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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

233 CWP-23830-2021 (O&M)
Date of decision : 03.07.2024

Amarjeet Petitioner

versus

State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, DAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. By way of present writ petition filed under Article 226/227 of the Constitution of India, the petitioner has laid challenged to the result dated 31.10.2021 issued by Haryana Staff Selection Commission qua ESM category for the post of Sub-Inspector (Male).
2. Vide advertisement No.3/2021, Commission invited application for filling up 400 posts of Sub-Inspector (Male) in Police Department, Haryana. Out of 400 total posts, 28 were reserved for ESM general category candidates. As per further stipulation as contained in the advertisement, the posts were required to be filled in the following order:-

“xxx

12. For Disabled ESM/Dependent of
Killed/Disabled in action reservation will be as per

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Haryana Govt. instructions contained in letter No.945-GS-II 72/6451, dated the 6th March, 1972. The reservation for ESM will be utilized in the order given below:

- i. Disabled ex-servicemen with disability between 20% to 50%.
- ii. Up to two dependents of Service personnel killed/disabled beyond 50%.
- iii. Other ex-servicemen.

Note:- Such benefit is not allowed to the ex-Serviceman and their dependents who is released in the normal course after the completion of their terms and is available to those who are boarded out of service by the defense department on account of their disability (vide Govt. Circular letter No. 8047-4GSII-73/1549, dated 21st January 1974).”

3. Petitioner claims to have applied as dependent of the disabled ex-serviceman. It is not in dispute that the petitioner secured 46.40 marks. He did not figure amongst the successful candidates as per the impugned result Annexure P-10, even though the cut off DESM disabled as per P-10 was 35.2 marks.

4. Petitioner approached this Court by way of present writ petition impugning the results claiming superior right over the last selected candidate in DESM category.

5. Short reply on behalf of Haryana Staff Selection Commission-respondent No.2 was filed wherein it was claimed that the petitioner having failed to upload the disability certificate which was pre-requisite to seek consideration under the general Ex-servicemen

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(Killed in Action/Disability beyond 50%) category was rightly not considered in the said category. During the course of hearing on 26.05.2023, following order was passed:-

“Learned State counsel seeks more time to bring on record the application form of the petitioner and the documents submitted by him at the time of scrutiny of the documents.

Adjourned to 06.07.2023.”

6. In compliance thereof on 08.12.2023, the documents were brought but in sealed cover. The Commission was directed to place the same on record vide order dated 08.12.2023 which reads as under:-

“In pursuance of order dated 26.05.2023 passed by the Coordinate Bench of this Court, learned State Counsel has produced the documents in a sealed cover which has been opened and returned back to learned State Counsel.

A perusal of said order dated 26.05.2023 would show that the documents were not to be produced in a sealed cover but were to be brought on record.

Accordingly, the State is directed to place on record the said documents on or before the next date of hearing.

Adjourned to 31.01.2024.”

7. Counsel for the petitioner submits that though as per the petitioner, disability certificate Annexure P-6 was duly uploaded which has been denied by the State. Even for the sake of arguments, the stand of the State is accepted, the petitioner will have a case. He has drawn attention of this Court to document Annexure R-2/6 which has come out from the possession of the State only and is stated to be a document

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which accompanied the application form. He submits that from bare perusal of the same, it is evident that the father of the petitioner was awarded disability pension for being disabled to the extent of 50%. He submits that the disability pension to the armed forces personnel is payable only when such disability is acquired during the course of service. In view of aforesaid document, the claim of the petitioner ought not have been rejected.

8. Faced with the situation, State counsel submits that there is a technical impediment for the petitioner to surpass as the last selected candidate has not been impleaded in the memo of parties. He submits that since all the posts advertised were filled and the petitioner has challenged the result itself in the category of ESM, it was incumbent upon the petitioner to implead the last selected candidate who would be a necessary party.

9. Mr. Nehra joins issue thereon and submits that from the result, it is not clear as to which candidate is the last selected candidate having earned 35.2 marks in DESM disabled category and thus the objection being raised by the counsel for the State is merely an attempt to add insult to the injury. Once it has come on record that the petitioner has been denied rightful claim, the same should not be allowed to be defeated. He further submits that the petitioner approached this Court prior to issuance of appointment letters and by way of interim order passed by this Court on 24.11.2021, the appointments were made subject to the outcome of the writ petition.

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10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. Facts are not much in dispute apart from uploading of certificate Annexure P-6. The certificate is dated 18.06.2019. Cut off date is 21.07.2021. Thus, it is not a case wherein the petitioner has attained certificate post the relevant date. He was already in possession of required certificate prior to the relevant date.

12. Without going into the factual dispute with respect to uploading of P-6, I find merit in the contention raised by counsel for the petitioner that dehors the certificate, the document dated 24.01.2014 which was admittedly uploaded alongwith the application form has come from the possession of the respondents only alongwith their affidavit dated 31.01.2024 filed before this Court. It shows that the father of the petitioner was being paid disability pension. As per same, he has been shown to be disabled to the extent of 50%.

13. In view of the interim order passed by this Court wherein all the appointments were made subject to the final outcome of the writ petition, this Court does not find any merit in the objection being raised by the State counsel. Apart from that it needs to be noticed that the present writ petition is pending before this Court for last 03 years and the petitioner can be well adjusted by creating a supernumerary post without disturbing the candidates who are in service for more than last 02 years.

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14. Consequently, the present writ petition is allowed. Petitioner is ordered to be appointed within a period of 08 months from the date of receipt of certified copy of this order. It is made clear that all the consequential benefits including the seniority shall be amenable to the petitioner from the date his juniors were appointed. Though the petitioner shall not be entitled for any monetary benefits for the time he remained out of service. However, will be entitled for monetary benefits after the time granted by this Court lapses.

15. Ordered accordingly.

16. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

03.07.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No