

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.217

CWP No.7547 of 2020 (O&M)
Date of Decision: 25.01.2024

Mahender Singh

.... Petitioner

Versus

Haryana Staff Selection Commission

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Ravinder Malik (Ravi), Advocate for the petitioner.

Mr. Ravi Pratap Singh, DAG, Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

This petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondent-Haryana Staff Selection Commission to allow the petitioner to participate in interview for the post of Junior Engineer (Civil) in Public Health Engineering Department, against advertisement no.2 of 2015, category no.9, in response to announcement/notice dated 19.05.2020, Annexure P-5, and grant the consequential relief.

2. Facts of the case in brief are:

2.1. The respondent-Commission issued advertisement no.2 of 2015, dated 27.06.2015, Annexure P-1, inviting applications for various posts, including 162 posts of Junior Engineer (Civil), category no.9, in Public Health Engineering Department. Out of these, 109 posts were for unreserved/general category, and 16 for Special Backward Class (SBC)

category. The closing date for submission of online applications was 24.08.2015.

2.2. The petitioner, who belongs to general category, applied for the post. A written test was conducted which was cleared by him by obtaining 118 out of 200 marks, and was placed at serial no.4099 in the result declared on 03.08.2017, Annexure P-3.

2.3. The shortlisted candidates after the test were called for interview on the basis of scrutiny of documents, vide notice dated 18.10.2016. But the petitioner was not shortlisted. Later, pursuant to the judgment, dated 15.11.2016, passed by this Court in CWP No.22746 of 2016 titled *Satish Kumar Malik and others v. State of Haryana and others*, the Commission decided to call more candidates for scrutiny of documents on 02.12.2016, vide public notice dated 26.11.2016, Annexure P-4. Candidates equal to four times the advertised vacancies, from the merit list of written examination, were called for scrutiny to ascertain eligible candidates equal to twice the number of vacancies for interview. The petitioner's roll number also figured in the notice. However, he could not appear for scrutiny of documents as it did not come to his knowledge.

2.4. Thereafter, the Commission vide notice dated 27.12.2016, Annexure-R1/2, again called the candidates for scrutiny of documents on 30.12.2016, including the candidates who remained absent despite the earlier notice. But the petitioner still remained unaware, and could not appear. Yet again, the Commission issued a notice dated 14.01.2017, Annexure-R1/3, calling candidates for scrutiny of documents on 23.01.2017, including the ones like the petitioner who remained absent on earlier two occasions. This time also the petitioner did not appear for scrutiny, as he did not come to know about the notice.

2.5. After some time, the government, vide memo dated 05.03.2019, decided that in respect of the advertisements where result of SBC category candidates was put on hold due to Court orders, the Commission shall treat all SBC category posts to be under unreserved/general category. Accordingly, in continuation of its first notice dated 18.10.2016, the Commission issued a notice calling candidates, subject to their fulfilling eligibility conditions, for interview/viva-voce on 28 and 29 May 2020, for consideration against sixteen posts belonging to general category (earlier SBC category); this notice, dated 19.05.2020, has been appended to the petition as Annexure P-5.

2.6. The petitioner came to know about this notice from a friend, and immediately approached the Commission for being permitted to appear in the interview. His request was not granted, leading to filing of the instant petition.

2.7. The petition was heard on 29.05.2020, and vide interim order the Commission was directed to provisionally interview the petitioner. Subsequently, result of the interview was produced before this Court intimating that he scored 139 marks, as against 138 marks of the candidate last selected for the post in general category. Accordingly, the Commission was directed to keep one post of Junior Engineer (Civil) in general category vacant.

3. Learned counsel for the petitioner contends that the petitioner being a resident of a remote area in district Bhiwani, had limited access to internet and could not come to know about the notices issued by the Commission calling more candidates, including him, for scrutiny of documents. Otherwise, there was no reason for him not to appear for the same. It is also contended that the petitioner was not aware about the

pending litigation in *Satish Kumar Malik* case (*supra*), or the directions issued therein. He has now been provisionally interviewed during pendency of the petition, and has scored more marks than those of the last selected candidate. A post of general category has also been kept vacant, therefore, no prejudice will be caused to anybody in case he is appointed. Learned counsel also contends that the petitioner gives up his claim for salary for the period he has not worked, in case he is to be appointed.

4. *Per contra*, learned State counsel vehemently opposed the petitioner's prayer for appointment on the ground that despite repeated notices he did not come for scrutiny of documents, which means he willingly gave up his claim to the post. It cannot be believed that he was not aware about the three public notices issued by the Commission calling candidates for scrutiny of documents, especially when other candidates did appear and participated in the selection process. The plea of being a resident of a remote area has only been taken as an afterthought, and cannot be accepted.

5. Heard.

6. As per facts apparent on record, the petitioner duly applied for the post in question, and appeared in the written test as well. He, however, could not be shortlisted for further stages of selection. Although, pursuant to a direction issued by this Court in *Satish Kumar Malik* case (*supra*), the Commission called more candidates, including the petitioner, for scrutiny of documents and issued three notices for the purpose, dated 26.11.2016, 27.12.2016 and 14.01.2017, but the petitioner remained oblivious and could not appear for the same. His plea of being unaware about the notices and the consequent inability to join the process of selection, appears to be *bona fide*

having been called for it. This view is strengthened by his subsequent conduct also. Immediately on being made aware of the last notice, dated 19.05.2020, he approached the Commission seeking permission for appearing in the interview. On the request not being entertained, he promptly filed the instant petition leading to a direction being issued to provisionally interview him. Therefore, this Court is of the view that the petitioner's non-appearance pursuant to the notices issued by the Commission was not *mala fide*; rather, it was an inadvertent mistake, which needs to be condoned.

7. Even otherwise, the petitioner has a right to be considered for appointment after decision of this Court in *Satish Kumar Malik* case (*supra*), and in acceptance thereof the Commission itself called the petitioner along with other candidates for the purpose by issuing public notices. *Bona fide* inadvertent mistake on his part in failing to appear for the scrutiny of documents/interview, cannot result in taking away the right of consideration from him.

8. Also, it cannot be lost sight of that based upon a decision by the government, the Commission itself, vide memo dated 05.03.2019, converted SBC category posts into unreserved/general category, and called more general category candidates to join the process of selection. This was in continuation of the first notice, dated 18.10.2016, whereby the candidates were called for interview on the basis of scrutiny of documents after the written test. Pursuant thereto, based upon an interim direction of this Court, the petitioner has been interviewed and has scored more marks than those of the last selected candidate. In this manner, he has earned a place for himself on merit. Since a general category post has been kept vacant, he can be considered for appointment against it without prejudice to anyone.

Therefore, there is no valid reason or justification for not offering the vacant unreserved post to the petitioner, who is entitled to the same on merit.

9. In view of the discussion, the petitioner is held entitled to appointment, from the date other selected candidates pursuant to the advertisement in question have been appointed, with all consequential benefits except salary for the period he has not worked.
10. Accordingly, the petition is allowed, and subject to verification of documents the Commission is directed to recommend the petitioner for appointment against the vacant post of Junior Engineer (Civil) in the Public Health Engineering Department, Haryana, within two weeks of receiving a certified copy of this order.
11. Pending application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

25.01.2024
Maninder/jyt

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