2024:PHHC:073729

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(222) **CWP-8165-2020 (O&M)**
Date of Decision : May 23, 2024

Rinku **.. Petitioner**

Versus

State of Haryana and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. G.S. Khokhar, Advocate, for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance being raised by the petitioner is that the candidature of the petitioner has not been considered in the category of ESM (BCB) despite the fact that the petitioner was fully eligible to compete for the same as per the Advertisement No.10 of 2019 (Annexure P-4) by which, the posts of Junior Engineer (Civil) along with other categories were advertised.

2. Learned counsel for the petitioner argues that the petitioner applied in pursuance to the said post and cleared all the hurdles to be selected but at the time of scrutiny of the documents, the candidature of the petitioner was rejected on the ground that the dependent of ex-serviceman certificate was issued to the petitioner after the last date hence, the petitioner is not to be treated eligible.

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3. Learned counsel for the petitioner submits that the petitioner had already applied for the said certificate and it was only the Department concerned, which had not issued the certificate within time though, while submitting the application form dated 07.02.2019 (Annexure P-5), the petitioner claimed the benefit of dependent of ex-serviceman (BCB).

4. Learned counsel for the petitioner further submits that keeping in view the fact that even as of now, the posts which were advertised in the category of ESM (BCB) are lying vacant and will go waste hence, the petitioner, who is higher in merit and the candidates who have lesser merit, have already been appointed, the petitioner is entitled for appointment against the vacant post.

5. Learned counsel for the respondents, on the other hand, submits that the petitioner has to fulfill the terms and conditions of the advertisement and though he had applied under the category of ESM (BCB) but as the eligibility certificate to the dependent of ex-serviceman was not attached, the petitioner cannot be treated as eligible and his candidature has rightly been rejected.

6. Learned counsel for the respondents concedes the factum that the petitioner has higher marks than the last selected candidate in the BCB category and there are three posts which are lying vacant for the post of Junior Engineer (Civil) against the Advertisement No.10/2019 of various departments, keeping in view the communication which has been received from the Haryana Staff Selection Commission vide its letter dated 22.05.2024.

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7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. It may be noticed that the terms and conditions of the advertisement are sacrosanct and are to be complied with by both the parties i.e. the candidate as well as the selecting agency. As per the terms and conditions of the advertisement, the petitioner was required to submit the dependent of ex-serviceman certificate along with application form. The same was not attached hence, it cannot be said that the petitioner fulfilled all the requisite of the advertisement while filling up the form.

9. In the present case, the petitioner has submitted that he had already applied for the certificate for the dependent of ex-serviceman before the Zila Sainik but the same was not delivered to him within time though, in the certificate dated 05.11.2019 (Annexure P-10) which has ultimately been issued, the petitioner has been treated as dependent of ex-serviceman.

10. Learned counsel for the petitioner submits that the said certificate was already brought on record and submitted during the scrutiny of the documents hence, as three posts are lying vacant and the petitioner is not claiming any post at the cost of any other candidate and these three posts will go waste, the petitioner is entitled for consideration of his claim against these three posts.

11. Learned counsel for the respondents, on the other hand submits that these three posts which are vacant, can be advertised again and the petitioner is free to compete for the same as and when advertised.

12. Keeping in view the facts and circumstances of the present case

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that the eligibility of the petitioner is not being disputed and the only fact is that the dependent of ex-serviceman certificate was not attached along with application form, once all the eligible candidates in the category in which the petitioner is competing, have already been considered and the eligible persons have been appointed and still three posts have remained vacant, the claim of the petitioner needs to be considered against these three vacant posts.

13. Once, the petitioner is not ousting anybody in his category and is only claiming appointment against the vacant posts which are there, which will go waste, if not given to the petitioner, the petitioner is entitled to be considered against these three posts keeping in view the facts and circumstances mentioned hereinbefore especially when he has higher merit that the candidates already appointed.

14. As per the learned counsel for the respondents, the post can be advertised again and the petitioner can compete again, as and when advertised. The endeavor of the Department is to make appointment. Once the petitioner who is fully eligible otherwise and the posts are available and the eligibility of the petitioner as dependent of ex-serviceman already stands established, the petitioner be considered for appointment against one of the three vacant posts in the ESM (BCB) category which are lying vacant.

15. It is directed that in case, any candidate in the category in which the petitioner is competing having lower merit than the petitioner has been appointed, the petitioner be given appointment on the post of Junior Engineer (Civil). However, the petitioner will not be entitled for any monetary benefits consequent upon the appointment but will be given the

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seniority keeping in view the rules governing the service as per the merit obtained by him.

16. The present writ petition is disposed of in above terms.

17. Any civil miscellaneous application pending if any, also stands disposed of.

May 23, 2024 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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

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