



CWP-19090-2023

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

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CWP-19090-2023

Date of Decision: 31.07.2024

Manisha Bhardwaj

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Ashwani Bhardwaj, Advocate for the petitioner

Mr. Parveen Mehta, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *mandamus* directing the respondents to consider the petitioner's candidature for the post of Computer Instructor after deducting five marks given to her under socio-economic criteria.

2. Briefly, as per facts apparent on record, the second respondent/Commission published advertisement no.12/2019, inviting applications for direct recruitment against 3206 posts under various categories in the Skill Development and Industrial Training Department, including 59 posts of Computer Instructor, category No.9. Closing date for submission of application form was 20.08.2019, Annexure P-1, which was extended to 20.09.2019. It was specifically provided in the advertisement that validity of all

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certificates and documents regarding eligibility conditions and socio-economic criteria etc. will be determined with reference to the closing date.

2.1. The petitioner being eligible for the post as a General category candidate, applied for the same by submitting an online application form on 17.09.2019, Annexure P-3. He did not claim marks under the socio-economic criteria by answering 'yes' in column one under the criteria, which is as under:

1. Any person from among the applicant's father, mother, spouse, brothers, sisters, sons and daughters 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.: **Yes**

2.2. Thereupon, the petitioner participated in the selection process, and cleared the written examination as per result dated 12.03.2020, Annexure P-6. She was called for physical scrutiny of documents vide notice dated 17.09.2021, Annexure P-11. However, the scrutiny procedure was changed, and vide notice dated 27.09.2021, Annexure P-12, the candidates were asked to fill-up scrutiny form online and upload all original documents, photo, signature, downloaded application form, etc. for online scrutiny between 28.09.2021 to 04.10.2021. The petitioner uploaded all the requisite documents for the purpose in response to the notice. While doing so, she inadvertently uploaded an undertaking dated 25.09.2021, Annexure P-13, in the prescribed format, i.e., Annexure E-1, provided by the Commission, for claiming marks under socio-economic criteria. It was to the effect that neither the applicant nor any person among her family is, was or has been a regular employee in any Department/ Board/ Corporation etc. This undertaking was uploaded under the petitioner's signatures, but without any attestation by the competent authority.



2.3. After online security of documents, the respondents issued public notice, dated 22.12.2021, asking the candidates to withdraw their claim/undertaking for socio-economic criteria marks in case they wished to do so. It was also clarified that no subsequent chance for the purpose would be given to the candidates.

2.4. Thereafter, the Commission declared the final result of selection vide announcement dated 01.01.2023, Annexure P-14, whereby the petitioner was recommended for appointment as Computer Instructor, having secured eighty-nine marks in the written examination and five under the socio-economic criteria, making it ninety-four in total. Cut-off marks for the general category candidates were eighty-four in the main list, and seventy-six point five zero in the waiting list.

2.5. On seeing the result, the petitioner realised that marks under socio-economic criteria have been wrongly given to her in the final result of selection dated 31.01.2023, though she did not claim the benefit while applying for the post. Therefore, she submitted an affidavit to the Commission dated 14.02.2023, Annexure P-15, explaining the circumstances under which the undertaking, dated 25.09.2021, was inadvertently uploaded by someone else on her behalf. She was pregnant at the relevant time, and handed over the requisite documents to somebody else for uploading the same for online scrutiny. Accordingly, it was requested that five marks given to her under the criteria should be deducted from the final result. The Commission, however, did not take any action on the petitioner's request.

2.6. Having been recommended for appointment, the petitioner contacted the Department, and before the Departmental Enquiry Committee for documents verification, she requested for deducting marks under the socio-

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economic criteria given to her during selection. The Department, accordingly, sought a clarification to that effect from the Commission vide letter dated 26.04.2023, Annexure P-17. The Commission, in return, vide letter dated 04.10.2023, Annexure R-2/1, conveyed that her candidature was liable to be rejected for giving false/wrong information about her claim for socio-economic criteria. Accordingly, her recommendation was withdrawn by the Commission, and was consequently not appointed by the Department. In these circumstances, the petitioner approached this Court by filing the instant petition.

3. Learned counsel for the petitioner has contended that it was only on account of inadvertent mistake that the undertaking for claiming marks under socio-economic criteria was uploaded by/on her behalf for the online scrutiny of documents. Therefore, she should be allowed to withdraw the same. Since marks under the criteria were not claimed by her while filling-up the application form, the undertaking could not have been taken into account by the Commission even if it had been submitted. The conditions for claiming marks under the criteria had not been fulfilled by the petitioner, and the marks could not have been awarded to her for the same. It is further contended that even if five marks awarded to the petitioner under the criteria are deducted, she is entitled to be selected and recommended for appointment on merit as her score remains eighty-nine, which is more than the marks obtained by last selected candidate in the general category, eighty-four.

4. Learned State counsel, on the contrary, contends that the petitioner has no right to seek recommendation, and her candidature has been rightly withdrawn for furnishing false information claiming marks under the socio-economic criteria. It was only due to this information, which undisputedly was

furnished by the petitioner, that her candidature had to be cancelled as per



stipulation in the advertisement. Besides, despite opportunity having been given to withdraw the marks under socio-economic criteria vide public notice dated 22.12.2021, the petitioner failed to do so. On this account, her request for withdrawing the marks after declaration of result cannot be entertained.

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

6. It is undisputed that the closing date for submitting applications for the post of Computer Instructor was 20.09.2019, and the petitioner submitted her application form on 17.09.2019. She did not claim marks under socio-economic criteria by stating that one of her family members had been a regular government/corporation employee. After successfully clearing the written examination, she was asked to participate in the online scrutiny of documents. It was while uploading the documents for online scrutiny, that an undertaking, dated 25.09.2021, was uploaded by her claiming marks under socio-economic criteria. On that basis, she was awarded five marks under the criteria while declaring the final selection result.

7. As per mandatory requirement in the advertisement, the candidates have to fulfil qualifications as well as eligibility conditions for claiming benefit under the criteria on the closing date for submission of application. The stipulation to that effect is as under:

- i. Candidates must ensure that they fulfill the qualifications/eligibility conditions on cutoff date. All the Certificates/Documents relating to educational qualification/eligibility conditions and Socio-Economic Criteria etc. will be determined with regard to last date fixed to apply online applications also called as closing date i.e. **20th August, 2019** as given in the advertisement. No confidential result qua minimum



qualification shall be entertained. Where the result has been declared prior to closing date of the Advertisement and DMC was issued thereafter, the candidate must bring a certificate issued by the concerned institute/Board/University mentioning the date of declaration of result which should be prior to closing date and upload it and produce the same at the time of scrutiny of documents.

Further, it has been specifically provided in the advertisement that for claiming marks under the socio-economic criteria, an applicant has to furnish a certificate issued by the Tehsildar, and an affidavit attested by Executive Magistrate in the prescribed format. The conditions read as under:

2.4 Regulatory Framework

1. Certificate for an applicant whose father has died issued by Tehsildar/Naib Tehsildar: Refer Annexure AI, AII.
2. Widow Certificate issued by Tehsildar: Refer Annexure BI, BII
3. Vimuktjati and Tapriwasjati Certificate issued by Tehsildar: Refer Saralharyana.gov.in or Antyodaya Saral Centers at distt. Level or Tehsildar office.
4. Experience Certificate issued by the concerned Appointing Authority: Refer Annexure D1
5. Affidavit attested by Executive Magistrate in prescribed format regard point: Refer Annexure E1 to be uploaded application form and brought at the time of Scrutiny.

7.1. In the instant case, the petitioner neither claimed marks under the socio-economic criteria while filling-up the application form, nor did she furnish any certificate to establish the entitlement on the closing date for submitting the forms. Further, the undertaking uploaded by her, dated 25.09.2021, also failed to comply with the requirements; it was not an affidavit attested by the Executive Magistrate, and was only a statement under her own

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signatures, without any verification/attestation by any authority. Therefore, none of the pre-requisite for giving marks under the socio-economic criteria was satisfied by the petitioner, still the marks were given to her which the Commission, in fact, was not competent to in the face of her failure to meet any of the mandatory conditions.

7.2. Still further, when the inadvertent mistake came to her notice, she sought withdrawal of the benefit by furnishing an affidavit, dated 14.02.2023, but to no effect. Without considering her request seeking withdrawal of marks under socio-economic criteria, the Commission cancelled her candidature failing to advert to relevant facts of her case clearly establishing that neither the benefit was claimed by her at the time of submission of application, nor was the said undertaking on her behalf, dated 25.09.2021, valid. Besides, in the absence of any claim for socio-economic criteria marks on the petitioner's part, her undertaking claiming the same at the time of scrutiny is meaningless, and could not have been taken into account for awarding the marks. Instead of realising the mistake and correcting the petitioner's result by excluding the marks under the criteria, the Commission cancelled/withdrew her candidature which was palpably wrong.

7.3. The petitioner has scored eighty-nine marks in the written examination and five marks have been given under socio-economic criteria, making it ninety-four in total. Even if five marks under the criteria are withdrawn, she is entitled to be recommended and appointed against the advertised post as a general category candidate, since the last selected candidate in the category has scored eighty-four marks. Learned State counsel, on instructions, has submitted that two posts of Computer Instructor in general

category are still vacant in the Department.



8. In view of the discussion, the petition is allowed, the communication issued by the Commission, dated 04.10.2023, withdrawing the petitioner’s candidature is set aside. The respondents are accordingly directed to appoint the petitioner as Computer Instructor in the Department against the vacant post with effect from the date other selected candidates in general category have been appointed in response to the advertisement in question. She shall be entitled to all service benefits notionally from the date of appointment and actually from the date of joining service. The directions shall be carried out by respondents within a period of four weeks from receiving a certified copy of this judgment. There shall be no order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

31.07.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>