



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-1808-2022 (O&M)
Date of Decision:01.05.2024

Anil Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Prashant Singh Chauhan, Advocate for the petitioner.

Mr. R.S. Budhwar, Addl. A.G. Haryana.

Ms. Nikita Goel, Advocate for respondent-Nigam.

JASGURPREET SINGH PURI J.(Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature *certiorari* for setting aside the impugned Result dated 15.04.2021 (Annexure P-5) further to set aside the impugned order dated 15.12.2021 (Annexure P-14) passed by respondent No.2 and further for quashing head note at page No.32 (para no.3, 7 & 8) page no.33 (para no.14, 15, 16) and at page no.2 (para no.1.2 procedure and instructions) and page no.3 (para no.1.3) and page no.34 (para no.3.1, 3.2) and /or any condition stipulated condition in the impugned advertisement requiring of dependent on freedom fighter certificate before cut-off date of impugned advertisement.
2. At the outset learned counsel for the petitioner stated that considering the main prayer made in the present petition, he does not wish to press the prayer by which he has challenged the quashing of various paragraphs

FACTS OF THE CASE

3. Brief facts of the present case are that the petitioner applied for the post of LDC (Lower Division Clerk) in pursuance of an advertisement dated 05.07.2019 at Annexure P-1. The closing date for the submission of application forms initially was 25.07.2019 which was later on extended till 03.02.2020 as per para 4 of the reply. As per the selection criteria, written test was conducted on 25.02.2020 and vide Annexure P-4 result of the same was declared on 19.02.2021 in which petitioner was declared as a successful candidate. Thereafter, the petitioner was called for scrutiny of document on 25.02.2021 and final result was declared on 15.04.2021 vide Annexure P-5 whereby the name of the petitioner was not in the selection list as he was declared as ineligible at the time of scrutiny of documents for want of certificate.

4. In the advertisement, there was also reservation provided for different posts. The petitioner who applied in Category 4 of LDC, the following was the breakup of the post and reservation which is reproduced as under:-

Break-up of the posts:-

Category	Total	NonESM/ESP	ESM	ESP
General	98	61	33	4
SC	138	117	14	7
BCA	113	93	16	4
BCB	77	55	19	3
EWS	14	14		
Total	440			
PwD (Person with Disabilities)	Blindness and low vision 4	Deaf and hard of hearing 5	Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy 4	Autism, intellectual disability, specific learning disability and mental illness AND Multiple disabilities from amongst person under including deaf-blindness in the posts identified for each disabilities 4



5. The petitioner applied for the post of LDC under the ESM general category and as per Clause 2.4 (note No.4) it has been mentioned that if a candidate of ESM is not available then the dependents of the ESM are to be considered and in case dependents of ESM are not available then dependents of freedom fighters are to be considered. The application form by which the petitioner applied is appended with the writ petition as Annexure P-1/C in which in the column of reservation he has so stated that he is dependent of freedom fighter (DFF). Alongwith the application, however, the petitioner did not upload or append any certificate for claiming reservation against the aforesaid reservation category. However, at the time of scrutiny of documents which took place on 25.02.2021, the petitioner supplied to scrutiny committee, the requisite certificate of freedom fighter dependent/relationship certificate which has also been appended with the present petition at Annexure P-3 at page No.82 of paper-book. The certificate dated 22.02.2021 has been issued by the office of the Sub Divisional Magistrate, Rewari, by certifying that the petitioner is the real grandson of the freedom fighter namely Sh. Gopi Chand.

6. The validity and authenticity of the aforesaid certificate is not in dispute. The fact that the petitioner is falling in the category of dependent of freedom fighter is also not in dispute. However, the dispute in the present case is with regard to the date of submission of the aforesaid certificate which was after the cut off date.

SUBMISSIONS MADE BY LEARNED COUNSEL FOR PETITIONER

7. The learned counsel for the petitioner submitted that undoubtedly at the time when the petitioner had applied for the post of LDC, the aforesaid certificate dated 22.02.2021 was not in the possession of petitioner but it was certainly with him before the scrutiny of documents and undisputedly, the



petitioner has supplied the aforesaid document to the scrutiny committee at the time of scrutiny of documents. He further submitted that when the petitioner submitted the aforesaid application form, he had rather specifically mentioned in the application form that he is applying in the category of dependent of freedom fighters. He further contended that it is not a case of the respondents that the petitioner does not fall in the aforesaid category of reservation nor it is a case of the respondents that there is any dispute regarding authenticity and validity of the same but the objection which has been taken by the respondents-Commission is that the petitioner has supplied the requisite certificate after the cut off date and as per the condition of the advertisement, the candidature of the petitioner was liable to be rejected.

7. He further submitted that it is not a case where the petitioner had acquired any eligibility qualification or any other educational qualifications of any sort after the cut off date so as to disentitle him from being considered for the aforesaid post. But it is a case where the petitioner was a dependent of a freedom fighter and he did not attain dependency after the cut off date but he was dependent of freedom fighter right from the beginning from the time of his birth and his dependency under the reserved category of dependent of freedom fighter is not in dispute and therefore even if the petitioner did not append or upload the requisite certificate regarding which the status he enjoyed even prior to the cut off date then he could not have been non-suited and rendered ineligible only because of this reason even if there are some procedural provisions in the advertisement in this regard. He further submitted that no prejudice would have been caused to the respondent-Commission to have considered the aforesaid certificate which he had in the possession at the time of scrutiny of documents but his candidature has been rejected purely on technical ground that there is a



condition in the advertisement in this regard.

8. Learned counsel also submitted that law in this regard has now evolved after various judgments of the Hon'ble Supreme Court and High Courts wherein it has been held that such conditions are not stringent conditions unless filing of a certificate after the cut off date is pertaining to some eligibility qualifications like that of educational qualifications or experience but in such like cases of castes certificates, OBC Certificates, Ex-serviceman certificates and dependent certificates, the aforesaid conditions would not operate in a stringent manner. In this regard, he referred to judgments of Hon'ble Supreme Court in *Dolly Chhanda versus Chairman JEE, 2005 (9) SCC 779* and *Ram Kumar Gijroya versus Delhi Subordinate Services Selection Board and another, 2016 (4) SCC 754*, a judgment of Delhi High Court in *Ms.Pushpa versus Government, NCT of Delhi and others, C.M. No.17504/2008 in W.P. (C) No.9112/2008*, and a Division Bench judgment of this Court in *LPA No.1199 of 2019, Haryana Staff Selection Commission versus Subhash Chand and others* to contend that mere fact that the certificate was given to respondent-recruiting agency after the cut-off date would not have any effect and it is not a hard and fast rule. It cannot be put in a straight jacket formula and it is always to be seen and considered in the light of facts and circumstances of each and every case whether an applicant can be granted the benefit even if a document has been supplied after the cut-off date. He also submitted that on 08.04.2022, this Court had directed that one post under the DFF (General) Category, if vacant, shall not be filled up till the next date of hearing and submitted that in pursuance of the aforesaid order one post is still vacant and as such he prayed that necessary directions may be issued in this regard.



SUBMISSIONS BY LEARNED COUNSEL FOR RESPONDENT-COMMISSION

9. On the other hand, Mr. R.S. Budhwar, learned Additional Advocate General, Haryana, for respondents-Commission, submitted that when the petitioner had applied for the aforesaid post then he was required to upload the certificate under which he was seeking reservation which admittedly he did not do and in view of various clauses of the advertisement, the petitioner could not have been considered against the aforesaid post in the reserved category as aforesaid. He also submitted that no justification has come-forth from the petitioner as to why he has not appended the aforesaid certificate and as per the impugned order and reply, he supplied the certificate dated 22.02.2021 at the time of scrutiny of documents but the scrutiny committee could not process the case of the petitioner for further selection under the reserved category because the aforesaid certificate was not attached or uploaded at the time of filing of the application form and certificate if any produced, was after the cut off date.

10. Learned counsel further referred Clause 1.2 of the Advertisement (Annexure P-1), wherein it has been so provided that 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. He further referred to Clause 2.4 which provides for the regulatory framework and referred to Clauses 3, 7 and 8 which provide that the claim of reservation/benefit of relaxation etc., if any shall be admissible to those candidates, who upload the requisite valid original certificate alongwith their applications and in support of their claim of Haryana State domicile and the DFF shall be required to upload the certificate duly issued by the respective competent authority and that the qualifications and other terms and conditions of eligibility will be determined with regard to the last date fixed



has also referred to Clause 3.1 which provides that scanned copies of the certificates were to be uploaded with the application form was mandatory and also Clause 3.2 which deals with the scrutiny of documents and which provides that only those documents which are uploaded by the candidates shall be considered and if there is any variation in the documents uploaded and produced at the time of scrutiny, candidature shall be liable to be cancelled. He further referred to Clause 4 which deals with likely causes of rejection of application. Vide point No.8 of the aforesaid clause in case of variation in data of online application form and original documents, if detected at any stage, will be a ground for rejection of application.

11. Learned counsel also referred to a judgment of Hon'ble Supreme Court in *Ashok Kumar Sharma and ors. vs. Chander Shekhar 1997 (4) SCC 18* to contend that if any requisite certificate is received after the cut off date then the same cannot be considered and as such prayed for dismissal of the present petition.

SUBMISSIONS BY LEARNED COUNSEL FOR RESPONDENT-NIGAM

12. Ms. Nikita Goel, Advocate appearing for respondent-Nigam stated that 05 vacancies are still available against the ESM category as some of the selected candidates did not join.

ANALYSIS OF SUBMISSIONS

13. I have heard learned counsels for the parties at length.

14. The only issue involved in the present case is that as to whether the petitioner could have been disqualified/rendered ineligible by the respondent-Commission on the ground that he did not upload the dependent certificate alongwith the application form but he did so at the time of scrutiny of documents.

The petitioner had applied for the post of LDC which is a Class-III post.



Admittedly, at the time of filling up of the application form, the petitioner did not upload his documents regarding dependency on freedom fighter because he did not have the aforesaid certificate with him. However, in the application form, he had so incorporated that he applied against the reserved category of dependents on freedom fighter. The process of selection was that initially a written examination was to be conducted and, thereafter scrutiny of documents were to be held and after the scrutiny of documents, the final result was to be declared. The petitioner appeared in the written examination and was short listed and thereafter, was called for scrutiny of documents. On 25.02.2021, at the time of scrutiny of documents undoubtedly the petitioner submitted the aforesaid dependent certificate to the scrutiny committee. The aforesaid dependent certificate was issued 03 days before the scrutiny of documents and the same was not considered by the scrutiny committee and therefore the petitioner was not considered against the aforesaid reserved category and rather he was declared to be ineligible.

15. In the present case, there is no dispute with regard to the authenticity or validity of the aforesaid certificate and the same has been issued by the competent authority. However, the only issue in the present case is that the petitioner had submitted the aforesaid certificate after the cut off date and whether he could be considered against the reserved category or not.

16. Therefore, it will be appropriate to discuss the law on the issue with reference to various judgments of the Hon'ble Supreme Court as well as High Courts. Learned counsel for the petitioner referred to a judgment of Delhi High Court in *Ms. Pushpa's case (supra)*. In that case, the petitioner applied for the post of Staff Nurse under the OBC category and the last date for submission of application form in the advertisement was fixed for 21.01.2018 and the



certificate was not accepted as no proof was furnished by the petitioner therein to satisfy the authorities that she belongs to the said category since she did not attach the certificate because although she had applied for the certificate to the SDM for grant of OBC certificate but it was issued after the cut-off date and therefore, the aforesaid petition of aforesaid Ms. Pushpa (*supra*) was allowed by the Delhi High Court on the ground that the petitioner therein was not at fault.

17. In *Dolly Chhanda's case (supra)*, Hon'ble Supreme Court while discussing a case of a girl, who was a daughter of an Ex-Serviceman and was discharged from Armed Forces on the ground of disability also discussed the aforesaid issue as to what is the effect of filing the certificate after the cutoff date. In that case, during the course of scrutiny of papers, it was revealed that the certificate pertained to "Disabled/killed in war/hostilities" and therefore, was not found to be eligible, whereas, it ought to have been under the ground of "Permanently Disabled" and thereafter, a fresh certificate was obtained by the aforesaid petitioner of that case and in that case, relief was granted to her. The Hon'ble Supreme Court while dealing with the principle of law observed that it is a general rule that when a person applies for any post, a person must possess the eligibility qualification on the last date fixed for such purpose, but at the same time depending upon the facts of each and every case, there can also be relaxation in the manner of submission of proof and it will not be proper to apply any rigid principle as it pertains to the domain of procedure and any infraction of any rule relating to the submission of the proof need not necessarily result in rejection of the candidature. In other words, it would mean that there can be no straightjacket formula for rejecting a candidature only on the aforesaid reason.

Paras No.7 and 9 of the aforesaid judgment is reproduced as under:-

"7. The general rule is that while applying for any



course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark-sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

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“9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the



stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.”

18. In ***Subhash Chand’s case (supra)***, a matter came up for hearing before this Court in LPA, wherein the candidature was also rejected on the ground that the condition was that the certificate should have been issued prior to the last date of submission of online application form. The matter was pertaining to getting reservation in EBP GC category and the certificate was to be issued by the Welfare of Scheduled Castes and Backward Classes Department, which was issued after the cut-off date. It was held by a Division Bench of this Court that it is important to see that while eligibility i.e. possessing education qualification should be possessed by the cut-off date for claiming benefit of reservation, proof of eligibility to claim such reservation need not to be submitted by the cut-off date. Even if proof of claim of eligibility for reservation is produced beyond the cut-off date, the candidate can be considered for the grant of the said benefit and cannot be denied relief. A Division Bench of this Court in this regard also referred to judgments of Supreme Court in ***Ram Kumar Gijroya’s case (supra)*** and ***Charles K. Skaria and others versus Dr. C. Mathew and others, 1980 (2) SCC 752*** and also referred to the aforesaid judgment of Hon’ble Supreme Court in ***Dolly Chhanda’s case (supra)***. The relevant portion is reproduced as under:-

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“Thus the important thing to be seen is that while eligibility i.e possessing education qualification should be possessed by the cut off date, for claiming benefit of reservation, proof of eligibility to claim such reservation need not be submitted by cut off



date. Even if proof of claim of eligibility for reservation is produced beyond cut off date, the candidate can be considered for grant of the said benefit and cannot be denied relief.

*In **Ram Kumar Gijroya's case (supra)**, the appellant had sought appointment to the post of Staff Nurse under the OBC category, but the said certificate was not submitted with the application and submitted after the last date mentioned in the advertisement. The appellant was therefore not selected on that ground, but the Supreme Court held that the candidature of those candidates, who belonged to reserved categories, could not be rejected simply on account of late submission of caste certificate. The Supreme Court held that the purpose of certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to a particular category and act thereon by giving the benefit to such candidate for his belonging to the said category. It was not as if the petitioners therein did not belong to the reserved category prior to the cut off date or that they acquire the status of belonging to the said category only on the date of issuance of the certificate. It held that necessitating upon a certificate to be issued prior to the cut off date would be clearly arbitrary and it has no rational objective sought to be achieved.*

*In **Charles K. Skaria and others Vs. Dr. C. Mathew and others**, the Supreme Court held that the candidates who got admission even though they had not attached the certificate of having passed the diploma alongwith their applications, could not have their admission to a Post Graduate cancelled provided they*



had in fact passed the diploma before the date fixed, but had submitted the diploma with delay. It observed that the important question is whether or not the candidate secured a diploma before the final date of application for admission to the degree course and if he did have the diploma some relaxation in producing evidence of the diploma can be granted. It held that the emphasis should be on the diploma and the proof thereof subserves the factum of possession of diploma and is not an independent factor. It held that what is essential is the possession of the diploma before the given date and what is ancillary is the safe mode of proof of the qualification. To make mandatory, the date of acquiring the qualification before the last date for application make sense. But if it is shown that the qualification has been acquired before the relevant date, to invalidate the merit factor because proof was adduced a few days later, would not be proper.

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19. The aforesaid judgment of Division Bench of this Court was assailed by the Haryana Staff Selection Commission by filing a Civil Appeal before Hon'ble Supreme Court, which was dismissed on 31.01.2024.

20. Hon'ble Supreme Court in ***Ram Kumar Gijroya's case (supra)*** also dealt with this important issue as to whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not. It also referred to a judgment of the Delhi High Court in ***Ms.Pushpa's case (supra)*** and another judgment in ***Tej Pal Singh & others versus Govt. of NCT of Delhi, ILR 2001 Delhi 298***. It was so held by



Hon'ble Supreme Court that the decision rendered in the case of ***Ms. Pushpa's case (supra)*** is in conformity with the position of law laid down by Hon'ble Supreme Court.

21. After the aforesaid judgment in the case of ***Ram Kumar Gijroya's case (supra)*** another matter came up before Hon'ble Supreme Court in the case of ***Karn Singh Yadav vs. Government of NCT, Delhi in SLP No.14948 of 2016*** arising out of the aforesaid judgment passed by Delhi High Court. The aforesaid matter came before Bench of two judges of Hon'ble Supreme Court wherein reference was also made to ***Ram Kumar Gijroya's case (supra)*** but Hon'ble Supreme Court had referred the matter for consideration to a larger Bench. Learned counsel for the petitioner has supplied a copy of the order passed in the aforesaid judgment of Hon'ble three Judges in this regard which is taken on record as 'Mark X'. The aforesaid three Judges Bench of Hon'ble Supreme Court in the aforesaid case thereafter observed that in an identical situation in ***Ram Kumar Gijroya's case (supra)***, Hon'ble Supreme Court has ruled in favour of the concerned candidate and the present case is thus completely covered by the aforesaid case.

22. The aforesaid order passed by three Judges Bench of Hon'ble Supreme Court dated 28.09.2022 is reproduced as under:-

“Leave granted.

This appeal challenges the judgment and order dated 07.01.2023 passed by the High Court of Delhi in Writ Petition (C) No.55 of 2013.

We are presently concerned with the process of selection issued vide advertisement dated 30.08.2007 for the posts of “A” Grade Staff Nurse, Municipal Corporation of Delhi. The



appellant had offered his candidature as a person belonging to Other Backward Class. His candidature was, however, rejected by the Authorities inter alia on the ground that the documents certifying him to be belonging to that community were not filed before the cut-off date.

The challenge raised by the appellant to such rejection did not meet with any success and the High Court by the order presently under challenge rejected the writ petition in limine.

*It must be stated here that an identical fact situation came up for consideration before this Court in **Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board & Another, (2016) 4 SCC 754**, wherein this Court ruled in favour of the concerned candidate. The instant matter is thus completely covered by said decision.*

However, it must be noted here that as a result of cancellation of the candidature, the appellant was never appointed to the post in question and at this length in time, it will not be possible to grant any substantial relief to the appellant.

Therefore, the appeal is disposed of with no order as to costs.”

23. In the present case, some conditions have been so mentioned in the advertisement which have been so referred by learned counsel for the respondents. Relevant conditions of the advertisement are mentioned at Page Nos.28, 58 to 60 and 61 and the same are reproduced as under:-

“(1.2)(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 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.”

(2.4) Note xxx xxx xxx xxx

“3. Claim of reservation/benefit relaxation etc., if any, shall be admissible to those candidates only, who upload the requisite valid original certificate along with their application in support of their claim and of Haryana domicile.

4. If quota reserved for Ex-servicemen or Backward Classes remains unfilled to that extent due to non-availability of suitable Ex-servicemen or their dependents or non-availability of suitable candidates from Backward Classes then overall reservation either from the unfilled vacancies of Ex-serviceman from the Backward Classes for Freedom fighter/their Children/Grand Children will remain limited 2% only. This benefit will be available to all Grand Children i.e. sons and daughters of sons and daughters (paternal as well as maternal) of the Freedom Fighter (Chief Secretary Instruction No.22/10/2013-1 GSIII, dated 15.07.2014).

7. “DFF shall be required to upload the certificate duly issued by the respective competent authority.

8. Qualifications and other term and conditions of eligibility will be determined with regard to the last date fixed for



receipt of online applications also termed as closing date.”

“3.1 Documents to be uploaded with Application form (MANDATORY)

(2) Scanned copy of SC/BCA/BCB/EWS/ESP/ESM/DESM/DFP/PwD (person with Disabilities) certificate alongwith Haryana domicile Certificate issued by competent authority.”

“3.2 Scrutiny of Documents:-

Only those document which are uploaded by the candidates shall be considered. If there is any variation in the document uploaded and produced at the time of scrutiny candidature shall be liable to be cancelled. If any application is found without uploading requisite supporting documents and other relevant information, the candidate himself/herself shall be responsible for that and his/her candidature would be liable to be cancelled due to lack of proper or correct documents/information.”

“4 Likely causes of rejection of application

(8) Variation in date of online application form and in original documents if detected at any stage.”

24. As per conditions reproduced above, it has been so provided that claim of reservation/benefit, relaxation etc., if any, shall be admissible to those candidates only, who upload the original certificate alongwith their application to support of their claim with an added condition that the DFF shall be required to upload the certificate duly issued by the respective competent authority and also that the qualification as also other terms and conditions of eligibility will be determined with regard to the last date fixed for receipt of online applications also termed as closing date. It is further provided in Clause



of reservation and also in Clause No.3.2 that only those documents which are uploaded by the candidates shall be considered and if there is any variation in the document uploaded and produced at the time of scrutiny, candidature shall be liable to be cancelled.

25. The only dispute in the present case is that the petitioner has not uploaded the DFF certificate alongwith the application form and submitted the same at the time of scrutiny of documents i.e. after the cut off date. It has been so observed by Hon'ble Supreme Court in ***Dolly Chhanda's case (supra)*** that there can be no straight jacket formula and in the facts and circumstances of each and every case, direction can be issued because there can be no rigid principle because it pertains in the domain of procedure and any infraction of any rule related to the submission of proof need not necessarily result in rejection of the candidature. The conditions which have been so stated as aforesaid are rules of procedure. Had it been a case where the petitioner had attained some qualifications either on the educational side or such like eligibility qualifications after the cut off date and had produced the document at the time of scrutiny of documents then certainly he would not have been entitled to any relief especially in view of the judgment of Hon'ble Supreme Court as so referred by learned counsel for the respondents in ***Ashok Kumar's case (supra)***. The aforesaid judgment however, is not applicable in the present case and it is distinguishable. In the present case, the petitioner was dependent of freedom fighter and it cannot be said that he had obtained the qualification after the cut off date. He is holding a certificate being dependent of freedom fighter and therefore it cannot be said at all that he attained the aforesaid dependency after the cut off date. The authenticity and validity of the certificate which he had produced at the time of scrutiny of documents is not in dispute nor it is in dispute that the petitioner did



not produce the aforesaid certificate. Therefore it is purely a matter of procedure and the petitioner cannot be non-suited only because of the aforesaid reason in the light of the aforesaid judgment of Hon'ble Supreme Court and settled law.

26. The present case can also be considered from two more angles. Firstly, on the one hand learned counsel for the respondents has taken an objection pertaining to violation of various clauses of advertisement which is a rule of procedure. The procedure is the handmaid of justice. On the other hand, it is a case where the petitioner was of the 37 years of age at the time of filling up of the application form and he was seeking employment on clerical post which is a class-III category for the purpose of seeking his livelihood. He wanted to get an employment to make his both ends meet and to support his family. It was therefore his right of livelihood which was required to be considered. Hon'ble Supreme Court in *Olga Tellis and others vs. Bombay Municipal Corporation (1985) 3 SCC 545* settled the law that Right to Livelihood is included under Article 21 of the Constitution of India. Therefore, on the one hand there is a violation of procedure and on the other hand Fundamental Right under Article 21 of the Constitution of India enshrined in Part-III of the Constitution of India is under consideration. This Court is of a considered view that violation of procedure if any would be subservient to the dominant factor of Article 21 of the Constitution of India. Another angle which requires attention would be that as per the learned counsel for respondent No.3, there are 05 posts still vacant since some of the selected candidates did not join and therefore there could not be any impediment in considering the candidature of the present petitioner.

27. In view of the above, present petition is hereby allowed and impugned order at Annexure P-14 is hereby quashed and set aside. The respondent-Commission is directed to consider the case of the petitioner by



taking into consideration the certificate dated 22.02.2021 produced by the petitioner pertaining to dependent of freedom fighter by considering him in the category of dependent of freedom fighter and thereafter to proceed further and in case the petitioner is found to be on merit then shall send the recommendations to the concerned authority in accordance with law who shall thereon proceed expeditiously.

28. The aforesaid exercise shall be completed within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

01.05.2024

shweta

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