

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

215

CWP-279-2017 (O&M)

Date of Decision: 28.08.2023

Jagdish Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Dinesh Mahajan, Advocate
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner by way of this petition has prayed for directions to the respondents to consider his case for appointment to the post of Revenue Patwari.

2. The petitioner had applied for recruitment for the post of Revenue Patwari as an Ex-serviceman on 25.08.2015. As per the original advertisement, the petitioner would have been over aged and he had not applied under the Ex-serviceman category. The examination was conducted but the result was scrapped on account of certain allegations relating to the exam. Those candidates who had already applied in the earlier selection process were asked to re-apply but the fees which had already been deposited under the earlier advertisement was to be considered. Even the roll number as mentioned in the earlier recruitment was to be taken into consideration and the age criteria was also required to be considered similarly. While filling the new form online, the petitioner's category was mentioned as General without mentioning Ex-serviceman. Resultantly,

when the result of the examination was declared afresh, although, the petitioner was falling in the Ex-servicemen category, he was shown as unsuccessful in the General category and was denied counseling and appointment. Therefore, the petitioner has approached this Court submitting that he had always intended to and applied under an Ex-servicemen category. He had also deposited the fees accordingly, which was relaxed for Ex-servicemen. He was over age if treated as a General category and it is only as an Ex-servicemen that he could have participated in the selection process.

3. In view thereof, learned counsel for the petitioner prays that the petitioner should be considered as an Ex-servicemen and his candidature should be considered accordingly in the same merit of Ex-servicemen.

4. Learned State counsel submits that the petitioner scored 20 marks while the cut off marks for the Ex-servicemen were 18.25 but the admit card which was issued for the subsequent written examination conducted, as per the fresh advertisement, after the scraping of the earlier exam, mentioned the petitioner's category as General. The form placed on record for recruitment to the post of Revenue Patwari 2016 also mentions category as General. Therefore, the petitioner ought to be considered as a General category.

5. I have reflected on the submissions and carefully noticed the facts of the present case and find that the previous roll number of the petitioner has been mentioned in the form of the recruitment for the post of Revenue Patwari 2016. The age of the petitioner treating date of birth as 10.02.1977 would fall over age if he is to be treated as a General category. It is also to be noticed that in the qualifications detail, the petitioner is shown to have passed graduation from Army which also shows that the petitioner is

an Ex-Army servicemen.

6. Considering all the aspects, the petitioner has to be treated as an Ex-servicemen and the respondents ought to have considered him in the said category for the purpose of consideration of his case for appointment as an Ex-servicemen.

7. Taking into consideration the fact that the petitioner falls above, the cut off marks for Ex-servicemen i.e. he scored 20 marks while the cut off marks was 18.25, he would be entitled for being considered for appointment as a Revenue Patwari under the Ex-servicemen quota.

8. The view taken by this Court is also supported in the judgment passed by the Division Bench of this Court in the case of Sarla Vs. State of Haryana; CWP-14863-2017 decided on 31.10.2018, wherein identical issue was examined by this Court by referring to earlier judgment passed in Usha Dhillon Vs. State of Haryana; 2015 (2) PLR 412. The Court has observed as under:-

“It is not in dispute that the petitioner was given certificate dated 17.02.2017 i.e before last date of submission of application form. It is not a case where the petitioner intentionally tried to change her category from BCB to EBPB and it was the duty of the respondents to read the form of the petitioner carefully and then to reject the case of the petitioner. For all intents and purposes, it was a clerical mistake. It is not a case of the respondents that the certificate (Annexure P-5) of the petitioner is not valid. Due to inadvertent mistake of the petitioner, the petitioner was considered against the wrong category.

Reference at this stage can be made to a judgment of this Court in a case of Usha Dhillon vs. State of Haryana and others, 2015 (2) PLR 412 wherein it has been held that there was no provision on the website of the Commission allowing correction in the online application form. There was no option

left with the petitioner but to approach the Commission through her application. If one is human, one will err. Right of no other candidate would be effected, if the application of the petitioner is permitted to be considered, prayed for. Respondents were directed to consider the case of the petitioner under Ex-servicemen category as dependent of Ex servicemen, in accordance with law.

In view of the above factual position, the present writ petition stands allowed and the respondents are directed to consider the candidature of the petitioner under EBPB category instead of BCB category and issue her appointment letter within a period of two weeks from the date of receipt of certified copy of this order. The petitioner is entitled to all consequential benefits.”

The said judgment was examined by the Division Bench of this Court in LPA-320-2019 decided on 22.02.2019 in which the Court has observed as under:-

“4. The case set up by the respondent-petitioner was that as soon as the mistake committed in filling up online form came to her knowledge she immediately made a representation dated 27.04.2017 before respondent No.2 requesting for necessary correction in the application form. She was assured that at the time of verification of the documents she will be allowed to carry out necessary corrections and was permitted to appear in the written test. However, subsequently when she appeared for verification of documents on 03.07.2017 she was not allowed to participate in the interview and her candidature was cancelled.

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 readily available for use. In these circumstances, when such a candidate has to submit an application on-line he has to dependent upon the cyber cafés providing the net services. Being himself/herself not computer and net savvy the candidate has to depend upon the operator in the cyber café 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 Kaithal, 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.*

7. *After hearing learned counsel for the appellant we are also not persuaded to take a different view in the matter than the taken by the learned Single Judge. Appeal thus accordingly stands dismissed.”*

9. Accordingly, the present petition is allowed. The respondents are directed to consider the case of the petitioner for appointment on the post of Revenue Patwari under the recruitment of Revenue Patwari 2016 and if he is found otherwise suitable, appointment be offer to him. On appointment, he would be given all the consequential benefits from the date other persons have been so recruited but the salary shall be treated as notional. The actual salary shall be paid from the date he joins the post. The said exercise shall be conducted within a period of one month from today.

10. Pending application(s), if any, shall stand(s) disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

28.08.2023

D.Bansal

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