

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

105

CWP-26298-2023 (O&M)
Decided on : 23.11.2023

Saroj Kumari

. . .Petitioner

Versus

State of Haryana Others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Sushil Jain, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 16.01.2023 (Annexure P-14) passed by respondent No.2 informing that Haryana Staff Selection Commission i.e. respondent No. 3 has withdrawn the recommendation of the petitioner qua the post of Operation Theatre Assistant and consequently, the services of the petitioner have been terminated.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. It may be noticed that the Haryana Staff Selection Commission had issued an Advertisement No. 15/2019 dated 07.09.2019, copy of which has been appended with the present petition as Annexure

P-1 advertising various posts to be filled up from the eligible candidates wherein 100 posts of Operation Theatre Assistant were also advertised.

4. As per the terms and conditions of the advertisement No. 15/2019 dated 07.09.2019, under the heading special instructions for filling the application form qua the post in question, it was duly mentioned that in case upon verification, at any stage starting from the submission of the application form till the appointment or even after the appointment has been granted, it is found that any candidate does not fulfill any of the eligibility conditions or it is found that the information furnished in the application form for the post in question is false and incorrect, his/her candidature will be cancelled and the said candidate will also be liable for the criminal prosecution. The said action could be taken irrespective whether the candidate was benefited by the false or incorrect information supplied by him/her while filling up the application form for the post in question or not.

5. While filing-up the application form for the post of Operation Theatre Assistant, the petitioner concededly claimed that she is entitled for 05 marks under the Socio-Economic Criteria by stating that none of her family member i.e. father, mother, brother, spouse or son is or was a regular employee in any department /board /corporation /company /statutory body / Commission / authority of the Government of Haryana or any other State Government or Government of India.

6. Keeping in view the said information supplied, the petitioner competed for the post in question under the reserved category of BC-A and in the written examination, she secured 51 marks. Keeping in view

the fact that the petitioner also claimed 05 marks under Socio-Economic Criteria on the ground that none of her family member was or is in the Government service and her total score was 56 marks on the basis of which she was allowed to compete further and was ultimately selected against one of the advertised post of the Operation Theatre Assistant and she was selected under the General Category having more marks than the last candidate who competed in the General Category.

7. Keeping in view her selection, the name of the petitioner was recommended for appointment against one of the advertised post of Operation Theatre Assistant.

8. In the meanwhile, the respondents came to know that the information supplied by the petitioner in the application form qua the claim of 05 marks under the Socio-Economic Criteria for no family member in the government job was false as not only the father of the petitioner was a Government employee but her brother was also working as Operation Theatre Assistant in Civil Hospital Hisar. On the basis of verification of the information given by the petitioner in her application form for the post in question, it was found that the petitioner has provided incorrect information in her application form and had claimed 05 marks under the Socio-Economic Criteria despite being not entitled for the said benefit. Keeping in view the said fact, the Haryana Staff Section Commission withdrew the recommendation of the petitioner so as to be considered for appointment against one of the advertised post of Operation Theatre Assistant.

9. The order dated 16.01.2023 (Annexure P-14) is under

challenge in the present petition.

10. Learned counsel for the petitioner argues that even if the five marks given under the Socio-Economic Criteria are to be withdrawn from the petitioner then also, she will be within the selection zone for the post of Operation Theatre Assistant in the reserved category of BC-A, hence, withdrawing the recommendation of the petitioner for the post in question is bad in law and the petitioner is entitled to be considered for appointment under the BC-A category for the post of Operation Theatre Assistant as the last selected candidate in which the petitioner is competing is having lesser marks i.e. 48 marks.

11. Keeping in view the advance copy given, learned State counsel appears and objects to the grant of prayer on the ground that keeping in view the terms and conditions of the advertisement any candidate who has given incorrect information while filling the application form, his/her candidature is liable to be cancelled and once it has already come on record that the petitioner had supplied false information in her application form for the post in question, which fact is apparent from Annexure P-7, the candidature of the petitioner has rightly been cancelled and the recommendation has been withdrawn and even if, the petitioner has secured the more marks than the last selected candidate under the reserved category of BC-A, once her candidature is to be cancelled, no relief can be granted to the petitioner.

12. Learned counsel for the petitioner further argues that though in the advertisement, the eligibility to claim 05 marks under the Socio-Economic Criteria was mentioned but subsequently, the notification, on

the basis of which the said criteria was fixed, underwent a modification vide notification dated 13.12.2021 hence, keeping in view the said notification dated 13.12.2021, the petitioner became entitled for the grant of benefit of having five marks under the Socio-Economic Criteria. Learned counsel for the petitioner also submits that the department has also applied the notification dated 13.12.2021 while considering the claim of other candidates.

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

14. It is settled principle of law that the terms and conditions mentioned in the advertisement are sacrosanct and to be adhered to, not only by the candidates, but even by the selection agency.

15. It is clear that as per the advertisement, one of the terms and conditions for competing for the post in question was that candidates were required to give correct information while filling-up the application form qua the post in question and in case, any false information is supplied, the candidature of the said candidate will stand cancelled and the said candidate will also be liable for a criminal prosecution. The further condition is that it will be immaterial whether any benefit has been taken on the basis of the false information provided or not.

16. The relevant Clause IV of the advertisement No. 15 dated 07.09.2019 (Annexure P-1) is reproduced as under:

“4. If on verification at any stage starting from submitting application form till appointment and any time even after appointment, it is found that any candidate does not fulfill any of the eligibility condition or it is found

that the information furnished is false or incorrect, his/her candidature will be cancelled and he/she will also be liable to be criminally prosecuted. This is irrespective of whether the candidate was benefitted by furnishing the false or incorrect information in his/her application. ”

17. From the terms and conditions reproduced herein above, it is clear that the petitioner's candidature has rightly been cancelled as she has submitted wrong information in the application form by stating that none of her family member i.e. father, mother and brother is or was in the Government service so as to claim 05 marks under Socio-Economic Criteria.

18. That being so, the petitioner's case is covered for the cancellation of candidature as per the clause IV reproduced herein above.

19. The argument of learned counsel for the petitioner that even after 05 marks for no family member in government job are withdrawn, the petitioner is eligible to be appointed on the post in question under reserved category of BC-A having secured more marks than the last candidate in the said category, will not come to the rescue of the petitioner for the reasons that once upon furnishing of the false information in the application form and taking benefit on the basis of the said false information, the candidature of the petitioner stands cancelled, irrespective whether the petitioner is entitled for the appointment under the reserved category of BC-A, no benefit can be given. Once, the candidature is cancelled, the said candidate cannot be

treated to have competed for the post in question being made ineligible for providing wrong information while filling up her application form for the post in question.

20. The another argument of the learned counsel for the petitioner qua notification dated 13.12.2021, by which, criteria for the grant of socio-economic marks was amended is of no avail in the facts and circumstances of the present case as in the present case, the question which arises is that as to whether the petitioner has supplied the false information while filling up the application form for the post in question or not, keeping in view the terms and conditions of the advertisement.

21. The last date of the filling up of the application form is 12.10.2019. On the said date, the petitioner claimed the benefit of Socio-Economic Criteria despite there being a specific Clause in the advertisement that the candidates whose father, mother and brother are or were in regular service, they are not entitled for the grant of benefit wherein petitioner has categorically mentioned that none of her family members including her father, mother and brother are or were in the Government employment. The notification dated 13.12.2021, subsequently amending the earlier notification will not give a right to the petitioner to claim that the incorrect information though given while filling up the application form for the post in question, in view of the amendment dated 13.12.2021, the petitioner became entitled for the said benefit. The conduct of an applicant is to be seen while filling up the application form and not with regard to the subsequent events.

22. Further more, in the advertisement it was mentioned that

even if a candidate has not got benefit of wrong information supplied then also his/her candidate can be cancelled., the ground being taken of the Subsequent modification of the eligibility criteria to get 05 marks under the Socio-Economic Creitaria, will not come to the rescue of the petitioner.

23. Keeping in view the above facts and circumstances of the present case, no ground is made out for any interference by this Court with the impugned order.

24. The present petition stands dismissed.

25. Civil miscellaneous application pending, if any, is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

23.11.2023

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