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2023:PHHC:166542
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15710-2023
DECIDED ON: 25th JULY, 2023

ANISH

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

COARM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jasbir Mor, Advocate
for the Petitioner.

SANDEEP MOUDGIL, J

The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Mandamus* directing the respondent-Commission to consider the candidature of the petitioner under Economically Weaker Section (EWS) in the selection for the post of ALM against Advertisement No. 11/2019 Category No. 21 (Annexure P-11) and to place the petitioner at the appropriate place in the Selection/Merit List dated 14.05.2022 (Annexure P-14) and to Revise the Final Result dated 06.07.2022 (Annexure P-15) for the post of ALM under Economically Weaker Section (EWS) because the petitioner secured 55 marks which are more marks than the last selected candidate with 51 marks under EWS Category and to direct the respondent Commission to recommend his name for appointment to the concerned department for his appointment on the post of ALM.

2. Learned counsel for the petitioner submits that in pursuance to Advt. No. 11/2019 (Annexure P-11), the petitioner has applied for the advertised post of ALM under Economically Weaker Section (EWS) Category duly attaching the Income and Asset Certificate dated 26.06.2019 (Annexure P-3) issued by the competent authority. The petitioner was called for written test and after qualifying the same, he was called for document verification and vide result dated 14.05.2022 (Annexure P-14) the petitioner was shown selected under General Category but on revision of result on 06.07.2022 vide Annexure P-15 he was shown selected under waiting list. The counsel submitted that at the time of document verification, the objection was raised regarding EWS Certificate of the petitioner and he has produced another EWS Certificate dated 24.06.2022 (Annexure P-16) showing income of his Family as Rs.90,000/- Per Annum, therefore, the petitioner is entitled to be considered an EWS candidate and since he has secured total 55 Marks and the last selected candidate of EWS Category has secured 51 Marks, he is entitled to be selected and recommended for the advertised post of ALM under EWS Category.

3. The sole issue which is to be decided by this court in the present writ petition, is as to whether the candidature of the petitioner can be considered under EWS Category in view of EWS Certificate dated 24.06.2022 (Annexure P-16) showing income of his Family as Rs. 90,000/- Per Annum.

4. On 05.07.2019, Haryana Staff Selection Commission has advertised 1307 posts of ALM for various categories including 130 posts meant for EWS Category for appointment under Uttar Haryana Bijli Vitran Nigam Limited, for which last date of submission of application was

Online Filling of Application Form is very relevant to decide the issue in hand which is reproduced here as under:

“1.2 Procedure/Instructions/Guidelines for Online Filling of Application Form:

Following are all the general and special instructions for the applicant with respect to the online filling of the application form:

- a. Apply online well in advance without waiting for last date of submission of online application form.*
- b. Please read the instructions and procedures carefully before you start filling the Online Application Form and check all the particulars filled up in application form after getting the printout to ensure the correctness of information and upload all documents before finally submitting the application*
- c. The candidate should fill all details while filling the Online Application Form. After applying online, Registration No. and Password will be generated. Take print out of the registration no. and password screen for future reference of your application status and for Reprinting of your online filled application form and E-Challan Form.*
- d. After successful submission of application, candidates can again take final print out of application form and e-Challan.*
- e. The hard copy of application form along with all uploaded documents, must be brought at the time when called upon to do so by Haryana Staff Selection Commission. Documents which have not been uploaded, shall not be' entertained.*
- f. No request for change of any particular on the application. form shall be entertained by the Haryana Staff Selection Commission.*
- g. No offline application form or copy of downloaded. application form will be accepted by the Haryana Staff Selection Commission.*

- h. *The Selection shall be made in accordance with the provisions of Haryana Govt. Notification No.523-3GS-70/2068, dated 28.01.1970 and further amended time to time.*
- i. *Candidates who do not fulfill the qualifications/eligibility conditions on cutoff date, their application shall not be accepted by the online application system. All the Certificates/Documents relating to educational qualification / eligibility conditions and Socio-Economic Criteria etc. will be determined with regard to last date fixed to apply online applications, also called as closing date: i.e. 25.07.2019 as given in the advertisement. The Commission does not scrutinize the documents at the time of submission of online application and the same are checked only at the time of Scrutiny.”*

5. From perusal of above referred clause of advertisement it is undisputed that the candidature of an applicant will be decided as per the documents uploaded by him at the time of submission of online application. From perusal of the EWS Certificate dated 26.06.2019 (Annexure P-3) which has been uploaded by the petitioner with his online application, it is undisputed that the same is meant for use of Jobs/Admission under Government of India and the same cannot be used for Jobs/Admission under Government of Haryana. The EWS Certificate dated 24.06.2022 (Annexure P-16) produced by the petitioner cannot be accepted as a proof of EWS because it was not uploaded at the time of submission of application. As per settled proposition of law in case titled as “**Balwinder Kaur Versus State of Punjab and others**” 2018 (1) SCT 229, the conditions of advertisement are sacrosanct and cannot be relaxed/violated otherwise it would amount to discrimination with the candidates who could not apply under EWS Category due to not having EWS Certificate before the cutoff date. The relevant part of Judgment is reproduced here as under:

“It is by now well settled that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from. If the petitioner's claim for validation of more than one year old B.C. Certificate is accepted, it would result to discriminatory consequences as there might be several other candidates who may have relied upon such expired certificates and have been denied benefit of reservation. Likewise, if the validity period of such like certificate is overlooked, it would be self destructive to the objectives of the reservation policy. A reference in this regard may be made to the judgement dated 18.8.2011, passed by this Court in CWP No.9859 of 2009 (Sukhjit Kaur Vs. State of Punjab and others).

An identical issue arising from a recruitment process initiated vide advertisement dated 23.9.2009 issued by the Education Department was dealt by a Coordinate Bench of this Court in CWP No.5560 of 2011 (Jaspal Kaur and others Vs. State of Punjab and others) and other connected petitions decided on 2.11.2011. The relevant condition in advertisement dated 23.9.2009 which was the subject matter of controversy in Jaspal Kaur's case (supra) was identical to clause 6 pertaining to the present case. The B.C. Certificates furnished by the candidates in Jaspal Kaur's case (supra) were also not as per the time frame stipulated under the advertisement and as such were treated not valid. Challenge to the same was negated by the Coordinate Bench in the judgement dated 2.11.2011 in Jaspal Kaur's case (supra). It would be useful to extract the judgment in Jaspal Kaur's case (supra) herein below:

This order shall dispose of Civil Writ Petitions Nos. 22881 of 2010 and 3990, 4077, 4696, 4788, 5514, 5560, 5596, 5837, 6026, 7449, 7992, 8749, 8889, 11625, 11593, 12653, 12658, 12702, 12708, 12907, 13042, 15212 and 18493 of 2011, as the same broadly similar facts and issues, hence need not to be dealt with separately. For brevity, the facts are taken from Civil Writ Petition No. 5560 of 2011.

2. Suffice it to mention that the petitioners applied for different teaching posts for appointment in the Education Department, Punjab in the one or the other reserved category but their categories have been subsequently changed by the respondents after rejecting their Backward/Dependent of Ex-Serviceman Certificates, consequently treating them in the open category. The common issue raised by the aggrieved petitioners pertains to the justification of change of their respective category.

3. Petitioners in these cases were applicants for one or the other teaching posts in response to the Advertisement dated 23.09.2009, followed by the Corrigendum dated 27.09.2009. They belong to reserve categories of Backward Class or Dependent of Ex-Serviceman. The Advertisement dated 23.09.2009 (Annexure P-2) containing Clause-6 regarding validity of a Backward Class Certificate is reproduced herein as under:

6. The Certificate of B.C. is to be within one year from the last date of submissions and this Certificate should be in terms of the letter dated 17.01.1994 and 17.8.2005 issued by the Department of Welfare, Punjab Government.

The subsequent Corrigendum issued on 27.09.2009 (Annexure P-3) further stipulates as follows:

Condition No. 6: The Certificate of B.C. Category should not be more than 1 year prior to the last date of submission of applications and this Certificate should be as per the Punjab Government, Department of Welfare Letter No. 1/41/93-RS/1/209 dated 24.2.2009.

Similarly, as regard to Dependents of Ex-Servicemen, the advertisement stipulates as follows:

The reservation under Ex-serviceman quota is applicable only in the case of residents of Punjab and in case the Ex-serviceman himself is not a candidate then this reservation would be applicable for the dependents. Such Ex-Servicemen/dependents would present the original certificate made prior to the last date of submission of applications and issued by the competent authority appointed by the Government at the time of counselling.

The subsequent Corrigendum issued on 27.09.2009 (Annexure P-3) further stipulates as follows:

Condition No. 8: The candidates seeking reservation under Freedom Fighter Quota will have produced the original certificate made prior to the last date of submission of applications in terms of Punjab Government letter No. 4-13- 8P3-95/Special-477 dated 24.9.1998 and letter No. 4-13- 8P2-25/Special/62 dated 11.2.1999 and issued by the competent authority appointed by the Government at the time of counselling.

4. Notwithstanding the explanation(s) or justification given by the petitioners, the fact of the matter is that their Certificates of Backward Class or as Dependents of Ex-Servicemen, as relied upon by them, were more than one year old in the case of Backward Class candidates and/or the original Certificates were not produced in case of Dependents of Ex-Servicemen. Consequently, their candidatures for the reserved category have been rejected, treating them in the open category.

5. An identical question came up for consideration before a Co-ordinate Bench in Civil Writ Petition No.11647 of 2008 decided on 18.5.2009 (Loveljeet Kaur and others Vs. The State of Punjab and

others) and the claim was turned down after observing as follows:

The requirement of the notification is that the Certificate should not be older than one year preceding the last date for submission of the applications. All these Backward Class Certificates produced by the petitioners except petitioner No. 6, were issued much after the last date and, thus, cannot be considered for the purposes of selection against the Backward category. No material has been placed on record to show that the petitioners produced Certificates in accordance with condition No. 6 of the advertisement issued by the competent authority within one year preceding the last date for submission of the applications.”

(emphasis supplied)

6. Thereafter a bunch of writ petitions were dismissed by this Court along with Civil Writ Petition No. 9859 of 2009 (Sukhjit Kaur V. State of Punjab and others) on 18.08.2011 supplementing the above reproduced reasoning as under:

It is well settled that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from on pick and choose basis. If the petitioner's claim for validation of more than one year old Backward Class Certificate is accepted it shall lead to discriminatory consequences as there might be several other candidates who may have relied upon such expired Certificates and have been denied the benefit of reservation. Similarly, if the

validity period of such like Certificates is over looked, it can be self destructive to the object of the reservation policy which consciously excludes those who are in creamy-layers.

(emphasis supplied).”

6. The view taken by the Coordinate Bench in **Jaspal Kaur's** case (supra) would apply squarely to the facts of the present case. No exception as such can be taken to the decision of the respondent authorities in having denied to the petitioner benefit of reservation under EWS Category on account of having not furnished the requisite certificate in support of such reservation strictly as per Clause 1.2 (i) of the advertisement dated 05.07.2019 (Annexure P-11). The petitioner cannot be considered EWS Category candidate based on EWS Certificate dated 24.06.2022 (Annexure P-16) and he has rightly been considered under General Category.

7. This court finds no merit in the present writ petition and consequently, the petition stands dismissed, with no orders as to costs.

JULY 25, 2023

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**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No