

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

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1. CWP No.15290 of 2023
Date of Decision : 17.10.2023

Suman Lata

..... Petitioner

versus

State of Haryana and others

..... Respondents

2. CWP No.16055 of 2023
2023:PHHC:137594

Deepa and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

3. CWP No. 16577 of 2023
2023:PHHC:137595

Kusum Lata

..... Petitioner

versus

State of Haryana and others

..... Respondents

4. CWP No. 16852 of 2023
2023:PHHC:137597

Diksha Maan

..... Petitioner

versus

State of Haryana and others

..... Respondents

5. CWP No. 20034 of 2023
2023:PHHC:137600

Vikash and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

6. CWP No. 18270 of 2023
2023:PHHC:137603

Shalini

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rajat Mor, Advocate (CWP No.15290, 16852 of 2023)
Mr. Ravinder Singh Dhull, Advocate
(CWP No.16055, 20034 of 2023)
Mr. Anil Kumar Rana, Advocate (CWP No.16577 of 2023)
for the petitioner(s)

Mr. Rohit Arya, DAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

The aforementioned petitions are being decided together since a common issue on similar facts arises therein as to whether the petitioners, who are applicants for the posts in question, are to be permitted to claim weightage under the 'socio-economic criteria', as similarly placed other candidates have been permitted to withdraw/forego the claim after the closing date of submission of applications.

2. For adjudication of the issue, facts in brief are being taken from CWP No.15290 of 2023, which are as follows:

2.1. The third respondent/Haryana Staff Selection Commission (hereinafter referred to as 'the Commission') issued advertisement no.2/2023 on 21.2.2023 for direct recruitment against 7471 posts of Trained Graduate Teachers (TGT) - Physical Education (Group-C). Applications for the posts were invited online; closing date for submission of the same was 15.3.2023. Para 3.1 of the advertisement stipulated that after the closing date, no change/correction/modification will be allowed under any circumstances. It reads as under:

3.1. Apply online well in advance without waiting for last date of submission of online application form. Before submission of the online application, candidates must check that they have filled

Parivar Pehchan Patra or certificate issued by the
competent authority in the specified proforma.

(5% weightage)

(4) to (6) xxx

xxx

xxx

2.3. The petitioner submitted her application form online in response to the advertisement before the closing date. However, due to inadvertence, she failed to claim weightage under the socio-economic criteria, despite being entitled to the same.

2.4. She was born on 15.8.1984, and her father died before she attained fifteen years of age, on 14.11.1998. Therefore, she fulfilled the criteria under sub-clause (iii) of clause (3) of Para 12.1. A certificate to that effect was issued to her by the competent authority in the specified proforma on 9.5.2023, Annexure P-7, that she was second child to her parents and, at the time of her father's death, was fourteen years and three months old.

2.5. Since the petitioner failed to claim weightage under socio-economic criteria due to inadvertence, on realising the mistake she made representations dated 15.5.2023 and 17.5.2023, Annexures P-6 and P-8, to the Commission bringing the aforesaid facts to its knowledge, and requesting that she should be awarded marks by being considered under the criteria. The representations remained un-answered.

2.6. The Commission, however, issued a public notice dated 23.5.2023, Annexure P-9, to all the candidates who had applied for the post of TGT against advertisement no.2/2023 under different categories and claimed socio-economic criteria marks in the application forms, granting them opportunity to withdraw/forego the marks falsely/inadvertently claimed by them. This could be done by the candidates from

24.5.2023 to 27.5.2023 through the relevant link provided on the designated portal of the Commission.

2.7. After sometime, the Commission issued another public notice dated 26.6.2023, Annexure P-11, again providing an opportunity to the candidates who had inadvertently/falsely claimed socio-economic marks or the mistake was committed by cyber cafe operator while filling-up online form, to withdraw/forego their claims at the time of documents verification which was carried out on 6th and 7th July, 2023.

2.8. Still, the petitioner was not provided the opportunity to claim the weightage. The selection process is going on and the final result has still not been declared. In these circumstances, the instant petition has been filed.

3. Learned counsel for the petitioner contends that the petitioner inadvertently failed to claim weightage/marks under socio-economic criteria while filling-up the online form which was a *bona fide* mistake. On realising the same, she immediately approached the Commission by submitting representations, but to no effect. Even during the scrutiny/ documents' verification, the petitioner submitted her certificate, dated 9.5.2023, beseeching the respondents to give her due marks under the category, but was not considered. Since the respondents themselves have permitted and provided an opportunity to the candidates who have falsely or inadvertently claimed marks under the socio-economic criteria, to withdraw the same vide public notices dated 23.5.2023 and 26.6.2023, which is after the closing date of submission of applications, an opportunity should be extended to the petitioner as well to claim benefit of marks under the criteria.

4. Learned State counsel, on the contrary, contends that the notices have been issued in public interest keeping in view the mistake that might have been committed by the candidates in wrongly claiming marks under the socio-economic criteria. These notices give fair opportunity to all the candidates to correct their mistakes, and withdraw/forego the marks so claimed by them. It is to ensure that the benefit goes only to the ones it is rightfully due, and to none other. The Commission is within its rights to do so. By way of these notices, any change/correction/modification in the application forms has not been permitted, as there is a bar imposed in terms of para 3.1 of the advertisement against any such change after the closing date. Further, it has been contended that the certificate regarding death of applicant's father, dated 9.5.2023, has been issued after the closing date for submission of application forms; therefore, the same cannot be accepted. On this count also, the petitioner cannot claim benefit under the criteria, and her claim has rightly been declined. Law in this regard is well settled by the Supreme Court in *State of Bihar & Ors. Vs. Madhu Kant Ranjan & Anr.* (2021) SCC Online SC 1262.

5. Heard.

6. Undisputedly, the closing date for submission of the application forms under the advertisement for the post of TGT-Physical Education was 15.03.2023. The petitioner submitted the form within time, but failed to claim weightage under the socio-economic criteria. She claims entitlement to the same as per clause 3 (iii) of the criteria, being second child of her father, who died on 14.11.1998 before she attained the age of fifteen years. The fact stands certified vide certificate, dated 09.05.2023, issued by the competent authority.

7. Undoubtedly, there is a stipulation in the advertisement that no change/correction/modification is to be allowed under any circumstances in the form after the closing date for submission of the applications/registration. Still, public notices, dated 23.05.2023 and 26.06.2023, were issued by the Commission permitting the candidates to withdraw/forego the marks claimed under socio-economic criteria, which were falsely/inadvertently claimed by them. This, in fact, means, that the candidates were permitted to change/correct/modify their application forms to the extent of withdrawing/foregoing marks under the criteria. Once relaxation has been given and the closing date has been extended for withdrawing the marks falsely/inadvertently claimed by the candidates, there is no reason why the petitioner(s), who inadvertently failed to claim such marks/weightage under the criteria, should not be afforded the opportunity to correct the mistake and claim the benefit. Mistakes can be committed either way, to claim or not to claim benefit under the socio-economic criteria. The candidates, who made such a mistake form a category/class, as carved out by the Commission, and they are to be treated on equal footing. However, vide the impugned public notices, the opportunity to correct the mistake has been granted only to a part of this category, i.e., the candidates who claimed the weightage, while denying the same to the ones who failed to claim it. This is arbitrary and discriminatory; all the applicants are similarly placed and belong to the carved-out category, they have to be treated equally. Therefore, the petitioner is also entitled to be given an opportunity to claim marks under the socio-economic criteria, which she inadvertently failed to do at the time of filling-up the application form.

8. Further, the petitioner's claim under the socio-economic criteria is *bona fide*. She fulfilled the requisite condition of the criteria prior to the last date of submission of applications, i.e., 15.03.2023. It is duly established on record by way of certificate issued by the competent authority, dated 09.05.2023, that she is second child to her parents, born on 15.08.1984, and was less than fifteen years of age at the time of her father's death on 14.11.1998. Therefore, there is no substance in the argument of learned State counsel that the certificate, which was issued after the closing date for submission of applications, cannot be accepted to consider her eligible under the socio-economic criteria and give marks on that basis. Submission of proof to substantiate eligibility can be allowed in deserving cases after the closing date for submission of applications but before the date of selection, when the candidate possessed eligibility prior to that date. The law to this effect stands settled by the Supreme Court in *Charles K. Skaria v. Dr. C. Mathew*, (1980) 2 SCC 752, and is being consistently followed ever since. The relevant paragraph 20 of the judgment laying down the *ratio decidendi* is as follows:

20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the

diploma and is not an independent factor. The prospectus does say:

(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced:- In all cases true copies of the following documents have to be produced:-

(k) Any other certificates required along with the application.

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

9. The judgment relied upon by learned counsel for the petitioner in *Madhu Kant Ranjan* case (*supra*) has no application to the facts and circumstances of the case. In that matter, it has been held that a candidate has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Since the petitioner therein failed to submit photocopy of the requisite certificate along with the original application as required by the advertisement, and the certificate was submitted after a period of three years from the cut-off date, that too after physical test, he was held not entitled to additional five marks on the basis of NCC 'B'

certificate. In the instant case, as discussed herein above, the Commission/recruiting authority itself has permitted candidates to withdraw their claim for weightage under the socio-economic criteria beyond the closing/cut-off date as per the advertisement. Therefore, to that extent the closing date stood extended by the Commission. Secondly, in the instant case, the petitioner was eligible to claim marks under the socio-economic criteria even prior to the closing date for submission of the applications; the certificate, dated 09.05.2023, itself establishes the fact. It is not a case that the petitioner has attained eligibility after the closing date, nor is there any delay on her part in submitting the certificate as she approached the Commission soon after realising the mistake and even prior to issue of the notices dated 23.5.2023 and 26.6.2023.

10. The other argument raised by learned State counsel that the public notices providing opportunity to the candidates to withdraw/forego their claim were issued to ensure that benefit under the criteria goes only to the ones it is rightfully due, and therefore the petitioner cannot claim benefit in terms thereof, is also without substance. If that is the intended purpose in issuing the notices, it becomes incumbent upon the respondents to extend the weightage/marks to all the applicants who mistakenly claimed the benefit or failed to do so, like the petitioner(s). Only in that manner benefit under the criteria can be ensured to the candidates to whom it is rightfully due; since denying the opportunity to claim weightage to the ones entitled to it, by excluding them from the process, amounts to denying them the rightful due which is arbitrary. The principle of righteousness cannot be selectively applied, as is being sought to be done.

11. Consequently, it is held that the Commission has to provide opportunity to the applicants like the petitioner, who could not claim weightage under the criteria inadvertently, to claim it and correct their mistake(s).

12. In view of the discussion, the writ petitions are allowed and the respondent Commission is directed to provide opportunity to the petitioners to claim weightage under the socio-economic criteria by correcting inadvertent mistakes, and consider their candidature for the advertised posts accordingly. The claims so made will be accepted on fulfilling the requisite conditions notified in the advertisement.

13. Photocopy of this order be placed on the connected case files.

(TRIBHUVAN DAHIYA)
JUDGE

17.10.2023
Ashwani

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