

244 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CWP-7755-2023

Date of Decision: 29.04.2024

VIKAS

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Jasbir Mor, Advocate for the petitioner.
Mr. Suneel Ranga, DAG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed *inter alia* seeking a writ of mandamus directing the respondents to grant five additional marks to the petitioner for 'being fatherless', as per criteria of selection for the post of Storekeeper, and to consider him for selection and appointment on the post.

2. Briefly, facts relevant to decide the matter are that the respondents issued advertisement no. 12 dated 20.07.2019, Annexure P-5, inviting applications for various posts, including one hundred twelve posts of Storekeeper, category no. 18. The petitioner being eligible, applied for the same as a general category candidate by uploading application form prior to the closing date, i.e., 20.08.2019.

2.1. As per the petitioner's personal details, he was born on 28.09.1996 and his father unfortunately passed away on 10.06.2007, at the age of thirty-four. At that time, the petitioner was just about ten years old. As per the selection criteria stipulated in the advertisement, he was entitled to five marks under socio-economic criteria for 'being fatherless'. To claim the

same, he uploaded 'orphan certificate' dated 06.12.2018 issued by the competent authority/Naib Tehsildar, Bhattu Kalan, Fatehabad, along with the application form which certified his date of birth as well as his father's date of death, apart from other particulars, viz., place of residence, mother's name, etc. It is apparent from the application form, Annexure P-6, that while responding to questions 3 and 4 under the heading 'Socio Economic Criteria', the requisite information was duly furnished by the petitioner which is as under:

3. Is the applicant the first or the second child and his father had died before attaining the age of 42 years: **Yes**

(Fathers's age at the time of demise:34)

4.Is the applicant the first or the second child and his father had died before the applicant had attained the age of 15 years: **Yes**

(Candidate's age at the time of his/her father's demise:10)

2.2. The petitioner was allotted roll no. 1219180026 for the written examination held on 20.02.2020, which was cleared by him. As per result dated 08.02.2022, Annexure P-9, he scored sixty-one marks in total; fifty-six in the written examination, and five were given for 'no government job to any family member' category. However, additional five marks for 'being fatherless' were not given to him. The selection result was finally notified vide announcement dated 31.01.2023, Annexure P-11, wherein cut-off marks for selection of general category candidates were sixty-three. Had the petitioner been given five marks for 'being fatherless', he would have secured sixty-six marks and been selected.

2.3 On realizing that he had been wrongly prevented from being selected, the petitioner represented to the Commission vide letter dated

09.02.2023, Annexure P-13, requesting for giving him the additional five marks for 'being fatherless'. In support of the claim submitted a 'Certificate for an application whose father has died' dated 15.03.2021, Annexure P-12, issued by the competent authority, Naib Tehsildar, Bhattu Kalan, Fatehabad. All the particulars mentioned in the 'orphan certificate' dated 06.12.2018, earlier submitted by him, were also mentioned in the certificate dated 15.03.2021, as also the additional information regarding his being first child, his father's date of birth and age at the time of death. The petitioner's case was still not considered, which led to the filing of the instant petition.

2.4. Respondents have claimed that the petitioner was rightly not selected for the post being lower in merit than the last selected candidate in general category, who secured sixty-three marks whereas the petitioner secured sixty-one. He was not entitled to the marks under socio-economic criteria for 'being fatherless', since he failed to provide the relevant information as per the format; the 'fatherless certificate' was not attached/upload in the format prescribed for the purpose vide Annexure A-II, appended to the advertisement. Even at the time of online scrutiny of documents, or up to the final declaration of result on 31.01.2023, the certificate in correct format was not furnished, therefore, the marks claimed could not have been given. Besides, the certificate attached to the instant petition was issued on 15.03.2021, after the cut-off date 20.08.2019, and the respondents were required to make selection only on the basis of documents uploaded along with the application form. Any document subsequently submitted could not have been considered for the benefit/marks, accordingly,

the petitioner was rightly not selected.

3. Learned counsel for the petitioner contends that the petitioner has been wrongly declined marks under the socio-economic criteria despite being eligible for the same 'being fatherless'. All the requisite conditions laid down in the criteria were fulfilled by him, and a certificate to that effect was also furnished to the Commission along with the form, therefore, the claim could not have been rejected. He further submits that at the time of submission of application form, nomenclature of the certificate to be issued to a candidate for claiming marks for 'being fatherless' was 'orphan certificate'; the same was accordingly issued to the petitioner and submitted by him to the Commission as well. In case the competent authority did not issue the certificate in the format attached to the advertisement, the petitioner cannot be denied marks on that basis, that too when relevant information regarding fulfilment of the criteria for award of marks was already with the respondents.

4. Learned State counsel, on the contrary, has relied upon the stand taken by the Commission in the short reply filed on its behalf. The only contention is that the petitioner is not entitled to award of marks under the socio-economic criteria since he failed to upload 'fatherless certificate' in the prescribed format, Annexure A-II.

5. Learned counsel for the parties have been heard.

6. There is no dispute on facts that the petitioner applied for the post of Storekeeper as a general category candidate by uploading the application form prior to the closing date, i.e., 20.08.2019. He claimed

weightage of five marks under 'being fatherless' category and uploaded an 'orphan certificate' dated 06.12.2018 issued by the competent authority/Naib Tehsildar which certified his date of birth as 28.09.1996, his father's name and date of death as 10.06.2007, apart from other relevant particulars. He also ticked appropriate column in the application form, stating that his father had died before he was fifteen years of age. The final result of the selection was declared on 31.01.2023, and the last selected candidate in general category secured sixty-three marks as against sixty-one secured by the petitioner. He was not given five marks as per the socio-economic criteria despite being 'fatherless'.

7. The requisite selection criteria for the award of five marks under socio-economic criteria is as follows:

2.3 Criteria for Selection, Examination & Syllabus.

- (i) xxx
 - (ii) xxx
 - (iii) The 10 marks for socio-economic criteria and experience shall be allocated as follows:
 - a. xxx
 - 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
 - (ii) the first or the second child and his father had died before the applicant had attained age of 15 years,
- (5 marks)

2.4 Regulatory Framework

- 1. Certificate for an applicant whose father has died issued by Tehsildar/Naib Tehsildar: Refer annexure AI, AII.

7.1. A perusal of the aforementioned clause shows, the requirement for award of five marks under the socio-economic criteria as per Clause 2.3 (iii) (b) is, the applicant should either be a widow, or the first or the second child whose father died before attaining the age of forty-two years, or at the time of the father's demise the applicant had not attained fifteen years of age. It is also required that the certificate to claim the weightage is to be issued by the Tehsildar/Naib Tehsildar, for which proforma/formats have been made available as 'annexures' to the advertisement. In the petitioner's case, he was born on 28.09.1996, his father had died on 10.06.2007 when the former was about ten years of age, being the first or the second child. These facts duly stand established by the 'orphan certificate' dated 06.12.2018, issued to the petitioner by the competent authority, read with the application form submitted by him, and have not been disputed by the respondents.

7.2. Accordingly, all the requisite information, which entitled the petitioner to five marks under the socio-economic criteria for 'being fatherless', was with the Commission, still the marks were not given only on the plea that the same was not furnished in the prescribed format. It is not the Commission's case that the format of 'orphan certificate' was created by the petitioner himself to misstate any fact or conceal any relevant information. Instead, the competent authority/Naib Tehsildar on its own issued 'orphan certificate', dated 06.12.2018, to the petitioner, in the format provided at that time for the candidates seeking marks under the socio-economic criteria, and the same was duly uploaded by him along with the application form. Authenticity of the certificate or the information furnished therein is not in

question; nor that the petitioner was never asked by the respondents to correct the format or provide any additional information.

7.3. Consequently, the weightage of five marks could not have been denied to the petitioner for the reasons; *firstly*, he has been issued 'orphan certificate' for the purpose by the competent authority mentioning the requisite details in the format in vogue/prescribed by the government; *secondly*, the certificate was issued in fulfilment of the requirement to claim weightage/marks under the socio-economic criteria for 'being fatherless'; and *thirdly*, all the necessary particulars/information for awarding of marks under the criteria stood furnished by way of the 'orphan certificate' read with the information given in the application form. By denying the weightage in the face of these facts, the respondents have shown themselves to be more concerned with the format in which the information has been furnished, than the information itself, despite it being certified by the competent authority, albeit in a different format. Only because the format is not strictly the one prescribed, does not justify discarding the authenticated information altogether, that too without even asking the petitioner about the reason for submitting the information in a different format. It is sheer high-handedness on the respondents' part, and shows their callous attitude to the candidates' concerns. By being more concerned with the format, instead of the facts brought to notice, the Commission has laid bare the hollowness of its approach to deal with a sensitive issue having serious repercussions for the candidate's future. Further, there is no stipulation in the advertisement that grant of five marks' weightage to candidates will solely be dependent upon

the format of providing the information, irrespective of it being certified, relevant and fulfilling the requirements for claiming the benefit. Nor does the criteria require that the information not furnished in the prescribed format will be rejected on that account only. Accordingly, the respondents’ action is impermissible being patently arbitrary and illogical.

8. For the reasons recorded above, the petition is allowed. The respondents are directed to grant the benefit of additional five marks to the petitioner under socio-economic criteria ‘being fatherless’ and offer him appointment against the vacant general category post of Storekeeper on merit from the date other selected person pursuant to the advertisement in question were appointed, with all consequential benefits except payment of salary for the period he has not worked.

9. This Court vide interim order dated 17.04.2023, had directed, “One post of Storekeeper (Cat No.18), General Category, be kept reserved, available as on today, till the decision of the present petition”. In case the post was not available and could not be reserved, nor any is lying vacant with the Department, the appointment is to be offered against the first post falling vacant now onwards.

10. Pending applications, if any, shall stand disposed of.

29.04.2024
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(TRIBHUVAN DAHIYA)
(JUDGE)

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