

225

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16108-2021

Date of decision: 11.11.2024

PRIYANKA

...Petitioner(s)

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Saurabh Bajaj, Advocate for the petitioner.

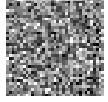
Mr. Kapil Bansal, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the action of respondent No.2 for not selecting the petitioner and putting her in the waiting list in EWS category inspite of the fact that she scored more than the cut-off marks with a further prayer to direct the respondents to declare the petitioner as successful candidate and further select her on the post of Lower Divisional Clerk (LDC) on the basis of the criteria as per advertisement dated 05.07.2019 (Annexure P-1).

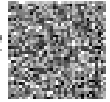
2. Learned counsel for the petitioner while giving the brief facts of the present case submitted that the petitioner applied for the post of Lower Divisional Clerk (LDC) vide advertisement dated 05.07.2019 (Annexure P-1).

He further submitted that the petitioner applied under the Economically Weaker



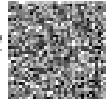
Section (EWS) Category for the aforesaid post and she duly cleared all the examinations and the interview process and thereafter, she was kept in the waiting list because as per the result declared by the respondent-Haryana Staff Selection Commission, she secured 85 marks, whereas the cut-off marks for the last selected candidate were 88.

3. Learned counsel for the petitioner submitted that the grievance of the petitioner is that she being in the Economically Weaker Section (EWS) Category was entitled for grant of 5 marks under socio-economic criteria, which were given to the other candidates but not to her on the ground that she did not upload or supply the undertaking in consonance with Clause 2.3 of the aforesaid advertisement pertaining to the criteria for selection, which provided that 5 marks are to be granted if neither the applicant nor any person from among the applicant's family viz father, mother, spouse, brother, and son is, was or has been a regular employee in any Department/Board/ Corporation/Company/Statutory Body/ Commission/ Authority of Government of Haryana or any other State Government or Government of India. He further submitted that the petitioner had rather uploaded and attached the aforesaid undertaking in this regard which is very clear from the application form of the petitioner (Annexure P-2), wherein in the list of documents attached at serial No.6 it is stated self-declaration in prescribed format (reference to Annexure E-1). He further submitted that the respondents have taken up a plea that the petitioner did not attach the aforesaid undertaking/self-declaration and that was the reason as to why she was not granted 5 marks under socio-economic criteria but the stand taken by the respondents is totally against the record and vitiated



in view of the fact that even in the reply, the respondents themselves have attached the format/form of the petitioner at the time of scrutiny of documents, which is Annexure R-2/1 and a perusal of the same would show that it has been specifically so stated in the aforesaid form at serial No.10 with regard to socio-economic criteria and experience that the petitioner has attached self-undertaking i.e. Annexure E-1 issued by the issuing authority and the aforesaid scrutiny form has been duly countersigned by the official of the respondent-Haryana Staff Selection Commission from where it is very clear that the petitioner had already attached the self-undertaking (Annexure E-1 of the form) as per the requirement of the advertisement and now the respondents have taken up a plea that the petitioner did not attach the aforesaid undertaking and on this ground, she has been non-suited and has not been granted 5 marks under socio-economic criteria.

4. He further submitted that the stand taken by the respondents in the reply is totally contrary to the record and without any basis. He submitted that rather the petitioner had filed an application under the RTI Act seeking information with regard to the aforesaid vide Annexure P-8 but the respondents did not choose to even file a reply or give any information to the petitioner for the reasons best known to them. He further submitted that had the respondents given information to the petitioner with regard to the same, then it would have been clear but now when the respondents have filed reply in the present case, the only ground which has been taken in the said reply is that the aforesaid undertaking/self-declaration was not available on the record but this cannot become a ground for rejection in view of the fact that rather it is clear not only

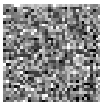


from the application form (Annexure P-2) but also from the scrutiny form which they themselves have attached as Annexure R-2/1. He further submitted that in case the petitioner is granted 5 marks under socio-economic criteria, then in that situation, the petitioner would get $85+5=90$ marks, which is more than last selected candidate and therefore, the petitioner deserves to be considered for the purpose of appointment to the post of Lower Divisional Clerk (LDC) by the respondent-Haryana Staff Selection Commission.

5. On the other hand, learned State counsel submitted that as per the reply filed by the respondents, the undertaking/self-declaration (Annexure E-1 of the form) was not attached alongwith the form or at the time of scrutiny of documents and therefore, no such benefit can be granted to the petitioner. He further submitted that the petitioner was required to attach an affidavit attested by the Executive Magistrate, which she has not even attached and on this ground also, the petitioner cannot be granted 5 marks under socio-economic criteria.

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

7. The only issue involved in the present case is as to whether the petitioner was entitled for the grant of 5 marks under socio-economic criteria or not. It is not in dispute that the other similarly situated persons have already been granted the aforesaid 5 marks under socio-economic criteria by the respondent-Haryana Staff Selection Commission and the petitioner has not been granted the aforesaid 5 marks only on the ground that she did not attach the undertaking/self-declaration, as per the reply filed by the respondents. So far as the fact as to whether the petitioner belongs to Economically Weaker Section



(EWS) Category or not, the same is not in dispute nor the same has been disputed by the learned State counsel but the only dispute is as to whether the petitioner is to be granted 5 marks under socio-economic criteria or not.

8. The relevant provision of Clause 2.3 of the aforesaid advertisement (Annexure P-1) is reproduced as under:-

2.3 Criteria for Selection, Examination & Syllabus.

xxx-xxx-xxx-xxx

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

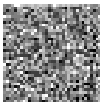
a. if neither the applicant nor any person from among the applicant’s family viz father, mother, spouse, brother, and Son is, was or has been a regular employee in any Department/ Board/ Corporation/Company/Statutory Body/ Commission/ Authority of Government of Haryana or any other State Government or Government of India.

(5 marks)

xxx-xxx-xxx-xxx

9. The relevant portion of the application form (Annexure P-2) submitted by the petitioner, wherein she has specifically stated in the list of documents at serial No.6 pertaining to attaching of self-declaration is also reproduced as under:-

S.N.	Document Name
1.	Category Certificate
2.	Document of Qualification 12th/10+2 – (12th/10+2) - (Arts)
3.	Document of Qualification Class 10th (Mandatory) – (Class 10th) - (General)
4.	Document of Qualification Graduation – (B.A) - (–)
5.	Haryana Domicile Certificate
6.	Self-Declaration in prescribed format : Refer Annexure E1.



10. Furthermore, the form which was processed as a scrutiny document vide Annexure R-2/1 and also attached along with the reply filed by the respondents, the relevant portion thereof is also reproduced as under:-

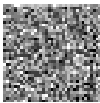
HARYANA STAFF SELECTION COMMISSION
BAYS NO.67-70, SECTOR-2, PANCHKULA – 134151
Website www.hssc.gov.in

Advt. No. 11/2019
Date of publication: : 05.07.2019
Opening date of submission of online applications: : 10.07.2019
Closing date for submission of online applications: : 25.07.2019
Closing date for deposit of fee: : 29.07.2019
Corrigendum date: : 22.01.2020
Closing date for submission of online applications: : 03.02.2020
Closing date for deposit of fee: : 06.02.2020

Scrutiny format for the post of Lower Divisional Clerk (Head Office Cadre) against Advt. No.11/2019, Cat. No.16.

- 1) Roll No. 1191610651
- 2) Name of candidate PRIYANKA
- 3) Father’s Name BAL KISHAN
- 4) Category Claimed (As per online application form) EWS (upload document)

Sr. No.	Qualification	Yes/ No	Documents/certificate uploaded		
			Date of issuing	Issuing authority	Document Serial No.
1.	Matriculation or equivalent examination from a recognized board	Yes	17/4/08	H.B.S.E	213884
2.	Hindi/Sanskrit up to Matriculation, as one of the subject.	Yes	-	-	-
3. a)	Age- 18-42 Years	Yes	-	-	-
b)	If age relaxation claimed (Relaxation in upper age limit is to be given as per Haryana Govt. instructions).	No	-	-	-
4.	Domicile of Haryana	Yes	26/6/19	NAIB Tehsildar	HR/ 2019/1019
5.	If OSP, whether Sports Gradation Certificate as per notification no.4/40/2017-4SYA dated 25.05.2018 issued by Sports & Youth Affairs Department Haryana	No	-	-	-
6.	Essential Qualification :	Yes	28/5/15	IASE	115173

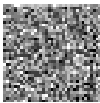


	1. Graduate with minimum 60% marks in respect of General Category/Other Category candidates & 55% marks of SC category candidates of Haryana domicile from any University recognized by the Govt. of Haryana. OR Post Graduate from a university duly recognized by Central Government or a state Government with a minimum 60% marks in respect of General Category/Other Category candidates and 55% marks in respect of SC Category candidates of Haryana domicile, in case of candidates having Graduation with marks less than 60% for General/Other category candidates & less than 55% for SC category candidates of Haryana domicile. 2. Hindi/Sanskrit as one of the subject in Matriculation or Higher...			Deemed University Rajasthan	
	<u>Marks</u>	Obt.= 1135 Max.= 1800			63.06 %
7.	Higher Qualification	B.A			
8.	Experience	-			
9. For office use only	Eligible/Not Eligible	eligible			

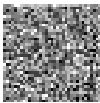
(Signature of candidate with date)

(Signature of HSSC official)
With full Name & Designation

10.	Socio-ecomomic criteria & Experience	Yes/No	<u>Date of Issuing</u>	<u>Issuing authority</u>	<u>Document Serial No.</u>
	a) Is applicant or any person amongst the applicant's family viz father, mother, spouse, brother and Son is, was or has been a regular employee in any Department/Board/ Corporation/ Company/	No	28/9/19	Self undertaking Annexure E-1	



	Statutory Body/ Commission/Authority of Government of Haryana or any other State Government or Government of India.				
	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. (Certificate issued by Tehsildar)	(mention category, if applicable)			
	c) If the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of Haryana which is neither a Scheduled Caste nor a Backward Class. (Certificate issued by Tehsildar)	(mention category, if applicable)			
	d) Experience: One-half (=0.5) mark for each year or part thereof exceeding six month of experience, out of a maximum of 16 years, on the same or a higher post in any Department/ Board/ Corporation/ Company/ Statutory Body/ Commission/ Authority of Government of Haryana . No marks will be awarded for any period less than six months. (Experience certificate should be signed by competent issuing authority with number and seal of	(mention total period, if applicable) Work experience start date			



	office).				
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Documents uploaded:

Declaration only by the candidate:

I hereby declare that all statement made in the above format regarding educational qualification and experience etc. to which I have submitted the above documents/certificates are true/correct and complete to the best of my knowledge, belief, record and nothing has been concealed therein. In the event of any information being found detected/false/incorrect/incomplete and ineligible before or after the interview/selection/appointment then my candidature may be cancelled and any legal action as per law can be initiated/taken against me. I have ensured that documents uploaded belong to me and have been uploaded after scanning from original. If any discrepancy found at any later stage, I may be declared ineligible and my Candidature may be cancelled.

Total No. of documents uploaded 01 to 08

Total pages attached (Pages shall be numbered except scrutiny Performa) 01 to 11.

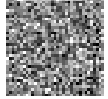
(Signature of candidate)

(Upload Image)

**(Signature of HSSC official)
With full Name & Designation**

(Signature of candidate with date)

11. A perusal of the aforesaid provision of Clause 2.3 would show that in case neither the applicant nor any person from among the applicant’s family viz father, mother, spouse, brother, and son is, was or has been a regular employee in any Department/ Board/ Corporation/Company/Statutory Body/ Commission/ Authority of Government of Haryana or any other State Government or Government of India, then 5 marks are to be granted under socio-economic criteria. It is not in dispute that the other similarly situated persons who have fulfilled the aforesaid criteria have been granted 5 marks under socio-economic criteria in the present selection process. So far as the present petitioner is concerned, an objection has been taken by the respondent-

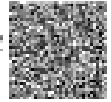


Haryana Staff Selection Commission that the petitioner cannot be granted 5 marks under socio-economic criteria on the ground that the petitioner did not attach the necessary document (Annexure E-1 of the form). The aforesaid Annexure E-1 has not been attached either by the petitioner or by the respondents and the contents of the same are not on record. Therefore, considering the reply which has been filed by the respondents, the objection which has been taken has to be considered by this Court. The objection which has been taken by the respondents in their reply in para No.8 and 9 is reproduced as under:-

“8. That it is pertinent to mention here that the petitioner did not submit any undertaking regarding "No Govt. Job in the family" at the time of filling the application form or at the time of scrutiny of documents. Therefore Respondent Commission has rightly not awarded any marks of socio-economic criteria to the petitioner and now she is estopped by her own act and conduct from seeking any relief from the Respondent Commission at this stage as the same will amount to injustice to those who have already been selected.

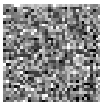
9. That the petitioner in the present writ petition has contended that she has submitted the undertaking regarding no family member in government job, also that she has sought information regarding the non-granting of 5 marks of socio-economic criteria under RTI Act, 2005 on 29.06.2021.

In this regard, it is submitted that the petitioner has not produced the undertaking regarding no family member in government job at the time of scrutiny of documents as stated above. Therefore, she cannot be given the 5 marks of socio-economic criteria against the terms and conditions of



the advertisement. Further, regarding the information sought by the petitioner under RTI Act, 2005 on 29.06.2021, the petitioner has already been provided all the documents submitted by her at the time of scrutiny of documents. Copy of scrutiny form submitted by the petitioner is annexed herewith as Annexure R-2/1, wherein it is clear that she has not attached undertaking. Hence, the petitioner cannot be given the marks of socio-economic criteria.”

12. A perusal of the same would show that the objection which has been taken by the respondent-Haryana Staff Selection Commission is that the petitioner did not submit any ‘**undertaking**’ regarding no Government job in the family. However, a perusal of serial No.6 the application form and serial No.10 of the aforesaid scrutiny form would show that the petitioner submitted the aforesaid undertaking which is so incorporated in both the documents as above. Not only this, a perusal of Annexure R-2/1 as reproduced above would show that the aforesaid form has been ‘countersigned’ by the official of the respondent-Haryana Staff Selection Commission. Now at this stage, the respondent-Haryana Staff Selection Commission cannot take up a plea that the aforesaid form was physically not present alongwith the documents. The scrutiny form Annexure R-2/1 does attach some sanctity to it especially when the same is not only signed by the petitioner but also countersigned by the official of the respondent-Haryana Staff Selection Commission at the time of the scrutiny of documents and therefore, the aforesaid stand which has been taken by the respondents that the undertaking was not found alongwith the application form is totally against the record. In case the petitioner was to be granted 5 marks under socio-economic criteria, then she would have obtained



90 marks, which are more than the cut-off marks i.e. 88 and consequent upon the same, she ought to have been considered for the post of Lower Divisional Clerk (LDC) in this regard.

13. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondent-Haryana Staff Selection Commission is hereby directed to consider the petitioner for the post of Lower Divisional Clerk (LDC) after granting her 5 marks under socio-economic criteria and thereafter, to process her case in accordance with law and forward the same to the concerned Administrative Department, within a period of two months from today, in case she is found on merit. In case the respondent-Haryana Staff Selection Commission forwards the case of the petitioner on the basis of the aforesaid to the concerned Administrative Department for appointment, then the concerned Administrative Department shall process the same and appoint the petitioner, within a period of two months thereafter. Needless to say that in case the petitioner is appointed, then she will be entitled for grant of all the consequential benefits including the seniority from the date when other candidates were appointed. However, the petitioner shall not be entitled for any monetary benefits pertaining to the salary for the period till the time she joins. In case there is no vacancy available, then the concerned Administrative Departmental shall create a supernumerary post for the petitioner.

11.11.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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