

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP No.8159 of 2023

Date of decision:04.05.2023

Usha Rani

... Petitioner

Vs.

Haryana Staff Selection Commission and another ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. S.K.Malik, Advocate
for the petitioner.

Mr. Pankaj Middha, Addl.A.G., Haryana
for the respondents.

SUVIR SEHGAL, J. (Oral)

1. Petitioner has approached this Court *inter alia* issuance of a writ in the nature of mandamus directing the respondents to take into consideration DESM (Dependent of Ex-Servicemen) Certificate of the petitioner to declare the petitioner successful in the ESM (Ex-Servicemen)/DESM category and to permit her to apply and participate in the recruitment process for Group-C posts under Advertisement No.3/2023 dated 07.03.2023 (Annexure P-12). Another direction has been sought to the respondents to consider and decide the representations dated 27.03.2023 and 07.04.2023 (Annexures P-10 and P-11).

2. Facts leading to filing of the petition are that by notification dated 05.05.2022 (Annexure P-1), Govt. of Haryana notified "Policy for Recruitment to Group C & D Posts through Common Eligibility Test, 2022" which required mandatory registration by the candidates with the

respondent-Commission. Petitioner registered herself as an Ex-Serviceman candidate on 27.03.2021. Advertisement No.01/2022 dated 17.06.2022 was issued for holding CET (Common Eligibility Test) for Group-C posts and online applications were invited from desirous candidates. Petitioner applied and appeared in the CET as a General ESM category candidate, but failed to qualify it. Result was declared on 10.01.2023 (Annexure P-6) and the petitioner scored 40.7653983 marks against the requisite qualifying marks of 47.50 in the General category.

3. By making a reference to Eligibility Certificate (Annexure P-5), counsel for the petitioner urges that the petitioner was an eligible DESM candidate, but due to a poor network, she could not upload the requisite document when opportunities were provided by the respondent-Commission in the month of February and March, 2023 for modification of the uploaded particulars. It has been submitted that petitioner's grandfather expired on 11.02.2023 and the petitioner was in a mentally disturbed state of mind. She visited the office of respondent-Commission and submitted a representation dated 27.03.2023, which was followed by a reminder dated 07.04.2023 (Annexures P-10 and P-11) to get herself registered as a DESM candidate, but to no avail. Counsel submits that now the Commission has issued advertisement bearing No.3/2023 dated 07.03.2023 (Annexure P-12) informing successful candidates that written examination/skill test is to be held and they should apply for the same. He submits that as the closing date for submission of application has been extended to 05.05.2023, the petitioner should be permitted to participate in the recruitment process in the

DESM category.

4. By referring to the stand taken in the short reply filed on behalf of the respondents, State counsel submits that the petitioner is seeking a change in the category after having remained unsuccessful in the written examination. He submits that seven notices were issued and opportunities were given to the candidates to raise their grievances/to correct the uploaded data in the CET score card on the official website but for reasons best known, petitioner did not avail of the opportunity. He has placed reliance upon the instructions in the advertisement as well as judgments to oppose the prayer made in the petition.

5. I have considered the submissions made by counsel for the parties and examined the material placed on the record.

6. There is no dispute about the factual position. Petitioner had registered herself, applied and appeared in the CET as a General category candidate. Although she claims that she possessed an Eligibility Certificate and was eligible to get herself registered and appear as a DESM candidate, but no reason has been given by her in the writ petition as to why she did not do so. After having participated in the qualifying examination and having failed to score the minimum requisite marks, she has now approached this Court seeking to change the category, which cannot be permitted.

7. Condition No.10.8 in the advertisement specifically provides that category once filled in, cannot be permitted to be changed. The condition is reproduced as under:-

“10.8 Candidates are advised to fill their application form

carefully and correctly such as Name, Father's/Mother's name, Date of Birth, Marital Status, Category, Qualification, marks obtained, passing year, photo, Signature, socio-economic criteria details, fee & other details etc. Candidates are advised to check the spellings as per documents. No request for change of any particular on the online application form shall be entertained by the Haryana Staff Selection Commission after submission of application form. Candidate will be responsible for any mistake in the data of application form and fees paid by him/her." (emphasis added)

8. It is well settled that if a candidate applies under a specific category he cannot be permitted to change his category during the selection or midway during the recruitment process. Hon'ble Supreme Court in **J&K Public Service Commission Vs. Israr Ahmad and others (2005)12 SCC 498**, has held as under:-

"We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate alongwith his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at

the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.”

9. Similar view has been taken by Division Benches of this Court in LPA No.380 of 2022 titled as ‘**Suman Khatri vs Haryana Public Service Commission and others**’, decided on 12.05.2022 and LPA No.226 of 2022 titled as ‘**Sweety Nagar vs State of Haryana and Another**’, decided on 23.08.2022.

10. Still further, condition No.7.3 of the advertisement (Annexure P-12), requires the candidates to upload all the relevant documents. Concededly, the petitioner has not uploaded the DESM Eligibility Certificate. In **Registrar General, Calcutta High Court Vs. Shrinivas Prasad Shah and others** (2013) 12 SCC 364, Apex Court has held that the decision of the Commission is not treating the applicant as a ST candidate,

cannot be said to be erroneous, since certificate from the competent authority was not produced before the examination was held for recruitment to West Bengal Judicial Service.

11. Furthermore, the petitioner has failed to avail the numerous opportunities given by the respondent-Commission in the months of February and March, 2023 to raise any grievance or to seek correction of the uploaded data. This Court is, therefore, of the opinion that it is too late in the day for the petitioner to seek change in the category and she is herself responsible for the delay.
12. In view of the above discussion, there is no merit in the writ petition, which is hereby dismissed.

May 04, 2023
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No