



CWP-4199-2023(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-4199-2023(O&M)
Date of Decision:23.07.2024

SUNIL KUMAR

...Petitioner(s)

Versus

HARYANA STAFF SELECTION COMMISSION ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Anshul Labana, Advocate
for the petitioner.

Mr. Dushyant Saharan, AAG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the order dated 15.02.2023, Annexure P-8, whereby the petitioner has been declined appointment to the post of Craft Instructor Health Sanitary Inspector (Practical) under Economically Weaker Section (EWS) category.

2. Briefly, facts of the case are, the first respondent-Haryana Staff Selection Commission issued advertisement No.12 of 2019, inviting applications for six posts of Craft Instructor Health Sanitary Inspector (Practical), category 55, which included one post under EWS category as well. The petitioner being fully eligible applied for the same as EWS category candidate, and claimed marks under Socio-economic criteria as well. Written examination was held on 25.12.2021, and scrutiny of documents was done from 01.03.2022 to 10.03.2022.

2.1 Later, the petitioner realised that he wrongly claimed marks under EWS category as his father, who had passed away more than fifteen



years back, was a Government Employee. There were other candidates also who, like the petitioner, had inadvertently claimed marks under Socio-economic criteria for the selection. Therefore, before the scrutiny of documents the Commission issued public notices dated 27.12.2021, 28.12.2021, 29.12.2021, 30.12.2021 and 31.12.2021, Annexure P-2, whereby opportunity was granted to such candidates, who had applied for the posts under different categories in response to the aforementioned advertisement, to withdraw the benefit of Socio-economic marks under 'no Government job in family' by furnishing an undertaking to that effect from 27.12.2021 to 31.12.2021. Candidates of all the categories except that of the petitioner, who applied under category 55, were given the opportunity to withdraw the benefit of Socio-economic marks, if wrongly claimed.

2.2 The result of selection was declared on 27.05.2022, Annexure P-3. The petitioner having secured forty-eight marks was selected under EWS category. The candidate next in the merit, who obtained forty marks, was placed in the waiting list.

2.3 Since the petitioner had not been afforded any opportunity to withdraw the benefit of Socio-economic criteria marks wrongly claimed by him, he submitted a representation dated 15.07.2022 to the Chairman, Haryana Staff Selection Commission, Annexure P-4, bringing the facts of his notice with prayer that five marks awarded to him under EWS category may be withdrawn as he was not eligible for the same. It was also brought to the Chairman's notice, that the petitioner's father as well as mother died on 08.12.2007 and 30.06.2018, respectively; their death certificates have been appended as Annexure P-6.



2.4. To the petitioner's knowledge, no action on the representation was taken, however, he was not offered appointment which resulted in filing of the earlier petition, CWP-28655-2022, which was disposed of directing the respondents to consider and decide the representation. Pursuant thereto, the impugned order, dated 23.01.2023, was passed by the first respondent/Haryana Staff Selection Commission, rejecting the petitioner's claim on the ground that he was not eligible for marks under Socio-economic criteria as per Government instructions, dated 11.06.2019; at the same time, it was observed that the main relief of selection against the post sought by the petitioner was within the purview of Commission. This has led to filing of the instant petition.

3. Learned senior counsel for the petitioner contends that the petitioner is entitled to be considered for selection against the EWS category post on merit, as he stands duly selected, having secured forty-eight marks. The only reason for not recommending him for appointment was, the wrong claim for marks under Socio-economic criteria. This was an inadvertent mistake on his part, and was not given any opportunity to withdraw the claim, though all other candidates were afforded the same. Besides, even by excluding five marks under the criteria, he is entitled to selection on merit.

4. Learned State counsel, on the contrary, contends that the petitioner wrongly claimed marks under the criteria, and as per the conditions of recommendation, if a candidate is found to have taken wrong benefit under Socio-economic criteria, he/she will be ousted from the selection list and the candidature will also be cancelled. Since the claim for marks under the criteria was not withdrawn by the petitioner at the time of scrutiny of documents, he is estopped by his own act and conduct from seeking relief at this stage. Learned

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counsel, however, is not in a position to dispute that no opportunity to withdraw the wrongly claimed marks under Socio-economic criteria was given to the candidates who applied under category 55, like the petitioner, in response to the advertisement in question.

5. Heard.

6. Undisputed facts on record are, the petitioner applied for the post under the EWS category and secured forty-eight marks during the process of selection. On the strength of his merit, he was selected against EWS category post as well, and the person next in merit, who secured forty marks, was placed in the waiting list, as per the final result of selection dated 27.05.2022. The petitioner claimed marks under the Socio-economic criteria by filling up the application form, statedly on account of an inadvertent mistake. Such mistakes were committed by other candidates as well, who had applied under different categories of posts in response to the advertisement in question. All such candidates were afforded the opportunity to withdraw the benefit wrongly claimed by them under the criteria vide public notices. However, for no reason such an opportunity was not afforded to candidates who applied in the category 55, like the petitioner; the fact has not been disputed by the respondents. Had the petitioner been given the opportunity to withdraw the benefit and would not have done so, the respondents could have cancelled his candidature for furnishing false information. This is not the case, as concededly no opportunity was afforded to him ever to withdraw the claim for marks under the criteria, inadvertently made by him. This is a double whammy against the petitioner; firstly, he was deprived of the opportunity to withdraw marks under the criteria as afforded to all other candidates; secondly, his candidature has been cancelled only because he wrongly



claimed marks under Socio-economic criteria by furnishing false information. This is patently arbitrary and discriminatory. The respondents, accordingly, cannot be permitted to reject the petitioner’s candidature and/or refuse to select and recommend him for appointment against the post on merit. Further, even if five marks under Socio-economic criteria are deducted from forty-eight marks secured by him in the selection, still he secures a place for himself on merit as the candidate placed in the waiting list has secured forty marks.

7. During pendency of the petition, the Department was directed to keep one post of Craft Instructor Health Sanitary Inspector (Practical) under EWS category vacant.

8. In view of the discussions, the petition is allowed, and the impugned order, dated 15.02.2023, is set aside. The Commission is directed to recommend the petitioner for appointment as Craft Instructor Health Sanitary Inspector (Practical), which shall be offered by the Department against the post lying vacant, subject to his fulfilling other requirements as per the rules, from the date other selected candidates pursuant to the advertisement in question have been appointed in EWS category. He shall be entitled to all service benefits 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 this order.

(TRIBHUVAN DAHIYA)
JUDGE

23.07.2024
Ad

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