

CWP-9617-2023 (O&M)

2023:PHHC:115833

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

260

CWP-9617-2023 (O&M)
Date of Decision :-04.09.2023

Satish Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikram Sheoran, Advocate for the petitioner.

Mr. Tapan Yadav, DAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

Present petition has been filed challenging the order dated 21.04.2021 (Annexure P/12) by which, the services of the petitioner, who is visually impaired were terminated on the ground that he had wrongly taken the benefit of 05 marks under the socio economic criteria by concealing the information with regard to the fact that his father was in Government job.

As per the facts mentioned in the petition, the petitioner had applied for Group-D post under the category of physically handicapped (visually impaired) in pursuance to advertisement No.4/2018, which posts were to be filled in various departments of the Government of Haryana. The petitioner competed in the selection process and cleared the written examination. The petitioner's disability, which was 40% has also been verified and keeping in view the fact that the petitioner had secured 62 marks in the written examination, and he was also given 05 marks under the social economic criteria, he was selected and recommended for appointment.

In pursuance to the recommendation, the petitioner joined as Peon in the department of Revenue on 05.02.2019.

A show cause notice was issued to the petitioner on 18.10.2021 alleging that 05 marks under the socio-economic criteria has wrongly been claimed by the petitioner as his father was in Army hence, the selection of the petitioner is to be treated null keeping in view the fact that the petitioner had concealed some relevant information and claimed certain benefits, which were not admissible to him especially when the petitioner had undertaken even at the time of seeking appointment that no information supplied by him while getting selected was incorrect.

The petitioner filed reply to the said show cause notice and submitted that he is visually impaired and had got his form filled up through someone else as he was not in a position to fill the same and it was under these circumstances, a discrepancy occurred while filling the application form whereas, on merits, the petitioner submitted that he had secured more marks than the last selected candidate in the category in which he had applied and selected and even if, 05 marks granted under the socio-economic criteria are withdrawn still he will be within the merit to be selected against the post advertised.

After hearing the petitioner, an impugned order dated 21.04.2021 (Annexure P/12) has been passed by the respondents, wherein it has been mentioned that as per the advertisement, in case in the application form any information is wrongly supplied by the candidate, his/her candidature will render void and the selection/appointment of the said candidate on the basis of furnishing wrong information will be set aside hence, as the father of the petitioner was an ex-serviceman personnel which

fact has been concealed by the petitioner so as to seek selection and consequent appointment on the basis of the wrong information supplied. The said order cancelling the selection as well as appointment of the petitioner is under challenge in the present petition.

While issuing notice of motion, a Coordinate Bench of this Court noticed that the petitioner who is visually impaired employee has taken up a plea that his application form was filled by somebody else due to which, a discrepancy occurred and further that even if, 05 marks granted to him under the socio-economic criteria are withdrawn, he is still within the merit as he had secured more marks than the last selected candidate in the category in which he had applied and selected while issuing notice to the department the operation of the impugned order was stayed and petitioner continued to be in service as of now.

In the reply, the respondents have conceded the fact that after due verification, it has been found that the petitioner is disabled employee having visual impairment to the required extent. Respondents in their reply did not deny the assertion that even after withdrawing the 05 marks granted to the petitioner under the socio-economic criteria, he will still have more marks than the last selected candidate in the category in which the petitioner had applied and selected/appointed.

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

Certain facts required to be considered by the respondents keeping in view the circumstances and the fact that petitioner is a visually impaired candidate, who has to depend upon others to fill his application form.

The fact whether the petitioner had an intention to cheat the department at the time of filling of application form or the same was bonafide mistake keeping in view the fact that the petitioner is a visually impaired candidate having got his application form filled from the third party was required to be kept in mind while arriving at the decision.

In the present case, nothing has come on record to show that the petitioner intended to cheat the department in any manner especially, when in the written examination the petitioner had secured more marks than the last selected candidate. That being so, the respondents should have considered the issue in a compassionate manner that once even after withdrawing the 05 marks granted to the petitioner under the social-economic criteria while selecting him, the petitioner is still was eligible to be appointed, keeping in view his merit, they should have allowed the petitioner to continue in service.

In the facts and circumstances of the present case, it cannot be said that the petitioner intentionally misled the respondents. Nothing has come on record that the petitioner had attached any forged document to claim any benefit. Further, no such allegations have been mentioned in the show cause notice issued to the petitioner. Once, it is a conceded fact that the petitioner had more marks than the last selected candidate even after withdrawing 05 marks granted under the socio-economic criteria, the candidature of the petitioner should not have been cancelled on the ground that certain wrong information was given while filling the application form. Hence, the impugned order dated 21.04.2021 (Annexure P/12) is set aside and the respondents are directed to allow the petitioner to continue in service.

CWP-9617-2023 (O&M)

2023:PHHC:115833

Present petition stands allowed.

September 04, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*