

CWP-168-2023

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

229

CWP-168-2023

Date of Decision: 27.08.2024

Naveen Yadav

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Bhupinder Malik, Advocate for the petitioner

Mr. Harish Rathee, Sr. DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondents to call the petitioner for documents verification-cum-interview and consider her for selection and appointment on the post of Physical Training Instructor (PTI), category 23, under BC-B category in response to advertisement 06/2006, against a vacant post.

2. Facts of the case in brief are, the third respondent/Haryana Staff Selection Commission issued the aforementioned advertisement on 20.07.2006, inviting applications for various posts of PTIs, including 216 posts under BC-B category. After completion of selection process the Commission recommended candidates for appointment under different categories in 2010. The selection process was, however, set aside by this Court vide judgment dated 11.09.2012, which was upheld by the Supreme Court in SLP No.35373 of 2013

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titled *Ramjit Singh Kardam and others v. Sanjeev Kumar and others*, vide order dated 08.04.2020, whereby the Commission was directed to initiate the selection process afresh from the stage of written examination on the basis of criteria notified on 28.12.2006. It was also directed that entire selection process would be completed within five months from the date Commission started working after the Covid-19 lockdown period was over.

2.1. The Commission, accordingly, issued notice dated 15.05.2020, Annexure P-1, inviting online applications for the posts from the applicants who had earlier applied in response to the advertisement, including the ones who had been selected as PTI pursuant thereto. The notified criteria for selection were as under:

Selection Criteria

Total Marks:-225

1. Written examination 200 Marks

The written examination for the above post will comprise of 100 multiple choice questions and divided into two portions comprising:-

A) There will be 100 objective type multiple choice questions (60 questions relating to academic knowledge of the respective subject for which candidates is appearing in the test and 40 questions relating to General knowledge, General English & Hindi upto Matric Standard. Each question will carry two marks).

B) The candidates will have to secure the minimum qualifying marks in the written test as mentioned below:-

a) General Category= 50%

b) SC,BC= 45%

c) ESM= 40%

d) DESM and Outstanding Sports Person-As for General, SC, BC Candidates as the case may be.

II. Viva-voce/interview=

25 marks.

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2.2. The petitioner had applied for the post as a BC-B category candidate, and was issued roll no.60233565. She appeared in the written examination conducted on 23.08.2020. Its result was declared on 24.09.2020, Annexure P-8, however, she could not clear the same failing to secure the minimum required forty-five per cent marks, i.e., ninety out of two hundred. The shortlisted candidates were called for scrutiny of documents-cum-interview/*viva-voce* from October 1 to 4, 2020. Finally, the selection result was declared on 05.10.2020, Annexure P-9, and the notification declaring the result also mentioned that 216 posts of BC-B category remained vacant.

2.3. Later, the answer key of written test was revised in compliance of order, dated 26.07.2022, passed by this court in Civil Writ Petition No.17196 of 2020, and other connected matters. This revision was done on the basis of an Expert Panel's report which had considered objections regarding the answer key and other relevant material for the purpose. The revised answer key was accordingly published, and on that basis detailed results of candidates for the post in question were notified by the Commission vide notice dated 09.09.2022, Annexure P-12. The petitioner's written test marks were increased based upon the revised answer key, and she was short-listed for scrutiny of documents and interview; her roll number was mentioned in the revised result of the selected candidates under BC-B category who were required to come for scrutiny of documents-cum-interview on 20/21.09.2022. It was also clearly stipulated therein that in case a candidate failed to appear for the purpose on the slated dates, no further opportunity would be given.

2.4. The petitioner, however, did not come to know about the revised result or the fact that she had been selected/shortlisted, and could not appear for

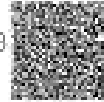
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2.5. Later, the Commission issued another notice for 23.11.2022, Annexure P-14, calling six other candidates, whose roll numbers were mentioned therein for the interview/*viva-voce* along with all original documents with attested copies on 25.11.2022.

2.6. The final result of selection was declared by the Commission vide notice dated 13.12.2022, Annexure P-16, wherein it was also notified that ninety-six posts of BC-B category remained vacant.

2.7. The petitioner somehow came to know about her selection after declaration of result on 15.12.2022, and immediately approached the Commission by submitting a representation dated 16.12.2022, Annexure P-19, seeking another chance for the interview on the ground that she never came to know about the revised result of written test wherein her score increased from eighty-six to ninety-two. No action on the representation was taken, leading to the petitioner filing the instant petition.

3. Learned counsel for the petitioner has contended that the petitioner had not been selected/short listed as per the written test result dated 24.09.2020, and was under the impression that the selection process came to an end. She was not aware about the revision of result, dated 13.12.2022, based on the revised answer key, or her having been short listed. It was a *bona fide* mistake on her part not to appear for scrutiny of documents-cum-*viva-voce* on the slated dates, 20/21.09.2022 in response to public notice dated 09.09.2022. She should have been informed either on phone or through email, as these details were duly furnished to the Commission at the time of filling-up the form. Therefore, she cannot be faulted for not appearing for the scrutiny. It is further contended that even after the final date for scrutiny of documents-cum-*viva-voce*, the

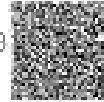
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interview notice dated 23.11.2022. And there is no reason why the petitioner's candidature should also not be considered, especially when ninety-six posts of BC-B category are still lying vacant.

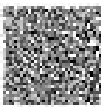
4. *Per contra*, learned State counsel contends that the petitioner cannot be considered for appointment at this stage. She failed to appear for scrutiny of documents-cum-*viva-voce* in response to public notice dated 09.09.2022, though other selected candidates did appear and were interviewed as well. The petitioner was marked absent and was not given any marks for interview. However, on the basis of instructions received from Secretary of the Commission, vide memo dated 23.08.2024, it is submitted by him that ninety-six posts of BC-B category are still vacant. He is also not in a position to dispute that even after the slated dates for scrutiny of documents-cum-*viva-voce*, six candidates were called for interview on 25.11.2022. He has only tried to explain it by contending that there might be other reasons for calling them separately. Learned State counsel has further contended that there is no procedure/rules requiring the Commission to issue individual notices through email or on mobile phones to the candidates for the scrutiny and *viva-voce* etc. In fact, no such individual notices were issued to any of the candidates, and they appeared in response to the public notice/result uploaded on the Commission's website and published in the newspapers also as per the procedure.

5. Heard.

6. It is apparent on record that the first result of selection for the post in question in response to advertisement no.06 of 2006 was announced on 24.09.2020, wherein the petitioner remained unsuccessful. Subsequently, writ petitions were filed in this Court by certain candidates against the answer key

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a party to these petitions. Pursuant to an order, dated 08.04.2020, passed by this Court answer key was revised by the Commission, leading to revision of the result of written examination as well which was notified on 09.09.2022. In this revised result the petitioner was declared selected/short listed against BC-B category, and was required to come for scrutiny of documents-cum-*viva-voce* on 20/21.09.2022. Since she was not aware about the developments in the matter resulting in revision of the written examination result, she did not appear for the scrutiny and *viva-voce* on the slated dates. It was a *bona fide* mistake on her part, otherwise there was no reason for her not to appear for the purpose, nor any has been suggested. Immediately on coming to know about the lapse, she represented to the Commission on 16.12.2022, but to no effect. The only reason canvassed by the respondents in not considering her candidature is, the petitioner failed to appear for scrutiny of documents-cum-*viva-voce* on the slated dates; and in terms of stipulation in the result notified on 09.09.2022, in case a candidate fails to appear, no further opportunity will be given to him/her. At the same time, it remains an admitted fact on record that six other candidates were called for interview/*viva-voce* by the Commission on 25.11.2022, vide public notice dated 23.11.2022. Therefore, the respondents cannot rely upon the stipulation to deny another opportunity for scrutiny and *viva-voce* to the petitioner after 20/21.09.2022; this is arbitrary and discriminatory. There is no *mala fide* alleged in her failure to appear before the Commission on the slated dates. Besides, the very fact that she was called upon to do so after about two years of having been declared unsuccessful, is reason enough to condone the solitary lapse on her part in not appearing for scrutiny and *viva-voce*. It is especially so when ninety-six posts are lying vacant and no prejudice will be caused to any candidate in case she is selected and appointed on merit.



7. In view of the discussion, the writ petition is allowed. The Commission is directed to consider the petitioner’s candidature by calling her for scrutiny of documents-cum-*viva-voce*/interview and recommend her for appointment, if found entitled as per merit, against one of the posts lying vacant. On being recommended she shall be entitled to appointment from the date other selected candidates have been appointed; however, the service benefits including salary will be admissible notionally from the date of appointment and actually from the date of joining. The entire exercise is to be carried out by the respondents within a period of four weeks from receiving a certified copy of the order. No costs.

(TRIBHUVAN DAHIYA)
JUDGE

27.08.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>