

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9297 of 2019
Date of decision : 23.08.2023

Geeta Devi

....Petitioner

Versus

State of Haryana and Ors

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Rakesh Sobti, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present petition has been filed challenging order dated 11.03.2019 (Annexure P-7), vide which, selection and appointment given to the petitioner has been withdrawn on the ground that though the petitioner is a physically handicapped candidate and has been appointed under the said category but in the form, the petitioner had mentioned his category as Ex-serviceman.

Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

The petitioner applied in pursuance of Advertisement No.4 of 2018 published on 26.08.2018 by which, various posts of Group D were advertised. As per the advertisement, the candidate was required to have Matriculation Certificate from a recognized Board and should have studied Hindi/Sanskrit upto the matriculation level as one of the subjects.

The selection in pursuance to the advertisement was to be made on the basis of written test consisting of 90 marks and 10 marks were to be given to a candidate in case he/she fulfills the requirement of Socio Economic criteria.

While filling the form, the petitioner, who is physically handicapped uploaded her Physical Disability Certificate and applied under the BCA category but while filling the form, the word 'ESM' was also mentioned, however, there was no post reserved for the ESM (BCA). The petitioner was considered under BCA Physically Handicapped Category.

The petitioner appeared in the written examination and her result was also declared in the Physically Handicapped category qua post reserved for the Backward Class candidate and she cleared the written test. Thereafter, in the final result declared by the Commission, the petitioner was selected against one of the posts reserved for the Physically Handicapped person in the backward class category and the name of the petitioner was recommended by the Selecting Agency to the Administrative Department and vide order dated 30.01.2019 (P.6), the petitioner was appointed on the Group-D post in the office of the Engineer-in-Chief, Panchkula.

While the petitioner was working on the said post, the respondent passed the impugned order dated 11.03.2019 observing that though the petitioner had been considered in the Physically Handicapped Category but at the time of verification of the documents, the petitioner intimated that she was not ESM and had not applied under ESM category. Therefore, vide impugned order, her selection and candidature in the Physically Handicapped category under Backward Class was sought to be cancelled.

The said action of the respondent is under challenge in the present petition.

While issuing the notice of motion, the petitioner had been allowed to join on Group-D post.

The respondents in their reply have mentioned that though the petitioner is a Physically Handicapped candidate and is also a Backward Class candidate but as she had mentioned the word 'ESM', she was only required to be considered in the main category of 'ESM' and not of 'Backward Class' in which category, the petitioner had been considered and appointed and that is why, upon the verification of the application form, the said discrepancy came to the notice of the respondents, which is being corrected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is conceded position that the petitioner is a physically handicapped candidate and had applied under the Backward Class Category. Even if, the petitioner had wrongly mentioned word 'ESM' while filing up the application form, once no post for the said category was advertised, the petitioner was rightly considered under BCA (Physically Handicapped candidate) in which category, petitioner fulfilled all the required qualifications and had submitted the same along with the application form.

The petitioner is a meritorious candidate and has already been selected and appointed against one of the advertised post of BCA (Physically Handicapped Category) and no one has raised any grievance qua the said selection and appointment of the petitioner even after a period of more than four years.

The withdrawal of the benefit of selection and consequent appointment of the petitioner by the respondents, only on the ground that word 'ESM' was mentioned in the application, cannot be a valid ground especially

when the respondents themselves have considered the petitioner as a candidate under BCA (Physically handicapped category) and she was allowed to compete under the said category thereby leading to her selection and consequent appointment.

It is also a conceded position that though the word 'ESM' was mentioned in the application form inadvertently by the petitioner but no such document was attached to claim the benefit under the category of ESM. That is why, the respondents considered the petitioner under the main category of BCA (Physically Handicapped Category) for which, the petitioner had already attached all the documents pertaining to Physically handicapped Backward Class. Hence, in the facts and circumstances of the case, the claim of the petitioner was rightly considered under BCA (Physically Handicapped Category) and she was selected and appointed against one of the post advertised in the said category.

Under these circumstances, withdrawing the selection and consequent appointment on the ground that word 'ESM' was also mentioned in the application form, is not a valid ground and the impugned order cannot be sustained and the same deserves to be set aside.

In view of foregoing discussion, present petition is allowed and order dated 11.03.2019 (Annexure P-7) is set aside.

August 23, 2023
manoj

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : No