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2023:PHHC:087399

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

CWP-7006-2020

DECIDED ON: 13.07.2023

SANDEEP

.....PETITIONER

VERSUS

HARYANA STAFF SELECTION COMMISSION AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.K Girdhwal, Advocate
for the petitioner.

Mr. Anant Kataria, DAG Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India seeking directions to the respondents to appoint the petitioner for the post of shift attendant and to rectify the mistake whereby petitioner is allotted 74 marks instead of 76 marks.

2. Learned counsel for the petitioner contends that the respondents invited online applications for the 2426 post of shift attendants against advertisement no. 03/2016 dated 20.02.2016 (Annexure P-1) and petitioner applied under the SC category and written examination was conducted and petitioner cleared the same and was called for interview.

3. He further submits that the cut off for the said exam under SC category was fixed at 89 and candidates securing 87 were shown in the waiting list. And

petitioner secured 87 marks as depicted by result sheet issued by Haryana Staff Selection Committee (Annexure P- 6) despite this the name of the petitioner has not been shown in the waiting list and candidates whose names were being shown in the waiting list are given the appointments.

4. In addition, he asserts that as per the revised answer key, petitioner has scored 76 marks in written examination and 13 marks in interview making it total 89 marks and the cut off under the SC category is 89 marks only. Meaning thereby, that the petitioner qualifies the same and is eligible for the post of the shift attendant but the respondents have inadvertently allotted 74 marks in written examination instead of 76.

5. Against this very grievance petitioner has also made a representation to the respondents on 10.01.2020 requesting them to consider the claim of the petitioner for the said post and till date no action has been taken by the respondents.

6. On the other hand, learned State counsel vehemently contends that the claim of the petitioner is not maintainable and has been rightly rejected. Further in support of his contention, he refers to para 7, 8 and 9 of his written statement which is reproduced as under :

“7. That it is pertinent to mention here that the petitioner has secured equal mark to the last selected candidate in SC waiting but even then also the petitioner would not fall in the selection zone as the petitioner is younger in age than the last selected candidate under SC category. The date of birth of last selected candidate who has secured and got selected in waiting list of SC Category 87 marks is 04.06.1990 whereas, the date of birth of petitioner is 11.04.1991. Thus, on this aspect the petitioner does not fall for selection zone waiting list for the post in question.

8. That further it was also mentioned in the resolution dated

25.09.2015 passed by the Haryana Staff Selection Commission and it was decided that where two or more candidates having equal marks to cut off, in such case, benefit will be given to candidate who is elder in age. The relevant part of resolution dated 25/09/2015 reproduced below.

*"The orders of Hon'ble Supreme Court in case of **Prem Singh Vs. Haryana State Electricity Board** reported as 1996 (4) SLR 661, wherein the appointments have been restricted to the extent of the advertised vacancies, should be followed meticulously. Thus, the selection of the last candidate in each category as per inter-se-merit, if in case there are more than one candidate having equal marks in written examination and interview/vivo-voce combined, will be determined with reference to the date of birth i.e. the older in age will get precedence over the younger one. In case two or more candidates have the same aggregate score and same date of birth, the inter-se-merit shall be decided by the higher achieved in the written Examination."*

The copy of resolution is annexed as Annexure R-1/3.

9. That another contention of the petitioner is that as per the revised answer key the petitioner has secured 76 marks in written examination. In this regard it is submitted that the written examination for the post in question was held on 29.05.2016. Thereafter, the answer key was published by the Commission on official website and called for objection regarding any question/answer. It was specifically mentioned in the above said notice that:-

"The commission has uploaded master set of Question booklet in which the highlighted yellow option is the correct answer for each question for both Morning and Evening session, on the website of the Haryana Staff Selection Commission i.e. www.hssc.gov.in of the above said written examination. Every candidate has to compare his/her question

booklet with above said master set of question booklet uploaded on website and if any candidate has any objection regarding any answer, he/she may submit his/her objection to the commission by email i.e.hssccecyobjection@gmail.com within 3 days i.e from 17.09.2016 to 19.09.2016 upto 5.00P.M. After that no objection will be entertained by the commission. The candidates are advised to clearly/specify the objection along with name of the Post, Advt. No., Category No., Date of Examination along with Morning, or Evening Session on which the objection is raised otherwise objection will not be considered. The objections shall be considered by the Commission and its decision in this regard shall be final and evaluation of the paper shall accordingly be done."

Further it is submitted that the petitioner has made the self assessment based on the initial answer key. However, the Respondent Commission has evaluated the OMR sheet on the basis of revised answer key and declared the final result on 08.03.2019, wherein, the petitioner has secured 74 marks in written examination based on revised answer key.

7. Heard learned counsel for the respective parties.
8. Perusal of the file reveals that the respondents have specifically mentioned that in case where two or more candidates having equal marks have made to the cut off, in that scenario the candidate being elder in age will be given preference. In present, case petitioner being younger to the last selected candidate has been rejected. More so as regards to the contention of the petitioner that the respondents have inadvertently allotted him 74, marks this also goes on the ground that the petitioner has made self assessment on the initial answer key and respondents have declared the result keeping in view revised answer key. Even if, there was any objection regarding the answer booklet same was to be filed within 3 days after the answer booklet was uploaded, to that also, petitioner admittedly filed

no objections. Therefore, the respondent commission has rightly not included the name of the petitioner in the waiting list.

9. In view of the above discussions made and supported with the judicial dictum in **Prem Singh** (supra), the petition stands dismissed in aforesaid terms .

13.07.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

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