

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208

CWP-24610-2013

Date of decision: 13.02.2023

HARVINDER SINGH

..Petitioner

Versus

STATE OF PUNJAB AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Chatrath, Advocate
for the petitioner.

Mr. R.K. Kapoor, Addl. A.G. Punjab.

Mr. R.K. Arora, Advocate
for respondent No.5.

Mr. C.L. Sharma, Advocate
for respondent No.6.

ANIL KSHETARPAL, J(Oral)

1. The petitioner *inter alia* prays for issuance of a writ in the nature of certiorari to quash the selection of respondent No.5 and 6 to the post of Junior Technician (Painter).

2. The relevant facts, in brief, are required to be noticed, which are as follows:

The Punjab Subordinate Service Selection Board issued a recruitment notice No.5 of 2011 on 27.09.2011 inviting applications for selection to various posts including 10 posts of Junior Technician (Painter). Out of the aforesaid 10 posts, 5 posts were for general category, whereas, 3 posts were reserved for Scheduled Castes and 1 post each was reserved for Backward Classes and Ex-Servicemen. The petitioner and respondents applied for the said posts. As per the recruitment notice, the selection was to

be made on the basis of the marks obtained by the candidates in their academic qualifications. The applications were required to be submitted online while disclosing the marks obtained by the applicants in matriculation and Painter General Trade Certificate Course. As per the recruitment notice, it was provided that the merit list at Serial No.1 shall be prepared on the basis of the pass percentage marks secured in diploma, whereas, the merit list at serial No.2, 3, 4, 5, 6, 7 and 8 shall be prepared on the basis of percentage of marks secured in matriculation and in the concerned certificate course. The post of Junior Technician (Painter) is at Serial No.7. It is the case of the petitioner that the number of candidates required to be called for scrutiny of documents was five times of the posts advertised. The petitioner claims that the official respondent has wrongly permitted the correction of the application form with respect to respondent No.5. Further, he claims that the name of respondent No.6 in the select list is Sh. Deepak Vohra but according to his caste certificate, his name is only Sh. Deepak, which is not identical with the name in his application form.

3. The respondents have filed their detailed written statements controverting the assertions made by the petitioner in the writ petition. The petitioner has also filed an additional affidavit on 13.12.2016 with certain new assertions which are also controverted by the respondent-State by an affidavit dated 25.09.2017.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the petitioner while drawing the attention of the Court to the application form submitted by respondent No.5-Sh. Sukhjinder Singh at page No.60 (Annexure P-5), submits that the

application form suffers from an error which could not be permitted to be corrected subsequently. He submits that respondent No.5 has claimed that he has obtained 256 marks out of total 650 marks in the matriculation examination. He submits that respondent No.5 has been selected after permitting him to correct the marks obtained by him in matriculation examination from 256 to 356. He submits that Clause 'a' of the recruitment notice debars any such correction after 16.10.2011, whereas, the correction has been permitted on 24.05.2012.

6. On the other hand, the learned counsel representing the State of Punjab has submitted that during the second counselling held on 24.05.2012 when the respondent No.5 produced his matriculation certificate, it was discovered that there is a typographical mistake in his application and the marks obtained by him in the matriculation examination, due to a bona fide error, had been submitted as 256 instead of 356. Thus, the Scrutiny Committee calculated his correct marks and after ensuring that he scored 356 marks, selected respondent No.5 for the concerned post. It has also been submitted that the credentials of respondent No.6 were verified and it was found that the Schedule Caste Certificate relied upon by him, in fact, belongs to him, therefore, he was selected.

7. The learned counsel representing the petitioner relies upon the judgment passed in **CWP-1378-2020 and other connected cases, titled as “Nirdosh Kumar and another Vs. Punjab and Haryana High Court Chandigarh and another”, decided on 07.02.2023**, to contend that no further document could be permitted to be filed once exists there a prohibitory clause.

8. On the other hand, the learned counsel representing respondent No.5 relies upon a Division bench judgment passed in **LPA No.320 of 2019, titled as “Haryana Staff Selection Commissioner through its Secretary Vs. Sarla and others”, decided on 22.02.2019**, where the Court has held that a mistake in filling the online form can be permitted to be rectified subsequently, on becoming aware, in the absence of a provision for carrying out such correction.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. On a perusal of the online application form submitted by Sh. Sukhjinder Singh, it is apparent that he has not supplied any wrong material information or concealed any material fact, however, may be due to printing error or typographical error, he is stated to have secured 256 marks instead of 356 marks. The post in question is a Group C post. The basic qualification required is matric with ITI certificate course. There appears to be a mistake while filling up the application form. In the first counselling, the required number of candidates were not selected. Respondent No.5, being 16th in the merit list, was called for scrutiny of documents on 24.05.2012 i.e. in the second counselling. The petitioner was also called in the said counseling. At that stage, the aforesaid mistake was discovered. In such circumstances, the Selection Committee considered it appropriate to forgo the bonafide error in order to select the more meritorious candidate as respondent No.5 scored 125.04 marks, whereas, the petitioner scored 118.20 marks. The judgment passed in **Nirdosh Kumar's case (supra)** is relating to selection of Senior Scale Stenographer in the High Court. The petitioner did not submit the date of birth proof along with the

application form. Hence, the aforesaid case is entirely on different facts. In the present case, respondent No.5 has submitted the application. There was only an inadvertent mistake which came to the notice of the Selection Committee only at the time of second counselling. In such circumstances, in fact, respondent No.5 has not been permitted to make any correction in the application form but the Selection Committee, after calculating the marks on examining the original documents, has prepared the merit and selected respondent No.5. In these circumstances, the argument of the learned counsel that the correction in the application has been permitted after the last date has no substance. Moreover, the selection committee has reasonably exercised the discretion vested in it in such matters. The Division Bench in Sarla's case (supra) observed as under:-

“5. We cannot loose sight of the fact that in view of the prevailing socio economic condition in our country, every citizen is neither net savvy nor has a computer or laptop application on-line he has to dependent upon the cyber cafes providing the net services. Being himself/herself not computer and net savvy the candidate has to depend upon the operator in the cyber cafe to fill in online form and in such a circumstance if any mistake occurs it would be wholly unrealistic and arbitrary to make such a candidate suffer. It is also to be taken note of that if an incorrect entry is made due to human error, there is no provision on the website of the Commission allowing correction in the online application form. In these circumstances, if a mistake is committed, there being no provision for carrying out correction, even if it is noticed subsequently, a poor candidate is to suffer for no fault.

6. In the case in hand, the respondent-petitioner is a poor widow lady and is resident of village Karora, District Kaitha, where she was working as an Anganwari Worker. It is pleaded in the writ petition that online application form was submitted by her through computer centre in the village. In view of the aforesaid facts and circumstances we find no illegality in the view taken by the learned Single Judge allowing the claim of the respondent-petitioner.”

11. As regards the next argument of the learned counsel representing the petitioner, it may be noticed that the respondents have filed a detailed affidavit to the effect that Sh. Deepak Vohra and Sh. Deepak are one and the same person and the Scheduled Caste Certificate relates to respondent No.6 only. The true identity of Sh. Deepak/Sh. Deepak Vohra has been checked and verified from the Tehsildar as well as the Deputy Commissioner of District.

12. Hence, no ground to issue the writ as prayed for by the petitioner, is made out.

13. Dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

February 13th, 2023

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(ANIL KSHETARPAL)
JUDGE

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