



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.217

CWP-13469-2023
Date of Decision: 13.09.2024

Parveen
Versus
.... Petitioner

Shri Vishwakarma Skill University and others
... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

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

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed seeking a writ of *certiorari* quashing the letter dated 07.06.2023, Annexure P-14, requiring the petitioner to submit Income and Asset Certificate (EWS) issued by the competent authority valid for the year 2020-21, based on income of financial year 2019-20; and a writ of *mandamus* directing the respondents to appoint the petitioner as Skill Instructor (Tool & Die) against Economically Weaker Section (EWS) category post on the basis of letter of appointment, dated 25.03.2023, Annexure P-11, with all consequential benefits.

2. Succinctly, facts of the case are, the respondent-University issued advertisement dated 12.11.2020, Annexure P-1, inviting applications for various posts, including two posts of Skill Instructor (Tool & Die), one each under EWS and unreserved category. Last date for submission of application forms in response thereto was 21.12.2020. The advertisement stipulated that the candidates were required to submit all supporting



self-attested documents along with the application form; the requirement is as under:

After successful submission of application form in online mode, the filled application form must be printed and signed on each page by the applicant. Such signed copy of application form along-with all supporting self-attested documents should be sent at the following address by 30.12.2020.

2.1. The petitioner belongs to EWS category, and has been issued certificates to that effect by the competent authority as well, i.e., (i) certificate dated 26.06.2019, valid for the year 2019-20, based upon his/his family's gross annual income for the financial year 2018-19, Annexure P-4, (ii) certificate dated 11.01.2021, valid for the year 2021-22, based upon his/his family's gross annual income for the financial year 2020-21, Annexure P-4A, (iii) certificate dated 21.01.2022, valid for the year 2022-23, based upon his/his family's gross annual income for the financial year 2021-22, Annexure P-4B.

2.2. Accordingly, being fully qualified the petitioner applied for the post under EWS category in response to the advertisement. He was considered eligible and was selected for the post as well. Pursuant thereto, a letter of appointment, dated 25.03.2023, was issued to him. In terms of paragraph 13(d) of the appointment letter, he was required to produce original documents/certificates at the time of joining which included '*caste certificate, as applicable. The caste certificate should be issued by competent authority*'. Thereupon, he received another letter dated 05.04.2023, Annexure P-12, asking him to produce EWS certificate (valid for the year 2020-21) as per paragraph 13(d) of the letter of appointment within fifteen days.



2.3. On receiving the letter, the petitioner applied to the competent authority/Sub Tehsildar for issuance of EWS certificate for the year 2020-21, Annexure P-13. As per report of the Namberdar on the application, the annual income of petitioner's family for the financial year 2019-20 was less than ₹6 lakh, they were having less than five acres of land, and the petitioner fulfilled all other eligibility conditions for a valid EWS certificate for the year 2020-21. The report was submitted to the Tehsildar, however, the certificate could not be issued. Thereafter, the impugned letter, dated 07.06.2023, was issued to the petitioner giving him final opportunity to submit the EWS certificate valid for the year 2020-21, based upon income for the financial year 2019-20, else his candidature/claim for the post would stand cancelled.

2.4. In these circumstances, the petitioner approached this Court by filing the instant petition.

3. Learned counsel for the petitioner contends that the petitioner belongs to EWS category, and the fact stands established from the valid certificates issued to that effect by the competent authority/Naib Tehsildar for the years 2019-20, 2021-22 and 2022-23, based upon his/his family's gross annual income for the previous financial years respectively. Only on account of outbreak of Covid-19 Pandemic the certificate for the year 2020-21 could not be issued to the petitioner, despite positive report, dated 07.04.2023, by the concerned department officials on his application that he fulfilled the requisite conditions and was entitled to a valid certificate for the year 2020-21 as well. In fact, there was no stipulation in the advertisement requiring him to submit a valid EWS certificate for the year 2020-21. Accordingly, he cannot be declined appointment on that basis.



4. Learned counsel for the University, on the contrary, contends that the petitioner was required to submit the EWS category certificate valid for the year 2020-21 in terms of the advertisement. He has referred to a stipulation therein that 'signed copy of the application form along with all supporting documents was required to be sent to the University by 30.12.2020'. And that this condition was to be read with the notification, dated 25.02.2019, Annexure R-1, issued by the State Government regarding reservation for EWS category candidates in direct recruitment on civil posts, which required under para 5.4 that, *'The crucial date for submitting Income and Asset Certificate by the candidate may be treated as the closing date for receipt of application for the post, except in cases where crucial date is fixed otherwise'*. Accordingly, the petitioner was required to submit Income and Asset Certificate (EWS) valid for the year 2020-21(relevant to the financial year with reference to the closing date to submit the application), based upon his/his family's annual income for the previous financial year 2019-20. Since it was not submitted, he could not be appointed. In support of the contentions, he has relied upon a judgment, dated 18.05.2022, passed by the Supreme Court in Civil Appeal No.4152 of 2022 titled *Union Public Service Commission v. Gaurav Singh and others*.

5. Submissions made by learned counsel for the parties have been considered.

6. As apparent on record, the University issued advertisement, dated 12.11.2020, for the post of Skill Instructor (Tool & Die) under EWS category. Closing date for submission of application forms was 21.12.2020, and the candidates were required to submit 'signed copy of application form along-with all supporting self-attested documents...by 30.12.2020'. Being

fully qualified, the petitioner applied for the post as a person belonging to



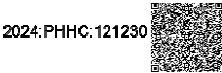
EWS category; his candidature was duly considered and was declared successful in the selection process as well, leading to issuance of the letter of appointment, dated 25.03.2023. However, he has not been allowed to join service for want of EWS certificate valid for the year 2020-21, based upon his/his family's annual income for the previous financial year 2019-20, though there is no specific requirement for the certificate in the advertisement. The petitioner has valid EWS certificates for the years prior to as well as after 2020-21, i.e., for the years 2019-20, 2021-22 and 2022-23. Accordingly, the issue arises for consideration is, *whether the University can insist upon a valid EWS certificate for the year 2020-21 as a pre-condition to give appointment, though there was no specific stipulation in the advertisement requiring the candidates to possess the same.*

7. An advertisement is the foundational document, laying down a set of rules/conditions to govern the selection process which remain binding on the candidates as well as the recruiting agency/appointing authority. To that extent it has the force of law, and binds the participating parties. Consequently, stipulations in the advertisement have to be zealously followed/observed, and the selection/appointment is to be mandatorily made in compliance thereof; a condition incorporated therein has to be complied with, and the one omitted cannot be insisted upon. There is no denying the fact that none of the conditions in the advertisement required the candidates to submit a valid EWS certificate for the year 2020-21 in support of their claim to be from the category. The only requirement was to furnish a signed copy of application form along with all supporting self-attested documents by 30.12.2020. Accordingly, there is no justification or legal basis for the University to insist upon this document as the sole valid proof to establish the petitioner's candidature under EWS category, and/or make it a condition



precedent to permit joining on the post after the selection. Besides, the petitioner was considered eligible during entire process of selection, and was issued the letter of appointment as well. The requirement of EWS certificate for the year 2020-21 has been insisted upon just before the date of joining, without any stipulation to that effect being notified to the candidates/petitioner anywhere. It amounts to shifting the goalposts at the far end of the process and imposing an altogether new condition disregarding the advertisement, based upon which the entire selection process was carried out culminating in offering appointment to the petitioner; this is impermissible being arbitrary and discriminatory

8. Further, the argument advanced by learned counsel for the University that the condition to submit all supporting documents by 30.12.2020, was to be read along with the State Government notification, dated 25.02.2019, and in terms thereof the closing date for submission of applications is to be treated as the crucial date for submitting Income and Asset (EWS) Certificate as well, is without substance. It is because there is no mention of the said notification in the advertisement, and the candidates, including the petitioner, cannot be required to furnish EWS certificate in terms thereof, nor can it be made a mandatory pre-condition for appointment against the post in question, as already discussed. Also, the reliance placed by the learned counsel on the judgment in *Gaurav Singh* case (*supra*) is misplaced, since in that case there was a clear stipulation in the notification/advertisement published on 24.04.2019, that the candidates were required to submit an Income and Asset Certificate for the financial year prior to the year of application. In these circumstances, it was held that in the absence of valid EWS certificate, the writ petitioners 2 and 4 therein could not be treated as EWS candidates. Whereas in the instant case, as already



discussed, there was no stipulation in the advertisement requiring the candidates to furnish a valid EWS certificate for any particular financial year, or for the year prior to the year of application.

9. In view of the discussion, the petition is allowed. The impugned letter, dated 07.06.2023, is set aside, and the University is directed to appoint the petitioner to the post of Skill Instructor (Tool & Die) in terms of the letter of appointment, dated 25.03.2023, within two weeks of receiving a certified copy of this judgment.

(TRIBHUVAN DAHIYA)
JUDGE

13.09.2024
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes