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2023:PHHC:121595

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-3879-2022

DECIDED ON: 4th JULY, 2023

HARINDER KUMAR

PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Surender Pal, Advocate
for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* for quashing the final result dated 01.02.2022 (Annexure P-6) for the post of Welfare Organizer with further prayer for issuance of a writ in the nature of *Mandamus* to direct the respondents to consider the candidature of the petitioner for the post of Welfare Organizer under ESM category.

2. Mr. Surender Pal, learned Advocate appearing on behalf of the petitioner contends that the petitioner has applied for the post of Welfare Organiser under ESM category vide Advertisement No. 15/2019, dated 07.09.2019. He further contends that the petitioner has secured 49 marks

in the written examination whereas, the last selected candidate under the said category has secured 48 marks. It is asserted that being a meritorious candidate the name of the petitioner has not been considered for the said post.

3. Learned State counsel submits that vide Advertisement No. 15/2019, dated 07.09.2019, the respondent-Commission has invited online applications for various posts under various categories including 77 posts of Welfare Organizer under Category No. 16. It is alleged that the petitioner has applied for the post of Welfare Organizer under ESM-General and was issued Roll No. 17160954 by the Respondent Commission. Thereafter, the Respondent Commission has conducted the written examination on 17.07.2021 for the post in question and the petitioner appeared for the same. The result of written examination was declared on dated 16.08.2021 and Commission called the shortlisted candidates including the petitioner for scrutiny of documents on 13.09.2021. Thereafter, the Respondent-Commission issued notice on 07.09.2021 prior to scrutiny of documents to all the candidates who were shortlisted for scrutiny of documents to fill up scrutiny form online. It is pertinent to mention that in the said notice dated 07.09.2021 it was clearly stated that without submission of online documents, no candidates will be allowed to participate in the process of document verification. It is asserted that at the time of scrutiny of documents the petitioner was found 'NOT ELIGIBLE' under ESM-GC, as he has not attached/submitted requisite certificate ie, NOC with his application form and also not uploaded the same for online scrutiny of documents. The petitioner has only attached the

discharge book which clearly shows that the petitioner was discharged on 31.05.2020 which is after the cutoff date i.e. 03.02.2020 meaning thereby, he could not have applied without 'NOC' from competent authority.

4. Having heard learned counsel for the parties.

5. Before proceeding further, it would be relevant to reproduce the extract of the Notification No. 36034/5/85-Estt (SCT) dated 27.10.1986 issued by the Government of India, Ministry of Personnel, PG & Pensions (Department of Personnel & Training) wherein, the term of 'Ex-Servicemen' has been defined, which read thus:-

Explanation: *“The persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of 'ex-servicemen' may be permitted to apply for re-employment one year before the completion of the specific term of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union.”*

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 afore-said discussions, the respondent-department is directed to appoint the petitioner on the post of Welfare Organizer, after following the due procedure expeditiously and not later than two weeks in any case from the date of the receipt of certified copy of this order.

9. Accordingly, the petition is allowed.

(SANDEEP MOUDGIL)
JUDGE

4th JULY, 2023

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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |