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

CWP-7684-2023 (O&M)
Date of decision: 12.07.2023

Naveen Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sanjeev Kodan, Advocate for the petitioner.

Mr. Ravi Pratap Singh, DAG, Haryana
for respondent Nos.1 to 3.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction especially in the nature of certiorari for quashing/revising the impugned final result dated 04.03.2019 (Annexure P-11). Further prayer has been made in the writ petition in the nature of mandamus seeking direction to respondent No.3 to grant 5 marks to the petitioner under the criterion of socio-economic.

2. On 04.07.2023, this Court had passed the following order:-

“Learned counsel for the petitioner has submitted that the issue in the present writ petition is with respect to grant of five additional marks to the petitioner under the socio-economic criteria being an orphan, as the additional said marks have not been granted to him on the ground that he has a living mother although his father had died. It is further submitted that a similar issue had arisen in a bunch of writ petitions i.e.,

CWP-11590-2019 titled as '**Sombir** Vs. **State of Haryana and another**' alongwith other connected matters and the Co-ordinate Bench of this Court had disposed of the said writ petitions vide a detailed order dated 16.05.2023. Learned counsel for the petitioner has referred to the paragraph Nos.14 to 19 of the said order dated 16.05.2023, which is reproduced as under: -

“14. In view of the very fair submission made by the respondents that there is variance in grant of marks in orphan category by different Scrutiny Committee, this Court is of the opinion that the merit list ought to be set aside and has no hesitation in doing so in respect of the candidates, who had applied under advertisement No.3/2018 dated 16.04.2018 for all the five categories and laid their claim for 5 additional marks under socio economic criteria being orphan. So instead of setting aside the entire selection process and directing that the examination be conducted afresh, especially when there is no allegation of any corrupt motive or malpractice, this Court is of the opinion that only the process of re-examining and scrutinizing the documents as submitted by the candidates claiming the benefit of additional 5 marks on account of being an orphan be conducted afresh. The mistake was committed at the stage of scrutiny of documents, so the exercise of revising the merit list be re-started from that stage. The respondent-Commission is hereby directed to revise the result of all such candidates by strictly adhering to the criteria as specified in the advertisement regarding allocation of 5 additional marks to candidates claiming under the orphan category. Since the term ‘orphan’ has not been defined in the advertisement and there are various interpretations given to the said word, as would be evident from definitions in Merriam Webster, Macmillan, Oxford and Cambridge dictionaries, it would be in fitness of things to direct the same interpretation of the word orphan to this selection, as was applied to group-D posts vide advertisement No.4/2018. Therefore, the respondent-Commission shall undertake the process afresh for scrutiny of all

the documents of all those candidates, who applied for either of the five posts under the advertisement in question, claiming 5 additional marks under the orphan category. All those candidates claiming 5 additional marks under the socio economic criteria being orphan would be associated and only those documents which were issued prior to the last date of submission of application forms i.e. 25.10.2018, will be taken into consideration to assess their eligibility.

15. In case, it is found that on re-casting of the merit list, certain selected candidates will have to make way for those who have a higher merit, at that juncture, the respondents-State may take a decision as to whether such candidates having lesser merit and have already been appointed and working as such for the past three years, ought to be relieved. In case, the writ petitioners figure in the revised merit list, their appointment shall relate back to the date when their batch mates were appointed with continuity in service to them for the purpose of seniority but without any back wages or other incidental benefits.

*16. Admittedly, the selected candidates have not contributed to the preparation of the erroneous merit list and in fact, no fault of fraud can be attributed to such selected candidates. It is the fault of the Commission that certain candidates were given marks, who were not entitled to the same and, therefore, they came to be appointed. The issue as to whether the candidates who had been appointed on the basis of erroneous result declared at the first instance without there being any allegation of fraud or misrepresentation on the part of the selected candidates, should be removed from service as they had secured marks less than the last selected candidate in terms of the revised list, had been gone into by the Supreme Court on a number of occasions. In *Rajesh Kumar and others versus State of Bihar and others*, 2013 (3) S.C.T. 449, the Supreme Court accepted the submission made on behalf of the selected candidates on the basis of alleged incorrect answer key that in case they do not fall within the select list*

prepared after re-evaluation of the answer sheets with the help of correct answer key, they should not be ousted. Relevant paragraphs of the judgment and the directions issued by the Supreme Court in the aforesaid judgment are extracted below:-

"17. That brings us to the submission by Mr. Rao that while reevaluation is a good option not only to do justice to those who may have suffered on account of an erroneous key being applied to the process but also to the writ petitioners respondents 6 to 18 in the matter of allocating to them their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the appellants should they be found to fall below the "cut-off" mark in the merit list. Mr. Rao gave two reasons in support of that submission. Firstly, he contended that the appellants are not responsible for the error committed by the parties in the matter of evaluation of the answer scripts. The position may have been different if the appellants were guilty of any fraud, misrepresentation or malpractice that would have deprived them of any sympathy from the court or justified their ouster. Secondly, he contended that the appellants have served the State efficiently and without any complaint for nearly seven years now and most of them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and lives. The experience gained by these appellants over the years would also, according to Mr. Rao, go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of

Bihar for a long time. Mr. Rao, therefore, prayed for a suitable direction that while re-evaluation can determine the inter se position of the writ petitioners and the appellants in these appeals, the result of such re-evaluation may not lead to their ouster from service, if they fell below the cutoff line.

18. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a reevaluation. The reevaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such reevaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.”

17. The respondent-Commission shall conclude the exercise of scrutiny of documents within a period of four months from today. Let adequate measures be taken to inform the candidates concerned well in advance so that there is no opportunity of raising a grievance by any of the selected candidates. Public notice will be issued and the candidates would also be given due information on their last known address as filled in the application forms. After re-casting of the revised merit list, the State Government to consider retaining the services of such candidates already serving, though lower in merit, by adjusting

them against any vacancies or future vacancies that are to arise. In case they are to be relieved to make way for candidates with higher merit, they will be issued appropriate show cause notice within a period of six weeks thereafter. Due intimation be sent at their last known address as mentioned. The show cause notice as proposed to be served upon the candidates having lesser merit, would also mention that the reply, if any, would be filed within a period of two weeks, while further mentioning that no opportunity would be given to them to prolong the matter.

18. All the writ petitions are disposed of in the aforesaid terms.

19. The entire original record, deposited with the Director, Anti Corruption Bureau, Haryana, is ordered to be returned back to the Haryana Staff Selection Commission, forthwith.

Sd/- (JAISHREE THAKUR)

16.05.2023

JUDGE”

2. Learned counsel for the petitioner has submitted that a direction had been given to the respondent Commission to re-examine and scrutinize the documents submitted by all the candidates claiming the benefit of five additional marks on account of being orphan and after doing the same, revise the merit list and to take into consideration the interpretation of the word orphan in the selection of group-D posts vide advertisement No.4/2018. It is further submitted that the respondent Commission had also been directed to undertake the process afresh for scrutiny of all the documents of all those candidates, who applied for any of the five posts under the advertisement in question, claiming 5 additional marks under the orphan category. It is stated that even the petitioner is a candidate, who had applied for the post of Sub-Inspector (Male), which is one of the five posts as mentioned in the order passed by Co-ordinate Bench of this Court and thus, the case of the petitioner is also required to be reconsidered as per the directions given by Co-ordinate Bench of this Court. It is further stated that in view of the same, the present writ petition also deserves to be disposed of in the same terms as the order passed in the above-said writ petitions.

3. Learned State counsel prays for a short adjournment to get

instructions in the matter.

4. Adjourned to 10.07.2023.

5. To be taken up at 1.45 PM.”

3. Learned State Counsel on instructions has submitted that the petitioner has not given any representation and no such representation has been annexed with the present writ petition and thus, his case could not be considered.

4. Learned counsel for the petitioner has submitted that the petitioner would give a detailed representation to respondent No.3-Secretary highlighting his grievances and prays that same be considered in accordance with law after taking into consideration the order dated 16.05.2023 passed in CWP-11590-2019 titled as Sombir Vs. State of Haryana and another.

5. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is disposed of with directions to respondent No.3 to consider the representation, if so, filed by the petitioner within a period of six weeks from the date of receipt of the said representation.

6. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

12.07.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No