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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8869-2021
Date of decision: 23.01.2024

VINOD

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rajat Mor, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Ms. Nikita Goel, Advocate
for respondent No.3-DHBVNL.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of an appropriate writ particularly in the nature of certiorari for quashing the impugned result dated 15.04.2021 (Annexure P-7) qua EWS category as well as General category i.e. unreserved category for the post of Lower Divisional Clerk (LDC) i.e. Category No.4, Advertisement No.11/2019 as the roll number of the petitioner has not been mentioned among the successful candidates despite the fact that he was duly eligible and had secured more marks than the last selected candidate under the EWS Category as well as under the General Category and further to issue a writ in the nature of mandamus directing the respondent-Haryana Staff Selection

Commission to offer appointment to the petitioner for the post of Lower Divisional Clerk (LDC).

2. The brief facts of the present case are that the respondent-Haryana Staff Selection Commission had issued advertisement No.11/2019 dated 05.07.2019 (Annexure P-1) for selection and recruitment of various posts in the State of Haryana. Under category No.4 of the aforesaid advertisement, 440 posts of Lower Divisional Clerk (LDC) were to be filled up. Thereafter, a break up of reservation for the aforesaid posts was also given in the aforesaid advertisement, wherein for the Economically Weaker Section (EWS), total 14 posts were reserved. The petitioner applied for the post of Lower Divisional Clerk against the aforesaid category of EWS. The process of filling up of the application form was through online mode and along with the application form various documents were to be attached including the documents pertaining to the reservation, if at all. The petitioner submitted his application form for the post of Lower Divisional Clerk under EWS category vide Annexure P-2 and he attached the EWS certificate dated 10.04.2019 (Annexure P-5) along with the application form which was issued by the Naib Tehsildar, Uchana and which was valid for the year 2019-2020. The aforesaid EWS certificate (Annexure P-5) depicts that the petitioner belongs to Economically Weaker Section. The last date for submission of the application form was 25.07.2019, which was later on extended till 03.02.2020. After the written examination, the candidates were called for scrutiny of documents which was held on 23.02.2021 qua the petitioner. Since there was a gap of about 2 years and the aforesaid EWS certificate (Annexure P-5) was valid for the year 2019-2020 as so stated in the aforesaid certificate, the petitioner in the meanwhile got another EWS

certificate, which was identical to the earlier EWS certificate and the subsequent EWS certificate was valid for the year 2020-2021 which has been attached along with the present writ petition as Annexure P-6. The EWS certificate (Annexure P-5) which was submitted by the petitioner along with the application form is dated 10.04.2019 and the second EWS certificate (Annexure P-6) is dated 01.10.2020. There is no difference between the aforesaid two certificates at all except for the date of issuance and the validity year. As per the learned counsel for the petitioner, at the time of scrutiny of documents, the petitioner had taken both the certificates with him since the earlier EWS certificate (Annexure P-5) was for the year 2019-2020 and the subsequent EWS certificate (Annexure P-6) was of the year 2020-2021 which he had obtained because he was continuously applying for various posts in various departments. However, at the time of scrutiny of documents, the respondent-Haryana Staff Selection Commission did not consider the EWS certificates of the petitioner and consequently did not grant him 5 marks for socio economic criteria. The petitioner had obtained total 84 marks in the written examination but he was not granted the benefit of 5 marks for socio economic criteria and therefore, his candidature was rejected by the respondent-Haryana Staff Selection Commission because of the reason that the EWS certificate (Annexure P-5), which was attached by the petitioner along with the application form was not shown by the petitioner at the time of scrutiny of documents, whereas second EWS certificate (Annexure P-6), which was of a later date was shown at the time of scrutiny of documents.

3. Learned counsel for the petitioner submitted that it is a case where the candidature of the petitioner has been wrongly rejected by the respondent-

Haryana Staff Selection Commission. He further submitted that there is no dispute raised even by the respondent-Haryana Staff Selection Commission that when the petitioner had applied for the post of Lower Divisional Clerk under the EWS category then he had attached EWS certificate dated 10.04.2019 (Annexure P-5). He also submitted that the reason as to why the candidature of the petitioner was rejected is that at the time of scrutiny of documents, the petitioner did not produce the aforesaid EWS certificate (Annexure P-5) but he had produced a subsequent EWS certificate (Annexure P-6), which was not the certificate which was attached with the application form and therefore, while referring to Clause 3.2 of the advertisement, the candidature of the petitioner was rejected. He further submitted that the provision which was made in the aforesaid advertisement vide Clause 3.2 was that only those documents which are uploaded by the candidate shall be considered and if there is any variation the document uploaded and produced at the time of scrutiny then the candidature shall be liable to be cancelled. He further submitted that firstly, there was no variation in the document which was uploaded along with the application form and subsequent EWS certificate dated 01.10.2020 (Annexure P-6) except for the date of issuance and the time of validity but otherwise the contents of both the EWS certificates are *pari materia* with each other. Secondly, the petitioner had rather produced Annexure P-5 at the time of scrutiny of documents i.e. the first EWS certificate which he had uploaded along with the application form and it could have been either misplaced by the respondent-Haryana Staff Selection Commission or may be because of *mala fide* reasons but there was no notice given to the petitioner with regard to the

same and there is nothing on the record to show that the petitioner did not produce the aforesaid EWS certificate at the time of scrutiny of documents.

4. Learned counsel for the petitioner further submitted that even as per the reply filed by the respondent-Haryana Staff Selection Commission it has been so stated that at the time of scrutiny of documents, the petitioner was declared eligible but it was only at the time of re-scrutiny of the documents that he was found to be not eligible and therefore, there was a pure *mala fide* on the part of the respondent-Haryana Staff Selection Commission. He further submitted that by virtue of the interim order passed by this Court while issuing notice of motion on 23.04.2021, it was so directed that one seat for the post of Lower Division Clerk (LDC) in category of EWS be kept vacant by the respondents and one seat has been kept vacant by the respondents and therefore, the petitioner may be directed to be appointed against the aforesaid post.

5. On the other hand, Mr. Kapil Bansal, DAG, Haryana submitted that there was a specific Clause in the aforesaid advertisement i.e. Clause 3.2, wherein categorically it has been so provided that only those documents which are uploaded by the candidate shall be considered and any variation in the document will entitle disqualification of the candidate and it was because of this reason that the candidature of the petitioner was rejected because he did not produce Annexure P-5, whereas he produced only Annexure P-6. He further submitted that so far as the interim order passed by this Court dated 23.04.2021 by which one seat was directed to be kept vacant for the post of Lower Divisional Clerk under EWS category is concerned, he has instructions to state that in pursuance of the aforesaid interim order, one seat was kept vacant under the EWS category. He also submitted that the petitioner had obtained total 84

marks and the last selected candidate had secured 83 marks. He further submitted that the total marks for socio economic criteria was 5 marks and the petitioner was not entitled for aforesaid 5 marks because he did not produce the aforesaid document (Annexure P-5) at the time of scrutiny of documents so therefore, the aforesaid 5 marks could not be added. He further submitted that in case the same is added, then the total marks of the petitioner would come out to be 89 marks and the last selected candidate under the EWS category has secured 83 marks, which is undisputed.

6. I have heard the learned counsel for the parties.

7. In pursuance of order dated 02.06.2023, record has been produced by the learned State counsel in Court today in a sealed cover and the same has been perused by this Court. A short controversy involved in the present case is that the petitioner had applied for the post of Lower Divisional Clerk (LDC) under EWS category and there were total 14 posts reserved for the said category. Admittedly, the petitioner had applied for the said post along with EWS certificate Annexure P-5, which is dated 10.04.2019 and thereafter, there was a gap of about 2 years from the last date of submission of the application form and the date of scrutiny. The aforesaid certificate (Annexure P-5) was valid for the year 2019-2020 and has been issued by the Naib Tehsildar, Uchana. At the time of scrutiny of documents, the petitioner also had in his possession EWS certificate (Annexure P-6), which was valid for the year 2020-2021. A perusal of both the certificates would show that both the certificates are *pari materia*. The only difference between the two certificates is that Annexure P-5 dated 10.04.2019 is valid for the year 2019-2020, whereas Annexure P-6 dated 01.10.2020 is valid for the year 2020-2021.

8. There is no dispute regarding the authenticity of the aforesaid two certificates nor any dispute is raised by the respondent-Haryana Staff Selection Commission that the petitioner does not belong to EWS category. The only objection which has been raised by the respondent-Haryana Staff Selection Commission was that the petitioner had uploaded Annexure P-5 along with the application form but at the time of scrutiny of documents, he had shown Annexure P-6, whereas he should have shown Annexure P-5 to the Scrutiny Committee because it was a mandatory requirement in pursuance of Clause 3.2 of the aforesaid advertisement. Clause 3.2 is reproduced as under:-

“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.”*

9. A perusal of aforesaid Clause 3.2 would show that it has been so provided 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 then the candidature shall be liable to be cancelled. This Court is of the view that the candidature of the petitioner ought not have been rejected or cancelled only because of the aforesaid Clause 3.2 of the advertisement. The meaning and tenor of the aforesaid Clause would show

that if there is a variation in the document only then the candidature is to be rejected, whereas Annexure P-5 and Annexure P-6 are in *pari materia* and with regard to the contents, there is no variation but both the documents are different documents pertaining to different dates since there was a gap of about 2 years between the last date of submission of the application form and the scrutiny of documents and therefore, it cannot be said that there was any variation in the document. Even otherwise also, a perusal of the reply filed by the respondent-Haryana Staff Selection Commission would show that when the petitioner presented himself for scrutiny of documents before the Scrutiny Committee then he was declared as eligible but thereafter, there was a re-scrutiny and at the time of re-scrutiny, as per the aforesaid reply, it was found that the petitioner had not produced Annexure P-5, whereas he produced Annexure P-6. The argument which has been raised by the learned counsel for the petitioner that Annexure P-5, which he had produced before the Scrutiny Committee could have been either misplaced by the respondent-Haryana Staff Selection Commission or may be because of *mala fide* reasons does carry weight and cannot be ignored.

10. It is a case where the right of livelihood and seeking employment is affected and therefore, this Court would consider the submission of the learned counsel for the petitioner as to whether such precious right of livelihood by seeking employment can be scuttled only because of aforesaid technicality which has been so stated in Clause 3.2 of the advertisement or not. There is nothing on the record to show whether any separate noting has been given by any of the Scrutiny Officers that the petitioner had produced Annexure P-6 and not Annexure P-5. The only document which was made available by way of

record today was one format of scrutiny, wherein against the column of eligibility, 'not eligible' has been stated because EWS certificate was given after the cut-off date. The aforesaid format of scrutiny which has been signed by the Scrutiny Officer as well as by the petitioner would show that this is a single document, wherein the petitioner has been stated to be not eligible because he had produced the EWS certificate after the cut-off date, whereas as per the reply filed by the respondent-Haryana Staff Selection Commission, a stand has been taken by the Haryana Staff Selection Commission that it was on re-scrutiny that the petitioner was found to be not eligible but as per the record which has been produced today in the Court, there are no two documents. In other words, had there been a re-scrutiny then there would have been a separate subsequent document to show that on re-scrutiny, the petitioner was found to be not eligible. Therefore, the possibility of malice cannot be ruled out. Once it is a categorical case of the petitioner that he already possessed EWS certificate (Annexure P-5), which is undisputed by the respondent-Haryana Staff Selection Commission to have been uploaded with the application form then now the petitioner could not have been declared as not eligible on finding him to be not eligible on re-scrutiny of documents particularly in view of the fact that no separate document has been shown to this Court today to be a part of the record to show that there was re-scrutiny of documents. Therefore, the action of the respondent-Haryana Staff Selection Commission was purely arbitrary and perverse in nature in declaring the petitioner as not eligible.

11. In view of the aforesaid facts and circumstances of the present case, the present writ petition is allowed. The impugned result dated 15.04.2021 (Annexure P-7) qua the petitioner is set aside. In view of the interim order

passed by this Court on 23.04.2021, one seat for the post of Lower Divisional Clerk (LDC) under the EWS category has been kept vacant and as per the learned State counsel, the same is still vacant as of today. Respondent-Haryana Staff Selection Commission is therefore directed to declare the petitioner to be an eligible candidate and to forward the candidature of the petitioner to the concerned Department i.e. respondent No.3 for his appointment. Thereupon, respondent No.3, who is the Additional Chief Secretary (Power)-cum-Chairman, DHBVNL shall issue appointment letter to the present petitioner on the post of Lower Divisional Clerk (LDC) under EWS category and shall place the petitioner at the relevant seniority on the basis of merit list of other selected candidates. However, the petitioner shall not be entitled to any benefit of any salary etc. from the date when other candidates were appointed to the post of Lower Divisional Clerk (LDC) but he will certainly be entitled for all consequential benefits except financial benefits. The aforesaid exercise shall be completed by the respondents within a period of three months from today.

12. The original record which has been produced in Court today is returned back to the learned State counsel.

23.01.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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