

102+265

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-19481-2017 (O&M)  
Date of decision: 14.03.2024

VINOD KUMAR

...Petitioner

VERSUS

HARYANA VIDYUT PRASARAN NIGAM AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Kamal Sharma, Advocate and  
Mr. Raja Sharma, Advocate  
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

\*\*\*\*

JASGURPREET SINGH PURI, J. (Oral)

CWP-3431-CWP-2024

Prayer in this application is for placing on record the replication to the affidavit dated 23.11.2023 filed on behalf of respondent No.4.

For the reasons mentioned in the application, the same is allowed. The replication to the affidavit dated 23.11.2023 filed on behalf of respondent No.4 is taken on record, subject to all just exceptions.

CWP-19481-2017

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing respondent No.4-Haryana Staff Selection Commission to call the petitioner for interview/viva-voce for the post of Shift Attendant in the Nigam

as the petitioner has fulfilled all the conditions as per the advertisement dated 20.02.2016 (Annexure P-1) and the Service Rules and with a further prayer to direct the respondents to allow the petitioner to appear in the Interview by considering him in the category of Dependant of Ex-Servicemen (ESM) and Scheduled Caste provisionally as he has applied under this category in his application form within the prescribed period.

2. The brief facts of the present case are that the petitioner applied for the post of Shift Attendant in pursuance of an advertisement, which was issued vide Annexure P-1 dated 20.02.2016 by the Haryana Staff Selection Commission and as per the aforesaid advertisement, the closing date for submission of online applications was 04.04.2016 and it was an online process. There were total 2426 posts of Shift Attendant under Category No.1, out of which 58 posts were reserved for Ex-Serviceman-Scheduled Caste Category (hereinafter referred to as ESM-SC). The petitioner applied against the aforesaid reserved category on the basis of being Dependent of Ex-Servicemen as well as Scheduled Caste. Along with the application, the petitioner attached the relevant documents which were so required in the aforesaid advertisement especially pertaining to reservation. So far as the eligibility requirement pertaining to the Scheduled Caste is concerned, the same is not in dispute but the dispute in the present case is only pertaining to the certificate of Dependent of Ex-Servicemen which was attached by the petitioner along with the application form, which according to the Haryana Staff Selection Commission was not a valid eligibility certificate. The petitioner submitted a certificate issued to him by the Secretary, Zila Sainik Board, Jind dated 15.06.2012, which has been attached along with the affidavit dated 23.11.2023 filed by the

Haryana Staff Selection Commission as Annexure R-4/3. The aforesaid certificate of Ex-Serviceman (Annexure R-4/3) is reproduced as under:-

**CERTIFICATE OF EX-SERVICEMAN**

Sr. No.644

*It is certified that Smt. Kamlesh Devi w/o No.2472531-N Rank Ex/Hav. Name Nafe Singh Resident of Buwana District Jind (Haryana) served in the Army/Navy/Air Force from 28.11.79 to 30.06.2000 and is entitled to:-*

- a) Electric connection of priority basis*
  - b) For getting admission only.*
  - c) Exemption for the payment of house Tax in Municipal area.*
  - d) Mr./Miss Vinod Kumar is the real son/Daughter of above ESM/Widows of ESM*
  - e) He/She is eligible to apply in HUDA for plots.*
- He/She is bonafide ESM/Widows of ESM.*

*Place:Jind  
Dated: 15.06.2012*

*Signature Thumb of  
ESM/Widows of ESM*

**SECRETARY  
ZILA SANIK BOARD  
JIND**

3. On the basis of the aforesaid process, the petitioner appeared for the written examination and he cleared the same. Thereafter, he was called for scrutiny of documents and the scrutiny of documents took place on 11.05.2017. During the scrutiny of documents, the petitioner produced the aforesaid certificate (Annexure R-4/3) for the purpose of seeking reservation in the Dependent of Ex-Servicemen Category. However, during the scrutiny of documents, the Haryana Staff Selection Commission did not consider the

aforesaid certificate as a valid certificate and therefore, the petitioner was rendered ineligible. It is a case of the petitioner that he was never told that the format of the aforesaid certificate was not in a proper form but thereafter, when the candidates were called for interview vide Annexure P-9, the roll number of the petitioner did not figure in the list of candidates called for interview and he thereafter, sought information from the Haryana Staff Selection Commission as to why he has not been called for the interview/viva-voce, to which he was told that the certificate of Dependent of Ex-Servicemen was not proper. After the petitioner inquired the same from the Haryana Staff Selection Commission with regard as to what was the proper format of certificate, to which he was told that a different kind of certificate is issued by the Zila Sainik Board. The petitioner thereafter approached the Zila Sainik Board and another certificate was issued to him vide Annexure P-5 dated 17.07.2017. The aforesaid certificate (Annexure P-5) is reproduced as under:-

(Refers to Para 3 of RSB Haryana letter No.50/4/96-SE-I RSB dated 11.10.2001)  
Serial No. of the Eligibility Register 183/2017

PHOTO

**ELIGIBILITY CERTIFICATE**

*Smt Kamlesh Devi W/o*

1.

*Number 2472531 -N*

*Rank Hav*
- Name Nafe Singh .....*

*of the Ex-servicemen*
2.

*Regiment/Unit of the Ex-Servicemen Punjab Regt(Army)*
3.

*Address of Ex-serviceman..VPO-BUWANA, The& Distt-  
Jind (Haryana)*
4.

*Name of Dependent*

*VINOD KUMAR seeking  
employment.*
- Date of Birth*

*17 SEP 1992*
- Civil Education Qualification*

*10<sup>th</sup>*

5. *Specimen Signature of the Ex-servicemen..... (Thumb)*
6. *Specimen Signature of the Dependent.... Vinod Kumar (SD/-)*
7. *This certificate is valid only for one year from the date of issue which will have to be renewed every year on expiry.*
8. *CERTIFICATES*
  - (i) *Certified That the applicant whose particulars alongwith the particulars of Ex- Servicemen. whose dependent he/she is/are given above is eligible for employment under the State Govt. Policy against the quota reserved for the Ex-servicemen as per Haryana Govt. Instructions issued from time to time.*
  - (ii) *It is further certified that as per the affidavit of Father/Husband of the applicant he is not a State Govt./Central Govt./PSU employee.*
  - (iii) *That this certificate has been issued to only one dependent of the EX-servicemen relevant records maintained in the Zila Sainik Eligibility register.*
  - (iv) *That the first eligibility certificate issued to the dependent has been received in original and entries made in the register before issue of the second/third certificate to the only dependent.*
  - (v) *I have personally perused all relevant documents and the affidavits of the individuals and have satisfied myself for correctness before issuing this certificate.*

Station: JIND  
Dated: 17 JUL 2017

SD/-  
Secretary  
Zila Sainik Board, Jind

4. Since the petitioner was never called for interview, the result was declared by the Haryana Staff Selection Commission, whereby the petitioner was not selected. The aforesaid result was declared on 08.03.2019, which was about 1 year and 10 months after the scrutiny of documents and in the meantime, the petitioner already had the aforesaid certificate (Annexure P-5) and as per the petitioner, he requested the Haryana Staff Selection Commission to consider the aforesaid certificate but they did not do the same. Thereafter, on 28.08.2017, the petitioner filed the present writ petition, wherein notice of motion was issued by this Court on 30.08.2017, which was accepted by the respondent No.4-Haryana Staff Selection Commission on the same date and a direction was issued to file an affidavit.

5. Learned counsel for the petitioner submitted that it is a case where the petitioner has been non-suited purely on irrelevant considerations since there was no violation of any statutory provision of law nor there was any violation of any conditions of the advertisement itself. He submitted that the only reason as to why the petitioner was rendered ineligible was that he had attached the certificate (Annexure R-4/3) of the year 2012, which was also issued by the Zila Sainik Board pertaining to the fact that he was Dependent of an Ex-Servicemen but it was not in the format which was so sought by the respondent-Haryana Staff Selection Commission at the time of interview. He further submitted that in fact it is a case where there is no dispute that the petitioner is Dependent of an Ex-Servicemen but the only dispute is that after the cut-off date, the aforesaid certificate (Annexure P-5) was issued to the petitioner but the same was issued to him prior to the declaration of result and even much prior to the declaration of result, the present writ petition was filed

before this Court, in which notice of motion had been issued and therefore, the respondent-Haryana Staff Selection Commission ought to have considered the aforesaid certificate of Ex-Servicemen in accordance with law but the same was not even considered only because of the reason that according to the Haryana Staff Selection Commission, it was not a valid eligibility certificate.

6. Learned counsel for the petitioner also submitted that rather when the present matter came up for hearing before this Court on 02.08.2018, it was so directed that the learned State counsel will inform as to how many posts of Dependent of Ex-Servicemen and SC Category (ESM-SC) are still lying vacant but no such affidavit was filed by the Haryana Staff Selection Commission and it was only thereafter, on 23.11.2023 that such an affidavit was filed, which was after the result was declared but the aforesaid order was passed by this Court prior to the declaration of the result. He further submitted that be that as it may, even otherwise also there were total 58 advertised posts under the aforesaid category and as per the affidavit filed by the Haryana Staff Selection Commission, out of the aforesaid 58 posts advertised, only 34 candidates were found eligible for interview, which finds mentioned in Annexure P-9 and out of the said candidates, only 28 posts were filled up and the remaining posts out of the aforesaid 58 posts were filled up from the SC category in view of the Policy of the State Government with regard to the residue posts which are not filled up and are to be filled up from the remaining category. He further submitted that it is not a case of the Haryana Staff Selection Commission that the vacancies were not available during the pendency of the present petition and prior to the declaration of the result on 08.03.2019 and now from the affidavit which has been filed by the Haryana Staff Selection Commission, it is very clear that the

vacancies were still available since out of 58 posts, only 28 posts were filled up and the remaining 30 posts were channelized in different reservation channel i.e of SC category and therefore, once the certificate (Annexure P-5) was given to the Haryana Staff Selection Commission by the petitioner, which was very well in the knowledge of the Haryana Staff Selection Commission much before the finalization of the selection process and much before the interview and also before the declaration of result, it was the duty of Haryana Staff Selection Commission to have considered the aforesaid certificate (Annexure P-5) especially in view of the fact that large number of vacancies were available and the candidature of the petitioner has been rejected on hypertechnical grounds, which is not supported by any Statutory Rule or even the advertisement itself.

7. Learned counsel for the petitioner also referred to the conditions of the advertisement (Annexure P-1) in this regard. He referred to the contents at page No. 18 of the paper-book, wherein it has been so provided that the dependents of ESM who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates and the ESM/DESM candidates of Haryana claiming benefit must have a valid eligibility certificate on last date of submission of online application form and will have to produce valid eligibility certificate from the concerned Zila Sainik Board at the time of interview. It was further pointed out that mere dependent certificate will not be entertained and ESM candidates should also produce attested photo copy of Identity Card issued by concerned Zila Sainik Board & Discharge Book at the time of interview. Further, it is also so stated in the advertisement that the benefit of reservation will be given only to those

SC/BCA/BCB/PHC/EBPG and ESM candidates and outstanding sportsperson candidates who are domicile of Haryana State and the SC/BCA/BCB/PHC/EBPG candidates are required to submit SC/BCA/BCB/PHC/EBPG certificate duly issued by the competent authority at the time of interview and that the Dependent of Ex-Servicemen (DESM) shall be required to produce the valid eligibility certificate duly issued by the respective Zila Sainik Board at the time of interview. The relevant portion of the aforesaid advertisement is reproduced as under:-

***Note:-1 Disabled ex-servicemen will mean ex-servicemen who, while serving in the Armed Forces of the Union were disabled in operations against the enemy or in disturbed areas.***

***Note:-2 The dependents will include besides wife/widow, dependent sons/daughters.***

*The dependents of ESM who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates.*

*ESM/DESM candidates of Haryana claiming benefit must have valid eligibility certificate on last date of submission of online application form and will have to produce the valid Eligibility Certificate from the concerned Zila Sainik Board **at the time of interview**. Mere dependent certificate will not be entertained. ESM candidates should also produce attested photo copy of Identity Card issued by concerned Zila Sainik Board & Discharge Book at the time of interview.*

**NONE OF THE PERSON BELOW SHALL FALL WITHIN THE DEFINITION OF WORD DEPENDENT**

**OF EX-SERVICEMEN IN TERMS OF HARYANA  
GOVT. LETTER NO.12/37/79-GSII, DATED 21.11.1980:-**

- i) A person may be working on an adhoc basis against the post advertised or somewhere else.*
- ii) A person may be unemployed at the time of making the application but he may have other source of income viz. from agriculture, trade, property, Bank Balance etc.*
- iii) A person who is a member of the joint Hindu family and remains dependent upon the Karta till there is partition in the family or he ceases to be a member of the joint Hindu family and is obliged to pass on all his income to the Karta and he draws money for his subsistence from the pool of the joint Hindu family with the consent of the Karta.*
- iv) A candidate who is a member of the joint Hindu family is employed on adhoc basis but he is otherwise dependent on his father.*

**Note :- i)** *The benefit of reservation will be given only to those SC/BCA/BCB/PHC/EBPG and ESM and outstanding sportsperson candidates who are domicile of Haryana State. The SC/BCA/BCB/PHC/EBPG candidates are required to submit SC/BCA/BCB/PHC/EBPG Certificate duly issued by the competent authority at the time of interview. Likewise the Outstanding Sports Person shall be required to produce the Sports Gradation Certificate as per Government instructions duly issued by the competent authority. DESM shall be required to produce the Valid Eligibility Certificate duly issued by the respective Zila Sainik Board at the time of interview.*

**ii)** *Qualification and other term and conditions of eligibility will be determined with regard to the last date fixed for receipt of online applications.*

**iii)** *Candidates applying for a post must ensure that they fulfill all the eligibility conditions on the last date of*

*application. If on verification at any time before or after the written examination or interview or appointment, it is found that they do not fulfill any of the eligibility condition or it is found that the information furnished is false or incorrect their candidature will be cancelled.*

8. Learned counsel for the petitioner while referring to the aforesaid advertisement submitted that it is very clearly mentioned in the advertisement that the certificate of Dependent of Ex-Servicemen was to be produced at the time of interview, whereas in the present case, the petitioner has been ousted at the time of scrutiny of documents on the basis of the aforesaid certificate (Annexure R-4/3). He further submitted that immediately thereafter, the petitioner got another certificate (Annexure P-5) issued much before the interview and had he been called for the interview, he would have produced the aforesaid certificate at the time of interview but the same was not done by the Haryana Staff Selection Commission. While referring to the earlier condition as reproduced above, wherein it has been so stated that the candidates must have valid eligibility certificate on the last date of submission of the online application form and that the mere dependent certificate will not be entertained on the basis of which the candidature of the petitioner has been rejected is not only an arbitrary condition and liable to be ignored but even otherwise also, it only states that a valid eligibility certificate has to be on the last date of submission of the online application form. He further submitted that the petitioner already had a certificate duly issued by the Zila Sainik Board stating that he is a Dependent of Ex-Servicemen (Annexure R-4/3) but as to what was the valid eligibility certificate and what was the format of the same, there was

nothing mentioned in the advertisement and as a layman, the petitioner could not know as to what could be the format which the Haryana Staff Selection Commission is wanting and when at the time of scrutiny of documents, he was made aware of the same, he immediately got the aforesaid certificate (Annexure P-5) issued which was in consonance with their requirement and which was so asked at the time of scrutiny of documents and which was given to the Haryana Staff Selection Commission and also attached with the present petition. He further submitted that once the aforesaid formality itself was completed vide Annexure P-5, then on the aforesaid hypertechnical and superficial condition, the petitioner could not have been non-suited particularly in view of the fact that large number of vacancies were still available with the Haryana Staff Selection Commission. He further submitted that in the absence of any format or criteria to explain or to define as to what was the valid eligibility certificate, the petitioner could not have been rendered ineligible in this regard.

9. Learned counsel for the petitioner also submitted that it is not the case of the respondent-Haryana Staff Selection Commission that the petitioner was not an Ex-Serviceman or a Dependent of Ex-Servicemen nor they have disputed the same but the only dispute which they have raised is that the petitioner did not attach the valid eligibility certificate at the time of the filling of the online application before the cut-off date. He further submitted that in other words, the factum of being Dependent of Ex-Servicemen has not been disputed by the respondent-Haryana Staff Selection Commission but it was only because of the aforesaid hypertechnicality that the petitioner has been rendered ineligible. In this regard, he referred to judgments of Hon'ble Supreme Court in **Dolly Chhanda versus Chairman JEE, 2005 (9) SCC 779**

and *Ram Kumar Gijroya versus Delhi Subordinate Services Selection Board and another, 2016 (4) SCC 754*, a judgment of Delhi High Court in *Ms.Pushpa versus Government, NCT of Delhi and others, C.M. No.17504/2008 in W.P. (C) No.9112/2008*, and a Division Bench judgment of this Court in *LPA No.1199 of 2019, Haryana Staff Selection Commission versus Subhash Chand and others* to contend that when a candidate is in a reserved category, then the mere fact that the certificate was given to the respondent-recruiting agency after the cut-off date would not have any effect and it can always be considered in the facts and circumstances of each and every case. He further submitted that during the pendency of the present writ petition, the respondent-Haryana Staff Selection Commission has recruited Shift Attendants and when there were 30 vacancies as per the affidavit filed by the respondent-Haryana Staff Selection Commission, it ought to have given preference to the petitioner and considered him for appointment but instead of giving an appointment to the petitioner, the Haryana Staff Selection Commission diverted the aforesaid vacancies to another reservation i.e. Scheduled Caste category and now therefore, in view of the aforesaid facts and circumstances, a direction may be issued to the respondent-Haryana Staff Selection Commission to consider the petitioner for the post of Shift Attendant on the basis of Dependent of Ex-Servicemen in the light of aforesaid certificate (Annexure P-5) and also in the light of the aforesaid judgments as relied upon.

10. On the other hand, Mr. Gaurav Jindal, Addl. A.G., Haryana submitted that when the petitioner applied for the aforesaid post, he had uploaded and attached the certificate of Zila Sainik Board (Annexure R-4/3), which was not in accordance with the terms and conditions of the advertisement

(Annexure P-1). While referring to the aforesaid terms and conditions, he submitted that it has been specifically provided that the Ex-Servicemen or Dependent of Ex-Servicemen must have a valid eligibility certificate on the last date of submission of the online application form, whereas in the present case the petitioner did not have a valid eligibility certificate on the last date since the certificate (Annexure P-5), which has been attached with the present petition is of a date which is much later than the last date of submission of application form. He further submitted that the certificate (Annexure R-4/3), which was attached by the petitioner along with the application form although was issued by the Zila Sainik Board and pertains to Ex-Servicemen but the aforesaid certificate cannot be termed as a valid eligibility certificate since the same was for a different purpose and it was not meant for getting the recruitment. He also submitted that the actual valid certificate is in the format of Annexure P-5, which clearly shows that it is meant for the purpose of recruitment but the aforesaid eligibility certificate was much after the cut off date and therefore, it could not have been considered at the time of scrutiny of documents and the petitioner was rightly declared to be ineligible in this regard. He further submitted that the aforesaid terms and conditions of the advertisement were binding upon both the parties and in this regard, he referred to judgments of Hon'ble Supreme Court in *The State of Bihar and others versus Madhu Kant Ranjan and another, 2022 AIR (Supreme Court) 1310, Rakesh Kumar Sharma versus Govt. of NCT of Delhi and others, 2013 (11) SCC 58* and *Divya versus Union of India and others, (2024) 1 SCC 448* in this regard. He also submitted that the aforesaid judgments which have been referred by the learned counsel for the petitioner are distinguishable and in terms of the

advertisement itself, the Haryana Staff Selection Commission has rightly disqualified the petitioner for being considered for appointment to the post of Shift Attendant and therefore, the present writ petition is liable to be dismissed.

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

12. The short issue involved in the present case is as to whether the petitioner ought to have been disqualified/rendered ineligible by the Haryana Staff Selection Commission on the basis of the certificate which was attached along with the application form i.e. Annexure R-4/3 or not. While the petitioner had applied for the post of Shift Attendant, he had attached Annexure R-4/3 which was a certificate issued by the Zila Sainik Board and it was also depicting that it is a certificate of Ex-Serviceman, which is clear from the aforesaid heading of the aforesaid certificate, which states "Certificate of Ex-Serviceman". The said certificate is issued by the competent authority i.e. Zila Sainik Board, Jind. The authenticity and genuineness of the aforesaid certificate is not in dispute and it is also not in dispute that the aforesaid certificate was a part of the application form, which the petitioner had submitted and the date of the aforesaid certificate is 15.06.2012, which is much before the cut-off date and much before the filling of the application form by the petitioner. However, when the petitioner appeared for the written examination, he cleared the same and as a next step in the process, he was called for scrutiny of documents along with other candidates. There were total 58 posts meant for the aforesaid reserved category of ESM-SC as per the advertisement and as per the affidavit filed by the Haryana Staff Selection Commission, only 28 posts were filled up and the remaining 30 posts were diverted to another reserved category i.e. SC category because of non-availability of the candidates from the

ESM-SC category. The scrutiny of documents took place on 11.05.2017 qua the petitioner and the petitioner was told that he is not eligible because his certificate is not in a proper format. Thereafter, the petitioner got another certificate from the Zila Sainik Board, which was issued to him just after about 2 months of the scrutiny of documents i.e. on 17.07.2017 vide Annexure P-5, which states that it is an eligibility certificate. As per the learned counsel for the petitioner, when the petitioner was not called for interview vide Annexure P-9, then he immediately submitted the aforesaid certificate to the Haryana Staff Selection Commission and stated that he has the requisite certificate (Annexure P-5) and the same should be considered especially in view of the fact that it is not in dispute that he is a Dependent of Ex-Servicemen but it is only the format which the respondent-Haryana Staff Selection Commission wanted to have and which was not the same format as that of Annexure R-4/3 but now he has got Annexure P-5 and the result has not been declared, so therefore, he should also be interviewed and be considered in accordance with law.

13. The interview was stated to be held on 02.08.2018, whereas the petitioner filed the present writ petition on 28.08.2017, which was almost one year prior to the interview. Thereafter, the result was declared on 08.03.2019. Before further analyzing the facts of the present case, it will be necessary to refer to the proposition of law in this regard. The learned counsel for the petitioner referred to a judgment of Delhi High Court in **Ms. Pushpa's case (supra)**. In that case, the petitioner applied for the post of Staff Nurse under the OBC category and the last date for submission of application form in the advertisement was fixed for 21.01.2018 and the certificate was not accepted as no proof was furnished by the petitioner therein to satisfy the authorities that

she belongs to the said category since she did not attach the certificate because although she had applied for the certificate to the SDM for grant of OBC certificate but it was issued after the cut-off date and therefore, the aforesaid petition of aforesaid Ms. Pushpa was allowed by the Delhi High Court on the ground that the petitioner therein was not at fault.

14. In *Dolly Chhanda's case (supra)*, the Hon'ble Supreme Court while discussing a case of a girl, who was a daughter of Ex-Serviceman and was discharged from Armed Forces on the ground of disability also discussed the aforesaid issue as to what is the effect of filing the certificate after the cut-off date. In that case, during the course of scrutiny of papers, it was revealed that the certificate pertained to "Disabled/killed in war/hostilities" and therefore, was not found to be eligible, whereas, it ought to have been under the ground of "Permanently Disabled" and thereafter, a fresh certificate was obtained by the aforesaid petitioner of that case and relief was granted to her. The Hon'ble Supreme Court while dealing with the principle of law observed that it is a general rule that when a person applies for any post, a person must possess the eligibility qualification on the last date fixed for such purpose, but at the same time depending upon the facts of each and every case, there can also be relaxation in the manner of submission of proof and it will not be proper to apply any rigid principle as it pertains to the domain of procedure and any infraction of any rule relating to the submission of the proof need not necessarily result in rejection of the candidature. In other words, it would mean that there can be no straightjacket formula for rejecting a candidature only on the aforesaid reason. Paras No.7 and 9 of the aforesaid judgment is reproduced as under:-

*7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark-sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.*

xxx-xxx-xxx-xxx

*9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.*

15. In **Subhash Chand's case (supra)**, the matter came up for hearing before this Court in LPA, wherein the candidature was also rejected on the ground that the condition was that the certificate should have been issued prior to the last date of submission of online application form. The matter was pertaining to getting reservation in EBP GC category and the certificate was to be issued by the Welfare of Scheduled Castes and Backward Classes

Department, which was issued after the cut-off date. It was held by the Division Bench of this Court that it is important to see that while eligibility i.e. possessing education qualification should be possessed by the cut-off date for claiming benefit of reservation, proof of eligibility to claim such reservation need not to be submitted by the cut-off date. Even if proof of claim of eligibility for reservation is produced beyond the cut-off date, the candidate can be considered for the grant of the said benefit and cannot be denied relief. The Division Bench of this Court in this regard also referred to judgments of Supreme Court in **Ram Kumar Gijroya's case (supra)** and **Charles K. Skaria and others versus Dr. C. Mathew and others, 1980 (2) SCC 752** and also referred to the aforesaid judgment of Hon'ble Supreme Court in **Dolly Chhanda's case (supra)**. The relevant portion is produced as under:-

xxx-xxx-xxx-xxx

*Thus the important thing to be seen is that while eligibility i.e possessing education qualification should be possessed by the cut off date, for claiming benefit of reservation, proof of eligibility to claim such reservation need not be submitted by cut off date. Even if proof of claim of eligibility for reservation is produced beyond cut off date, the candidate can be considered for grant of the said benefit and cannot be denied relief.*

*In **Ram Kumar Gijroya** case (4 Supra), the appellant had sought appointment to the post of Staff Nurse under the OBC category, but the said certificate was not submitted with the application and submitted after the last date mentioned in the advertisement. The appellant was therefore not selected on that ground, but the Supreme Court held that the candidature of those candidates, who belonged to*

*reserved categories, could not be rejected simply on account of late submission of caste certificate. The Supreme Court held that the purpose of certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to a particular category and act thereon by giving the benefit to such candidate for his belonging to the said category. It was not as if the petitioners therein did not belong to the reserved category prior to the cut off date or that they acquire the status of belonging to the said category only on the date of issuance of the certificate. It held that necessitating upon a certificate to be issued prior to the cut off date would be clearly arbitrary and it has no rational objective sought to be achieved.*

*In **Charles K. Skaria and others Vs. Dr. C. Mathew and others**<sup>8</sup>, the Supreme Court held that the candidates who got admission even though they had not attached the certificate of having passed the diploma alongwith their applications, could not have their admission to a Post Graduate cancelled provided they had in fact passed the diploma before the date fixed, but had submitted the diploma with delay. It observed that the important question is whether or not the candidate secured a diploma before the final date of application for admission to the degree course and if he did have the diploma some relaxation in producing evidence of the diploma can be granted. It held that the emphasis should be on the diploma and the proof thereof subserves the factum of possession of diploma and is not an independent factor. It held that what is essential is the possession of the diploma before the given date and what is ancillary is the safe mode of proof of the qualification. To make mandatory, the date of acquiring the qualification before the last date for application make sense. But if it is shown that the qualification has been acquired before the*

*relevant date, to invalidate the merit factor because proof was adduced a few days later, would not be proper.*

xxx-xxx-xxx-xxx

16. The aforesaid Division Bench judgment of this Court was assailed by the Haryana Staff Selection Commission by filing a Civil Appeal before the Hon'ble Supreme Court, which was dismissed on 31.01.2024.

17. The Hon'ble Supreme Court in **Ram Kumar Gijroya's case (supra)** also dealt with this important issue as to whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not. It also referred to the judgment of the Delhi High Court is **Ms.Pushpa's case (supra)** and another judgment in **Tej Pal Singh & others versus Govt. of NCT of Delhi, ILR 2001 Delhi 298**. It was so held by the Hon'ble Supreme Court that the decision rendered in the case of **Ms.Pushpa's case (supra)** is in conformity with the position of law laid down by the Hon'ble Supreme Court.

18. Some judgments were also relied upon by the learned State counsel. One of the judgments i.e. **Madhu Kant Ranjan's case (supra)** was a case where the writ petitioner of that case did not produce/submit the photocopy of the NCC certificate along with the original application and therefore, it was held that once the NCC certificate which was required to be attached along with the application form was not produced, then rendering the petitioner of that case to be ineligible was in accordance with law. This Court is of the view that this judgment of the Hon'ble Supreme Court is totally distinguishable from the present case since the certificate of NCC, which was required to be produced

along with the application cannot be considered on the same rationale of law as that of any OBC/SC/Ex-Servicemen category because as stated above, now it is a settled law that a person who is under reserved category is always in the reserved category and the date of certificates would not make any difference.

19. So far as the judgment of Hon'ble Supreme Court in **Rakesh Kumar Sharma's case (supra)** is concerned, the same was a case where the appellant had made a representation that he has obtained BA degree, but could not submit a copy of the mark-sheet or degree certificate. A perusal of para No.16 of the aforesaid judgment would show that the appellant of that case did not possess the requisite qualification on the last date of submission of the application, though he applied representing that he possessed the same. The aforesaid judgment is therefore distinguishable on facts.

20. So far as judgment of Hon'ble Supreme Court in **Divya's case (supra)** as relied upon by the learned State counsel is concerned, the same also dealt with the earlier judgments in **Ram Kumar Gijroya's case (supra)** and **Dolly Chhanda's case (supra)** etc. In **Divya's case (supra)**, the candidate was seeking reservation in the EWS category for the purpose of CSE-2022 and she was to provide the income and assets certificate for the financial year of 2020-21, but she did not attach the same, which was provided later on. In this way, before the closing date of the application, the candidate of that case was not in possession of the requisite certificate for the financial year 2020-21 and before the main examination. Again, the facts and circumstances of that case were pertaining to the income certificate, which cannot be treated at par with the rationale of the certificates, which are pertaining to the reservation under the

SC/OBC/Ex-Serviceman category and therefore, the aforesaid judgment is also distinguishable from the present case.

21. Coming to the facts of the present case again, a perusal of the advertisement (Annexure P-1) as reproduced above would show that the certificate of reservation was to be produced at the time of interview, which is clear from the aforesaid terms and conditions of the advertisement. However, in the present case, the petitioner has been shunted out at the time of scrutiny of documents on the ground that he had submitted a certificate (Annexure R-4/3), which was not in accordance with the format but after the scrutiny of documents and before the interview, which was held on 02.08.2018, the petitioner already had the certificate (Annexure P-5) with him, which was issued at least one year prior to the aforesaid date of interview. This Court is of the view that had the petitioner been not shunted out at the time of scrutiny of documents and was told about the aforesaid certificate which was required, he could have produced the same at the time of interview in accordance with the terms and conditions, but he had no opportunity to do so because he was never called for interview and much before the interview, he had rather preferred to file present petition before this Court on 28.08.2017, wherein notice of motion was issued by this Court on 30.08.2017 and the learned State counsel accepted notice on the same date. Therefore, even otherwise also, it came to the knowledge of the Haryana Staff Selection Commission at least one year before the interview was conducted with regard to the possession of the aforesaid certificate (Annexure P-5), which has been attached with the present petition and therefore, it appears that it was only because of some superficial and artificial reasons that the petitioner has been non-suited and rendered ineligible.

22. Even otherwise also, a perusal of the aforesaid condition which has been heavily relied upon by the learned State counsel shows that the ESM/DESM candidates of Haryana claiming benefit must have “*Valid Eligibility Certificate*” on the last date of submission of online application does not clarify or define as to what is the meaning, extent or definition of the aforesaid “*Valid Eligibility Certificate*”. During the course of arguments, a specific query was put to the learned State counsel as to whether the aforesaid expression “*Valid Eligibility Certificate*” has been defined or mentioned in the format along with the advertisement or not, to which he submitted that no such format or definition is provided. In other words, what was the meaning of the aforesaid expression “*Valid Eligibility Certificate*” was ambiguous and was not known to a candidate, who is a layman when he applies in pursuance of the advertisement and it appears that the petitioner applied under the reserved category along with the supporting document of his certificate of Ex-Servicemen (Annexure R-4/3), but according to the Haryana Staff Selection Commission, it was not in accordance with the format. However, no such format has been provided anywhere in the advertisement nor it is so there in any Statutory Rule or Instruction. Therefore, it cannot be expected from a candidate who is a layman as to what kind of format was required by the recruiting agency. Even otherwise also, after the scrutiny of documents when the candidates were called for interview vide Annexure P-9, the petitioner came to know that the certificate (Annexure R-4/3) was not in accordance with the format and he got issued another certificate (Annexure P-5) immediately within a period of 2 months after the scrutiny of documents and the entire process of interview took place after about one year and the result

was declared again after about 7 months and in this way, the respondent-Haryana Staff Selection Commission had lot of time to consider the aforesaid certificate, which was otherwise attached with the present petition as Annexure P-5 and was in the knowledge of the Commission much prior to interview and declaration of result. This Court is therefore of the view that in the light of the aforesaid judgments of the Hon'ble Supreme Court, judgment of Delhi High Court and a Division Bench judgment of this Court as relied upon by the learned counsel for the petitioner, the candidature of the petitioner was wrongly rejected.

23. Apart from the above, there was no difficulty with regard to the vacancies even as per the affidavit filed by the Haryana Staff Selection Commission. As per the affidavit filed by Haryana Staff Selection Commission, out of total 58 advertised posts against the reserved category of ESM-SC, only 28 posts have been filled up and 30 remained unfilled, which they had to divert to another reservation of SC category and therefore, at that time when the recruitment was made the vacancies were available.

24. In view of the aforesaid facts and circumstances and considering the factual position of the present case, the present writ petition is allowed. The respondent-Haryana Staff Selection Commission is directed to consider the candidature of the petitioner by taking into consideration the certificate (Annexure P-5) and thereafter, to follow the further process by interviewing him in accordance with law and thereafter, all the consequential process shall follow. The aforesaid exercise shall be completed within a period of two months from today.

25. In case the petitioner is found to be suitable for being recommended and he is recommended by the Haryana Staff Selection Commission, then he shall be given appointment on the aforesaid post by the respondent-Nigam and in case no vacancy is available, then by creating a supernumerary post. The petitioner will also be entitled for his notional fixation of pay and other benefits with effect from the date when the other candidates had joined, but he will not be entitled for any monetary benefits for that period. However, his seniority will also relate back to the date when the other candidates were appointed in pursuance of the aforesaid advertisement.

14.03.2024  
Chetan Thakur

(JASGURPREET SINGH PURI)  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No