

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-7771-2021 (O&M)

Date of Decision:25.04.2024

Ajay Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Suresh Kumar Kaushik, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned final result dated 22.03.2021 (Annexure P-14) with a further prayer to quash 'Clause/Point 2.3 (iii) a' of the Advertisement (Annexure P-1) to the extent whereby the respondents declared not to give 05 marks of Socio Economic Criteria to the petitioner.

2. Learned counsel for the petitioner at the outset stated that at this stage he does not wish to press the second prayer for quashing of the 'Clause/Point 2.3 (iii) a' of the Advertisement (Annexure P-1) and his only prayer is that considering the facts and circumstances of the present case, the final result qua the petitioner in which the petitioner was not selected may be set aside and direction may be issued to respondents to consider the candidature of the petitioner after giving him the weightage of 05 marks.

3. Brief facts of the present case are that the respondent-Haryana Staff Selection Commission (hereinafter to be referred to as 'Commission') issued an advertisement dated 05.07.2019 vide Annexure P-1 for appointment to various posts and the present petitioner applied for the post of Assistant Lineman. The last date for the submission of application form was 03.02.2020. Thereafter, vide Annexure P-5, the petitioner filled up the application form and applied for the aforesaid post and on the point No.3 in Socio Economics Criteria, it is mentioned that *is applicant an orphan & is the applicant the first or the second child and his father had died before attaining the age of 42 years*, the petitioner had written '**yes**'.

4. In the aforesaid advertisement, there was a criteria for selection in clause No.2.3, wherein it is mentioned that *the scheme of marks in respect of selection to the posts was stated to be total 100 marks*' out of which 90 marks were assigned to the written examination and 10 marks for socio-economic criteria and experience. For the purpose of socio-economic criteria, it was further provided that if the applicant is the first or the second child and his father had died before attaining the age of 42 years or the first or the second child and his father had died before the applicant had attained the age of 15 years then 05 marks are assigned to the applicant. At the time of filing of the application form by the petitioner, he did not upload any such certificate that he falls in any of the aforesaid categories. Thereafter, at the time of scrutiny of documents i.e.on 27.02.2021, the petitioner produced Annexure P-15 dated 25.02.2021 which was issued by the Tehsildar Badli, District Jhajjar about two days prior to the aforesaid scrutiny of documents with regard to his claim for being awarded the aforesaid 05 marks because he falls in both the

aforesaid categories but the aforesaid 05 marks were not awarded to the petitioner and in this way his total marks in the written test i.e. 85 marks were assigned to him as his total merit marks. The claim of the petitioner is that had he been given those 05 marks to which he was entitled he would have scored 90 marks and the last selected candidate also scored 90 marks as per the reply filed by the respondent-Commission. However, the candidate who was kept in the waiting list had obtained 89 marks and therefore the petitioner ought to have been at least kept in the waiting list at an appropriate place by giving him 05 marks so that his case may have been forwarded or considered for appointment.

5. Learned counsel for the petitioner submitted that although at the time of filling up the application form by the petitioner, he did not upload and attach the requisite certificate issued by concerned Tehsildar as the same was not available with him but at the time of scrutiny of documents he produced the same but due to non-attaching of the aforesaid certificate at the time of filling up the application form, he was not granted the aforesaid benefit of 05 marks despite the fact that he was fully eligible for being awarded the aforesaid 05 marks. He further submitted that the death certificate of the father of the petitioner was uploaded alongwith the application form and the same has been attached alongwith the present petition at Annexure P-4.

6. Learned counsel further submitted that when the scrutiny of document had taken place on 27.02.2021, he was already in possession of the aforesaid certificate (Annexure P-15) which was issued to him on 25.02.2021 and submitted the same to the concerned scrutiny committee when the documents of the petitioner were scrutinized and at that point of time once the documents were submitted, the committee of the

respondent-Commission ought to have considered his aforesaid document because no prejudice could have been caused to the respondent-Commission since it is not the case of the respondent-Commission that the petitioner was not eligible for the aforesaid certificate nor the authenticity of the aforesaid certificate is in dispute but the only dispute raised by respondent-Commission is that the petitioner submitted the aforesaid certificate after the cut-off date.

7. Learned counsel further submitted that the petitioner applied for the aforesaid post within the time frame as well as before the cut-off date and in the column of declaration as to whether he falls within any of the category of socio-economic criteria for which he has written 'yes' and as such he ought to have been assigned 05 mark as he has disclosed the entire information in the aforesaid application form and therefore the mere fact that he did not upload the aforesaid document (Annexure P-15) but it was supplied at the time of scrutiny of documents, cannot dis-entitle him for being awarded 05 marks in accordance with the selection criteria as aforesaid.

8. In this regard, he referred to judgments of Hon'ble Supreme Court in of 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 the 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 to a straight jacket formula and it is always to be seen and considered in view of the 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.

9. On the other hand, Mr. Kapil Bansal, DAG, Haryana, appearing on behalf of respondent-commission, has referred to various clauses of the advertisement and while referring to the various clauses, he submitted that it was mandatory for the petitioner to have attached all the documents at the time when he applied for the post and it has been specifically provided that the evaluation of marks was to be done on the basis of documents attached/uploaded with the application form and therefore, there was no occasion for the respondent-commission to have considered any other document which was not uploaded alongwith the application form and submitted that the petitioner had supplied the aforesaid certificate at Annexure P-15 at the time of scrutiny of document would be of no consequence. He further asserted that once a procedure has been so stated in the advertisement itself, it was incumbent upon the petitioner to have adhered to the same and in case of a violation of the same, the respondent-Commission was within its rights to have not awarded the aforesaid 05 marks.

10. Learned State counsel for the respondent-Commission also stated that when notice of motion was issued by this Court on 07.04.2021, it was also directed that 'in the meantime, one seat be kept vacant in case all the seats have not been filled up under the General Category'. He further submitted that he has instructions to state that one seat under the General Category has been kept vacant in pursuance of the order passed by this Court.

11. I have heard learned counsel for the parties.
12. Before analyzing the submissions made by learned counsel for the parties, the relevant portion of clauses of advertisement are required to be referred. Clause 2.3, 2.4 (1), Note 8 and 9, 3.1 (3) and 3.2 are reproduced as under:-

“2.3 *Criteria for Selection, Examination & Syllabus.*

(i) The scheme of marks in respect of selection to the posts shall comprise of total 100 marks, as detailed below.

<i>Sr. No.</i>	<i>Subject</i>	<i>Marks</i>
<i>1.</i>	<i>Written Exam</i>	<i>90</i>
<i>2.</i>	<i>Socio-Economic criteria and experience</i>	<i>10</i>

“(ii) The 90 marks of written examination shall be divided into two parts comprising:-

a) 75% weightage for General Awareness, Reasoning, Maths, Science, Computer, English, Hindi and concerned or relevant subject, as applicable.

b) 25% weightage for History, Current Affairs, Literature, Geography, Civics, Environment, Culture etc.of Haryana.

(iii) The 10 marks for socio-economic criteria and experience shall be allocated as follows:-

a. xxxxxx xxxxx xxxx

b. if the applicant is:-

(i) a widow; or

(ii) the first or the second child and his father had died

before attaining the age of 42 years; or

(iii) the first or the second child and his father had died before the applicant had attained the age of 15 years.” (5 marks)

xxxxx xxxxx xxxxx

“2.4 (1):- Certificate for an applicant whose father has died issued by Tehsildar/Naib Tehsildar: Refer Annexure AI, AII.”

xxxxx xxxxx xxxxx

“Note 8:- Qualification 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.”

“Note 9:- No individual information at any⁷ stage shall be sent and hence all candidates should regularly visit the Website & Public Notices in different Newspapers.”

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“3.1(3):- Scanned copy of certificate claiming weightage/marks under socio-economic criteria and experience 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.”

13. A perusal of the aforesaid provisions in the advertisement would show that if an applicant is the first or second child and his father had died before attaining the age of 42 years or the first or the second child and his father had died before the applicant had attained the age of 15 years, then he was entitled for additional 05 marks under the socio-economic criteria. So far as the aforesaid issue as to whether the petitioner was falling in the aforesaid criteria of being awarded 05 marks is concerned, the same has not been disputed by the respondent-Commission in the present case. The objection which has been raised by respondent-Commission is that a document or a certificate pertaining to the same was not uploaded by the petitioner at the time of filing of the application form.

14. As per Clause 2.4, it has been so stated that the certificate for an applicant whose father has died issued by the Tehsildar/Naib Tehsildar by reference to Annexures A-1 and A-2 is a part of the regulatory framework. As per Note 9 of Clause 2.4 it has been so provided that no individual information at any stage shall be sent and hence all candidates should regularly visit the website & public newspapers. Clause 3.1 provides for the documents to be uploaded with the application form being mandatory and as per clause 3.1 (3) it has been so provided that scanned copy of certificate claiming weightage/marks under socio-economic criteria and experience alongwith Haryana domicile certificate issued by the competent authority is to be uploaded. Further in para No.3.2 it has been so provided that at the time of scrutiny of documents only those documents which are uploaded by the candidates shall be

considered and in this way it is clear that as per the advertisement the candidate is to upload the documents on which he is seeking claim at the time of the filling up of the application form and as per the aforesaid clauses of the advertisement only those documents which are uploaded are to be considered.

15. In the facts and circumstances of the present case, the eligibility of the petitioner for being awarded the aforesaid 5 marks, is not in dispute. The only issue is that at what stage he has submitted the aforesaid document. Admittedly, he did not upload the aforesaid certificate which was not available to him and he supplied the same to the committee on 27.02.2021 and the aforesaid document Annexure P-15 was issued to him on 25.02.2021. Therefore, obviously at the time of submission of the application form, he did not have the aforesaid certificate. In other words, weightage is to be given to the petitioner for the aforesaid 5 marks for which his eligibility is not in dispute but the time he produced the aforesaid document is being objected to by the respondent-commission.

16. Therefore, it is essential to discuss the law on the issue with reference to various judgments of the Hon'ble Supreme Court, this Court as well as other High Courts. The 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)*, the 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 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 EBPGC 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 the 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. The 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 produced 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. The 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 the judgment of the Delhi High Court is ***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 the 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 the Hon'ble Supreme Court.

21. Learned State counsel, however, referred to a judgment passed by Hon'ble Supreme Court in ***Ashok Kumar Sonkar Vs. Union of India and others 2007(4) SCC 54*** to contend that it has been so observed by the Hon'ble Supreme Court that if a candidate who was not holding the requisite qualification on cut-off date, he will be ineligible and cannot be considered at all. However, the aforesaid judgment is distinguishable from the present case in view of the fact that in the aforesaid judgment the matter was pertaining to attaining the eligibility qualification till the cut-off date whereas in the present case it is not the case of the respondents that he was not entitled for the aforesaid benefit of weightage of 05 marks but the only objection was that he submitted the requisite certificate after the cut-off date and therefore the aforesaid judgment referred by learned State counsel is not applicable in the present case.

22. In the present case, the dispute is not with regard to the eligibility of the petitioner to be given weightage of 05 marks but the only dispute is that he has not uploaded the 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 to the domain and procedure and any infraction of any rule related to the submission of proof need not necessarily result in rejection of the candidature.

23. In view of the aforesaid facts and circumstances, this Court is of the view that it is a fit case for exercising jurisdiction under Article 226 of the Constitution of India and to issue directions to the respondent-Commission in this regard.

24. Consequently, the present petition is allowed. The respondent-Commission is hereby directed to consider the case of the petitioner on the basis of the aforesaid certificate (Annexure P-15) and after processing the same, pass an order in this regard. In case he comes on merit then shall forward the case to the concerned department for further process especially in view of the fact that as per the learned State counsel one post is kept vacant in pursuance of the interim order passed by this Court. In case he finds merit in waiting list, then his case be processed according to the procedure to be followed in the case of candidates falling in waiting list in accordance with law.

25. The aforesaid exercise shall be completed by the respondent-Commission within a period of four months from today. However, there shall be no order as to costs.

26. Before parting with the judgment, this Court would also take note of the contents of reply which has been filed by the respondent-Haryana Staff Selection Commission wherein the expression 'Fatherless certificate' has been mentioned. This Court is of the view that such kind of expression used either in its reply or any document of the Commission, is inappropriate and is an undignified expression. The respondent-Commission shall look into this issue and take appropriate corrective measures and, thereafter, file compliance report before this Court.

(JASGURPREET SINGH PURI)
JUDGE

25.04.2024

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