and gone through the record.

5. It has come on record that the petitioner had obtained 60 marks in the written examination and as such, concededly the petitioner has obtained 12 marks more than the cut-off marks. Further, as per the document- Mark A, placed at page no. 63 of the paper book, the reason for rejection given under the 'Remarks' column is- "*Not Eligible Due to NOC NOT Available*". It has also been contended by the respondents that the petitioner could not produce the NOC at the time of scrutiny of documents.

6. Attention of this Court was brought to the Instructions which have been reproduced by respondent wherein it has been stated that – "*ESM candidate should also produce attested photo copy of Identity Card issued by concerned Zila Sainik Board & Discharge Board wherever required.*" The instructions nowhere mentions that NOC was required to be produced by the petitioner. Further as per scrutiny attendance sheet (Annexure R-2/1), the petitioner was found 'eligible' at the time of scrutiny of documents. As such, the argument of the respondent is worthy of no credence, especially when the petitioner was marked as 'eligible' at the relevant time.

7. Even otherwise, under similar circumstances, this Court has passed the following order in case titled **Harinder Kumar Vs. State of Haryana &Anr., CWP-3879-2022**, decided on 04.07.2023, the relevant part of which is reproduced

below:

“6. In the case in hand, though the petitioner was due for discharge on 31.05.2020 but he was issued discharge order (Annexure-P-2) by the army authorities on 27.09.2019 that was well in time and the petitioner was transferred to Pension Establishment of the Army for completing the documentation and formalities for pension and other benefits admissible to the Army personnel after their discharge from the Army/Military service. The plea taken by the respondent-department that petitioner was discharged after the cut-off date on 31.05.2020 is contrary to the record, as according to the afore-said notification the petitioner has already been issued a discharge order on 27.09.2019 pursuant to which he got retired on 31.05.2020. As far as the contention with regard to the fact that the petitioner has not attached the NOC at the time of scrutiny/verification of form is concerned, as per the said notification the NOC is to be issued to the persons serving in the armed forces but in the present case the petitioner has already been issued with discharge order dated 27.09.2019 by the Armed authorities thus there was no requirement of issuance of NOC from the said authorities in favour of the petitioner. Moreover, admittedly during the verification of the documents no objection was ever raised by the respondents regarding his candidature.

7. Further this Court also cannot loose sight of the fact on record as on perusal of the Advertisement, it is abundantly clear that no such clause regarding the furnishing of NOC from the parent department as mandatory is found to be mentioned in the said advertisement.”

8. In view of the above discussion, the present writ petition is allowed and the respondent No. 2 is directed to appoint the petitioner on the post of Welfare Organizer, within one week from the date of the receipt of certified copy of this order, along with seniority and all consequential benefits.

9. Pending applications if any also stands disposed of.

12.12.2023

V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No