

228

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23724-2021
Date of decision: 18.01.2024

MANISH NAIN

...Petitioner

VERSUS

HARYANA STAFF SELECTION COMMISSION AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Samrat Malik, 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 order dated 27.09.2021 (Annexure P-8), whereby the petitioner has been denied 5 marks under socio economic criteria and further a writ in the nature of mandamus for directing respondent No.1-HSSC to revise the merit list of the petitioner after granting him 5 marks of socio economic criteria and to consider the claim of the petitioner for selection and appointment to the post of Lower Divisional Clerk from the date when the candidates lower in merit were appointed.

2. The brief facts of the present case are that the petitioner had applied for the post of Lower Divisional Clerk under the General category and the process of selection was to be conducted by respondent No.1-Haryana Staff

Selection Commission (HSSC). As per the advertisement, the application form was to be submitted online and there was a specific criteria for grant of 10 marks for socio economic criteria. Out of the aforesaid 10 marks, 5 marks were to be given to those candidates, who were not having any family members in a regular job in any Department / Board / Corporation / Company / Statutory Body / Commission / Authority of Government of Haryana or any other State Government or Government of India. The relevant portion of the application form (Anneuxre P-1) filled by the petitioner is reproduced as under:-

:: Socio Economic Criteria ::		
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.: No		
2. Is applicant a Widow ? : No		
3. Is the applicant the first or the second child and his father had died before attaining the age of 42 years.: No		
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.: No		
5. If the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State of Haryana which is neither a Scheduled Caste nor a Backward Class.: No		
Required Documents		
S.N.	Document Name	
1.	Document of Qualification 12th/10+2 – (12th/10+2) - (Commerce)	
2.	Document of Qualification Class 10 th (Mandatory) – (Class 10 th) – (General)	
3.	Self-Declaration in prescribed format – Refer Annexure E1.	
4.	Document for Qualification Graduation – (B.Com) - (–)	
Place :		Date :
		Signature of the Candidate :

3. Learned counsel for the petitioner submitted that the petitioner while filling up the application form (Annexure P-1) had rather stated that there is no family member of the petitioner in the Government job under any Department / Board / Corporation / Company / Statutory Body / Commission /

Authority of Government of Haryana or any other State Government or Government of India and against the aforesaid column, he has also stated 'No' and regarding the same, there is no dispute raised by respondent No.1-Haryana Staff Selection Commission. He further submitted that the controversy in the present case is that the petitioner was not granted 5 marks under the socio economic criteria because of the reason that as per the Selection Committee, the petitioner did not even show and submitted the undertaking/certificate at the time of scrutiny of documents, which was required to be done as per the advertisement. As per the Commission, self-declaration was to be filled up and duly attested in accordance with format Annexure E1. He also submitted that in fact at the time when the petitioner had filled up the application form and applied for the said post, he attached and uploaded the aforesaid Annexure E1, which is Annexure P-2 attached with the present writ petition dated 03.02.2020 by specifically stating that he is entitled for 5 marks under the socio economic criteria. He further submitted that thereafter, at the time of scrutiny of documents as well the petitioner had submitted the same along with all other documents which were required but respondent No.1-Haryana Staff Selection Commission has non-suited the petitioner only because he has not submitted the aforesaid document, which is against the record and without any reason. He further submitted that even thereafter, a fresh affidavit was also made by the petitioner vide Annexure P-6 as well, which was duly attested by the Executive Magistrate, Narwana. He further submitted that the candidature of the petitioner could not have been rejected only on the ground that at the time of scrutiny of documents he did not submit Annexure P-2 to respondent No.1-Haryana Staff Selection Commission.

4. On the other hand, Mr. Kapil Bansal, DAG, Haryana submitted that it is a case where the petitioner at the time of filling up of the application form did not submit the duly attested undertaking/certificate along with the application form and even at the time of scrutiny of documents, he did not produce any such undertaking which was duly attested by any competent authority. He further submitted that as per the advertisement, there was a specific Rule 2.4(5) vide which an affidavit attested by Executive Magistrate in prescribed format regarding point i.e. Annexure E1 was to be uploaded with the application form and brought at the time of scrutiny. He also submitted that the aforesaid regulatory framework was mandatory, whereas the petitioner has failed to comply with the aforesaid regulatory framework. He further submitted that a perusal of Annexure P-2, which has been so attached by the petitioner with the present writ petition and so stated by the petitioner that the document which he had attached with the application form would on the face of it show that even if it is taken to be true that it is in the nature of an undertaking but it is not even an attested document and since it was not even an attested document, it was never produced at the time of scrutiny of documents and therefore, he was not granted the benefit of 5 marks under socio economic criteria in accordance with the advertisement. He further submitted that so far as Annexure P-6 is concerned, the same is dated 21.06.2021, whereas scrutiny of documents had taken place on 17.03.2021 and therefore, Annexure P-6 itself is after scrutiny of documents and aforesaid document Annexure P-6 is otherwise also not relevant for the present case. He further submitted that since the mandatory requirement was not fulfilled by the petitioner, he was not granted 5 marks under socio economic criteria and his total marks came out to be 89 and the last selected

candidate has secured 93 marks and therefore, the petitioner was not selected. He further submitted that in view of the above, the present writ petition is liable to be dismissed.

5. I have heard the learned counsel for the parties.

6. The short controversy involved in the present case is that as per the advertisement, the application form was to be submitted online along with the undertaking/certificate, which was to be duly attested by the Executive Magistrate. Rule 2.4(5) of the advertisement is reproduced as under:-

“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. It is a case of the petitioner that he along with the application form had submitted the aforesaid undertaking/certificate and he had also submitted the same at the time of scrutiny of documents but was not considered by respondent No.1-Haryana Staff Selection Commission. Learned counsel for the petitioner has referred and relied upon Annexure P-2, which according to him was the document which was submitted and uploaded at the time of filling the application form and also was shown to respondent No.1-Haryana Staff Selection Commission at the time of scrutiny of documents. However, perusal of aforesaid Annexure P-2 would show that Annexure P-2 is not even attested by any authority and it is only a typed document which has been attached with the present petition. During the course of arguments, a specific query was raised to the learned counsel for the petitioner as to whether he has got any copy of the aforesaid affidavit which according to him was an attested document which he was not able to supply. In other words, aforesaid Annexure P-2 is a typed

undertaking which does not appear to be a copy of any document and the petitioner has not been able to either attach with the present writ petition or to show to this Court any such undertaking/certificate duly attested by the Executive Magistrate in pursuance of Rule 2.4(5) at all. The argument which has been raised by the learned counsel for the petitioner that the aforesaid undertaking/certificate would suffice and that he had rather given the original of the undertaking/certificate duly attested by the Executive Magistrate to the Commission at the time of scrutiny of documents cannot be accepted since it will become a disputed question of fact which cannot be gone into by this Court in exercise of power under Article 226 of the Constitution of India. Had the petitioner got a copy of any such undertaking/certificate which was duly attested by the Executive Magistrate in pursuance of Rule 2.4(5), he would have either attached the same with the present writ petition or could have produced before this Court at any time but the same was not done. Therefore, the plea raised by the learned counsel for the petitioner cannot be accepted.

8. Consequently, finding no merit in the present writ petition, the same is hereby dismissed.

18.01.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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