



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228-9 (Lead Case)

CWP-1262-2025 (O&M)
Date of decision: 15.02.2025

Pardeep Kumar and others ...Petitioners
VERSUS
State of Haryana and another ...Respondents

228-1

CWP-1902-2025 (O&M)
Date of decision: 15.02.2025

Manjeet Kumar and othersPetitioners
VERSUS
State of Haryana and othersRespondents

228-2

CWP-1078-2025 (O&M)
Date of decision: 15.02.2025

Kalpana Yadav ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-3

CWP-1130-2025 (O&M)
Date of decision: 15.02.2025

Priya ...Petitioner
VERSUS
State of Haryana and another ...Respondents

228-5

CWP-1235-2025 (O&M)
Date of decision: 15.02.2025

Priyanka ...Petitioner
VERSUS
State of Haryana and others ...Respondents



228 CWP-1262-2025 (O&M) and connected cases

228-10

CWP-1297-2025 (O&M)
Date of decision: 15.02.2025

Mamta ...Petitioner

VERSUS

Haryana Public Service Commission and another ...Respondents

228-11

CWP-1331-2025 (O&M)
Date of decision: 15.02.2025

Anshul and others ...Petitioners

VERSUS

State of Haryana and others ...Respondents

228-12

CWP-1350-2025 (O&M)
Date of decision: 15.02.2025

Lalita and another ...Petitioners

VERSUS

State of Haryana and others ...Respondents

228-13

CWP-1405-2025 (O&M)
Date of decision: 15.02.2025

Poonam ...Petitioner

VERSUS

State of Haryana and others ...Respondents

228-14

CWP-1445-2025 (O&M)
Date of decision: 15.02.2025

Berkha ...Petitioner

VERSUS

State of Haryana and others ...Respondents



228 CWP-1262-2025 (O&M) and connected cases

228-15

CWP-1450-2025 (O&M)
Date of decision: 15.02.2025

Aamir Suhail and others ...Petitioners

VERSUS

State of Haryana and others ...Respondents

228-16

CWP-1454-2025 (O&M)
Date of decision: 15.02.2025

Nachita ...Petitioner

VERSUS

State of Haryana and others ...Respondents

228-17

CWP-1486-2025(O&M)
Date of decision: 15.02.2025

Pooja Yadav ...Petitioner

VERSUS

State of Haryana and others ...Respondents

228-18

CWP-1498-2025(O&M)
Date of decision: 15.02.2025

Shabnam ...Petitioner

VERSUS

State of Haryana and others ...Respondents

228-19

CWP-1514-2025(O&M)
Date of decision: 15.02.2025

Atul Kumar ...Petitioner

VERSUS

State of Haryana and others ...Respondents



228 CWP-1262-2025 (O&M) and connected cases

228-20

CWP-1556-2025 (O&M)
Date of decision: 15.02.2025

Karuna ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-22

CWP-1615-2025 (O&M)
Date of decision: 15.02.2025

Neelam ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-23

CWP-1680-2025 (O&M)
Date of decision: 15.02.2025

Kalpana Yadav ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-24

CWP-1681-2025 (O&M)
Date of decision: 15.02.2025

Abhishek ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-26

CWP-1773-2025 (O&M)
Date of decision: 15.02.2025

Deepika ...Petitioner
VERSUS
State of Haryana and others ...Respondents



228 CWP-1262-2025 (O&M) and connected cases

228-27

CWP-1785-2025 (O&M)
Date of decision: 15.02.2025

Promila Yadav ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-29

CWP-1939-2025 (O&M)
Date of decision: 15.02.2025

Anjaly and another ...Petitioners
VERSUS
State of Haryana and others ...Respondents

228-30

CWP-1981-2025 (O&M)
Date of decision: 15.02.2025

Minu Yadav ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-32

CWP-2073-2025 (O&M)
Date of decision: 15.02.2025

Surbhi ...Petitioner
VERSUS
State of Haryana and another ...Respondents

228-33

CWP-2149-2025 (O&M)
Date of decision: 15.02.2025

Himanshu and another ...Petitioners
VERSUS
State of Haryana and others ...Respondents



228 CWP-1262-2025 (O&M) and connected cases

228-34

CWP-2151-2025 (O&M)
Date of decision: 15.02.2025

Jyoti ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-35

CWP-2309-2025 (O&M)
Date of decision: 15.02.2025

Bharti Shakla ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-36

CWP-2316-2025 (O&M)
Date of decision: 15.02.2025

Vipin Singla ...Petitioner
VERSUS
State of Haryana and others ...Respondents

228-37

CWP-30312-2024 (O&M)
Date of decision: 15.02.2025

Neha Dhiman ...Petitioner
VERSUS
State of Haryana and another ...Respondents

228-38

CWP-35133-2024 (O&M)
Date of decision: 15.02.2025

Sonam Saini ...Petitioner
VERSUS
State of Haryana and others ...Respondents



228

*CWP-1262-2025 (O&M) and connected cases***228-39****CWP-2430-2025 (O&M)
Date of decision: 15.02.2025**

Rashmi Yadav @ Rashmi Hiralal Yadav

...Petitioner

VERSUS

State of Haryana and others

...Respondents

228-40**CWP-2449-2025 (O&M)
Date of decision: 15.02.2025**

Anuj

...Petitioner

VERSUS

State of Haryana and others

...Respondents

228-41**CWP-2615-2025 (O&M)
Date of decision: 15.02.2025**

Bhanu Kumar Panchal

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ*********

Present: - Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate and
Mr. Gaurav Rana, Advocate
for the petitioner in CWP-1262-2025.

Mr. Sarthak Gupta, Advocate for the petitioner(s)
in CWP-2149-2025, CWP-1902-2025,
CWP-1939-2025 and CWP-2316-2025.

Mr. Mazlish Khan, Advocate and
Mr. Vikas Chopra, Advocate for the petitioner(s)
in CWP-1450-2025.

Mr. Balraj Rathee, Advocate and



Mr. Vinay Singh, Advocate for the petitioner(s)
in CWP-1235-2025.

Mr. Sudhir Rana, Advocate for the petitioner(s)
in CWP-1785-2025.

Mr. Akshay Jindal, Advocate for the petitioner(s)
in CWP-30312-2024.

Mr. Sumit Sangwan, Advocate
for the petitioner in CWP-1445-2025.

Mr. Bhupender Ghanghas, Advocate
for the petitioner in CWP-1556-2025

Mr. Ankur Kaushik, Advocate for
Mr. Ashok Kaushik, Advocate
for the petitioner in CWP-1130-2025

Mr. Dixit Garg, Advocate and
Mr. Sunny Namdev, Advocate
for the petitioner in CWP-2615-2025.

Mr. V.K. Kaushal, Advocate
for the petitioner in CWP-35133-2024

Mr. Vikram Rathore, Advocate and
Mr. Anshul Mangla, Advocate
for the petitioner in CWP-1405-2025.

Ms. Indu Bala, Advocate
for the petitioner in CWP-2151-2025.

Ms. Mamta Saini, Advocate for
Mr. Ravinder Malik (Ravi), Advocate
for the petitioner in CWP-2073-2025

Mr. Samir Rathaur, Advocate
for the petitioner in CWP-1981-2025

Mr. Shalender Mohan, Advocate,
Mr. Kendre Mani, Advocate and
Ms. Aarti Sharma, Advocate
for the petitioner in CWP-1297-2025.

Mr. Parveen Kumar Rohilla, Advocate
for the petitioner in CWP-1681-2025



Mr. Manuj Dhankar, Advocate for
Mr. Mukesh Yadav, Advocate
for the petitioner in CWP-1454-2025.

Mr. Shokeen S. Verma, Advocate
for the petitioner in CWP-1331-2025,
CWP-1350-2025, CWP-1680-2025 and
CWP-2430-2025.

Mr. Sunil Kumar Nehra, Advocate with
Mr. Rahil Mahajan, Advocate,
Mr. Viren Nehra, Advocate,
Mr. Arjun Dosanj, Advocate and
Mr. Akash Gahlawat, Advocate
for the petitioner in CWP-1615-2025.

Mr. Kamal Mor, Advocate
for the petitioner in CWP-1498-2025.

Mr. Tej Pal Singh Dhull, Advocate
for the petitioner in CWP-1078-2025,
CWP-1486-2025, CWP-1514-2025 and
CWP-2449-2025.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. Kanwal Goyal, Advocate;
Mr. Balvinder Sangwan, Advocate;
Mr. Gurnoor Sandhu, Advocate;
Ms. Sheena Dahiya, Advocate; for respondent-HPSC.

VINOD S. BHARDWAJ, J. (Oral)

(1) The prime question as to whether a Backward Caste Certificate or EWS Certificate ‘defines/determines eligibility’ or is a ‘proof of eligibility’ of a candidate arises for consideration before this Court in this bunch of petitions alongwith the ancillary issue as to whether submission of the updated/corrected document, pursuant to an option granted by the respondent-Haryana Public Service Commission (*HPSC*), would render a meritorious candidate ineligible. The present batch of petitions is



accordingly being decided by a common judgment. For facility of reference, facts are however being enumerated from **CWP-1262-2025** titled as '**Pardeep Kumar and others Vs. State of Haryana and another**' and **CWP-30312-2024** titled '**Neha Dhiman Vs. State of Haryana and another**'.

(2) Challenge raised in CWP-1262-2025 is to the Note 2(iii) of Clause 6 of the advertisement dated 21.06.2024, prescribing a requirement of submitting a caste/category certificate issued prior to the closing date of advertisement on the ground that the same has no nexus with the object or in determining eligibility. A further prayer has also been made for setting aside of the letter/order dated 14.01.2025, sent by the respondent-HPSC to the petitioner(s), rejecting their candidature on the ground that the caste/category certificates submitted by them had been issued after the closing date of the advertisement. A prayer has also been made for directions to the respondent-HPSC to accept the said caste/category certificate(s) submitted by the petitioner(s) and to allow them to participate in the ongoing selection process under advertisement dated 21.06.2024.

(3) In so far as CWP-30312-2024 titled '**Neha Dhiman Vs. State of Haryana and another**' is concerned, the issue therein is at a slight variance. The petitioner therein had submitted an application for the post of Ayurvedic Medical Officer and at the time of selecting an option between whether she belongs to creamy layer or non-creamy layer, she inadvertently clicked '**Creamy Layer**', whereas the certificate appended by her for claiming benefit under the reserved category BC-'A' was of '**Non-Creamy Layer**'.



She immediately submitted a representation to the respondent-HPSC requesting that on account of an inadvertence, she had selected her category as ‘**creamy layer**’ instead of ‘**non-creamy layer**’ and that her claim is duly corroborated by the BC-A non-creamy layer certificate, that had already been appended. Her claim was however rejected by the Commission on the ground that any change in the declaration/category furnished by a candidate is impermissible, after the closing date.

Facts:

(4) The undisputed facts that emerge in the present case are that the respondent-HPSC had issued an advertisement No.16/2024 dated 21.06.2024 for appointment to 805 posts of Ayurvedic Medical Officers (AMOs) including 88 posts under the BC(A) category, 48 posts under the BC(B) category and 81 posts under the EWS category. Since there is no dispute pertaining to any other category, hence, the said breakup of remaining vacancies need not be gone into. As per the advertisement so published, the opening date for submission of online application was 22.06.2022 and closing date for submission of the same (closing date) was 12.07.2024. The said last date for online submission of application was undisputedly extended to 20.08.2024 vide announcement dated 16.08.2024. Some of the important terms as mentioned in the advertisement are extracted as under:-

**“1. CANDIDATES TO ENSURE THEIR ELIGIBILITY
FOR THE POST:**



..... The eligibility of a candidate with reference to the documents submitted by him/her is assessed only after the candidate has qualified for the interview.

Note: The decision of the Commission with regards to the eligibility of a candidate shall be final.”

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6. ESSENTIAL QUALIFICATIONS:

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Note 2:-

1. The eligibility of the candidate with regard to educational qualifications, experience etc. shall be determined on the Closing Date fixed for submission of online application forms.
2. All applicants must fulfil the essential requirements of the post and other conditions stipulated in the advertisement on the Closing Date. They are advised to satisfy themselves before applying that they possess at least the essential qualifications laid down for the posts. No enquiry asking for advice regarding eligibility will be entertained.
3. The certificates/documents in support of educational qualifications, experience, domicile, caste, category etc. should be possessed by the candidates on or before the Closing Date. The certificates issued after the Closing



Date will not be accepted by the Commission. The qualification which is not claimed/mentioned by the candidate in the online application form will not be taken into consideration by the Commission.

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9. ELIGIBILITY CONDITIONS (NATIONALITY):

For this recruitment, a candidate must be either:-

- (a) citizen of India, or*
- (b) a subject of Nepal, or*
- (c) a subject of Bhutan, or*
- (d) a Tibetan refugee who came over to India before 1st January, 1962 with the intention of permanently settling in India, or*
- (e) a person of Indian origin who has migrated from Pakistan, Burma, Sri Lanka, East African countries of Kenya, Uganda, the United Republic of Tanzania, Zambia, Malawi, Zaire, Ethiopia and Vietnam with the intention of permanently settling in India.*

Provided that a candidate belonging to categories (b), (c), (d) and (e) shall be a person in whose favour a certificate of eligibility has been issued by the Government of India.

A candidate in whose case a certificate of eligibility is necessary, may be admitted to the examination but the offer of appointment may be given only after the necessary eligibility



certificate has been issued to him/her by the Government of India.

(emphasis supplied)

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11. **RESERVATION:**

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- (iii) *It is clarified that State Government has decided to specify the criteria for exclusion of persons with the Backward Classes as Creamy Layer, regarding reservation in Service and Admission as per notification No. 491-SW(1) 2021 dated 17.11.2021. Therefore, the candidates belonging to BC-A/BC-B category of Haryana are required to attach latest/updated Certificate as per notification No. 491-SW(1) 2021 dated 17.11.2021 & Govt. instruction No. 22/132/2013-1GS-III dated 22.03.2022 (available on the website of C. S. Haryana i.e. <http://csharyana.gov.in>) issued by the Competent Authority during 2024-25 only.*
- (iv) *Candidates who have in possession of OBC certificate. The candidates are advised to submit BC-A/BC-B certificate as per instructions detailed above.*

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13. **Certificate by the candidates belonging to Economically Weaker Section (EWS) of Haryana:-**



- (i) The candidates belonging to EWS category of Haryana are required to attach necessary CERTIFICATE as per Haryana Govt. Instructions issued vide No.22/12/2019-1GS-III dated 25.02.2019 (Available on the website of CS Haryana i.e. <http://csharyana.sov.in>) issued by the Competent Authority.
- (ii) The EWS certificates should be valid for the year 2024-25 showing annual income of the family less than Rs. 6 Lacs.

16. **SPECIAL INSTRUCTIONS REGARDING SUBMISSION OF APPLICATIONS:**

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- (iv) The application form will finally be submitted only after paying the requisite application fee. After final submission of application form, no change will be allowed and **no request for change of any particular(s) in the online application form** will be considered / entertained by the commission at any stage.

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- (ix) *The application of the candidates, who do not fulfill the qualifications/eligibility conditions on the Closing Date, shall not be accepted by the online application system.*
- (x) **Documents to be uploaded with Application Form:**

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5. Scanned copy of BC-A & BC-B certificate should be issued for the year 2024-25 as per Govt. instructions dated 17.11.2021 & 22.03.2022.
6. Scanned copy of EWS certificate valid for year 2024-2025 as per Govt. instruction dated 25.02.2019.

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11. Scanned copy of Parivar Pehchan Patra (if a candidate availing benefits of reservation).

(emphasis supplied)

(5) While the petitioner-Pardeep Kumar had submitted his application under BC-A category (non-creamy layer); petitioner-Naveen Kumar Dhiman had submitted his application under BC-B category (non-creamy layer) and petitioner-Munish Kumar had submitted his application under the EWS category.

(6) Adverting to the supporting documents appended by the petitioner, attention is drawn to the backward class certificate issued by the competent authority wherein apart from mentioning the certificate number, the unique ID of the *Parivar Pehchan Patra (PPP)* has also been mentioned at the top. The said certificate had been issued by the competent authority to the effect that the petitioner does not belong to the creamy layer, as per the Haryana State Notification No. 491-SW(1) 2021 dated 17.11.2021. The date of issuance of backward class certificate in favour of Himanshi (petitioner



No.15 in CWP-1262-2025) is 07.04.2023. The certificate appended by Pardeep Kumar pertaining to his eligibility under the BC-A 'Non Creamy Layer' is in reference to the State Government letter dated 07.06.1995, 09.08.2000 as well as 31.08.2010. Similarly, backward class certificate of Samta Hamre (petitioner No.5 in CWP-1262-2025) also gives a specific 'PPP' number in relation to EWS category.

(7) The petitioners undisputedly cleared the screening test and were to appear for the subject knowledge test, when they were served with a notice by the respondent-HPSC vide letter dated 26.12.2024 (Annexure P-9) informing that the candidature of the petitioner was provisionally found to be liable for rejection, for largely similar reasons that the certificate of the category appended by the petitioner did not conform with the requirements, as published in the advertisement by the Commission, since compliance with the instructions of 22.03.2022 had not been mentioned in the said backward class certificate. The reason conveyed by the respondent-Commission is extracted as under:-

“3. You are attached the certificate BCA category dated 31.12.2019 as per the Govt. letter No. 1170-SW(1)-95 dated 07.06.1995, 22/36/2000-3GS-III dated 09.08.2000 & No.213-SW(1)-2010 dated 31.08.2010 whereas as per the clause 11 (iii) of the advertisement, the candidature of BCA category is required as per Govt. notification No.491-SW(1) 2021 dated 17.11.2021 & Govt. instruction No.22/132/2013-1GS-III dated 22.03.2022 during 2024-25 only.”



(8) The candidates were granted an opportunity to submit a representation against the proposed grounds of rejection of candidature. In response thereto, the petitioners furnished the fresh certificates issued by the competent authority. The relevant part thereof is extracted as under:-

“This is to certify that he/she does not belong to creamy layer as per the Haryana State notification no.40/13/2024-1SW dated 16.07.2024.”

(9) It is submitted that initially, the requirement prescribed by the Commission was that the certificate ought to be in conformity with the Government notification dated 17.11.2021 and instructions dated 22.03.2022. However, as the closing date for submission of the application was extended to 20.08.2024 and in the meanwhile, the respondent-State of Haryana had issued new instructions dated 16.07.2024, thus, the fresh certificates issued by the respondent-authorities were as per the new instructions, since the online portal would not issue any other backward class certificate, other than as per the latest instructions issued by the competent authority. He submits that notwithstanding the petitioners submitting the specific certificates establishing that they fulfilled the eligibility condition for the respective class under which they had submitted their application, the candidature of the petitioners was rejected by the Commission vide communication dated 14.01.2025 (impugned herein). The operative part of the said communication reads thus:-

“Accordingly, Commission had provisionally rejected your candidature and informed vide this office letter dated



26.12.2024 through Email. Further, you were also directed you submit your representation if any latest on 03.01.2025 by email, failing which it will be assumed that you have nothing to say again sign if proposed rejection and your candidature will finally be rejected.

In reference to this office letter dated 26.12.2024, you had submitted your representation dated 26.12.2024 alongwith which you have submitted the certificate of BCA category dated 19.11.2024. Your representation has been considered by the Commission and the same is rejected as your BCA certificate dated 19.11.2024 has been issued after the closing date i.e. 12.07.2024 and thus the same cannot be taken into consideration in view of specific bar mentioned in Note 2 (iii) appended to clause 6 of the advertisement.

Thus, your candidature is finally rejected. It is informed that no further representation correspondence will be entertained by the Commission in this regard.”

(10) Similar orders were also passed in other cases. Aggrieved thereof, the instant writ petitions have been filed.

(11) Pursuant to the interim orders passed by this Court allowing the petitioners to participate in the selection process, the respondents produced the final result of the selection process in a sealed cover that has been opened. As per the final result produced, the petitioners herein are otherwise eligible to be recommended for appointment on the marks secured by them.

**Arguments of Petitioners:**

(12) In the aforesaid undisputed factual scenario, the senior counsel for the petitioners has argued as under:-

- (i) That the advertisement prescribes that a candidate should fulfill the eligibility before the cut-off date. He contends that the BCA certificate required to be submitted by a candidate was only a document as a proof of eligibility and was not the eligibility. Besides, the eligibility certificate issued is valid for a given financial year irrespective of the date when such a certificate may be issued. Hence, if a candidate is in a position to satisfy that he/she fulfilled the requisite 'non-creamy layer' requirement for the given financial year, he/she should be considered under the respective category under which the application had been submitted. He further submits that the non-creamy layer certificate for a given financial year commencing from First of April every year to Thirty First of March of the next year is issued on the basis of income for the last three financial years. Since the determinant factor for issuance of the non-creamy layer certificate stands fixed, hence, the date of issuance of the 'non-creamy layer' certificate becomes irrelevant and has the same validity irrespective whether it is issued on 10th of April of the said financial year or is issued on 28th of



March of the next year. Its validity would cease after 31st of March and a new ‘non-creamy layer’ certificate has to be obtained; and

- (ii) That as per the Important Note No.1, the eligibility of a candidate with reference to the documents submitted by him/her is assessed only after the candidate has qualified for the interview. Further as per the eligibility conditions (nationality) prescribed at Point No. 9 (in the advertisement), the eligibility of the candidates belonging to different nationalities mentioned therein was to be verified before an offer of appointment. It is thus argued that the closing date for submission of online applications was thus not sacrosanct and even if a candidate failed to furnish a proof of eligibility as on the closing date, it would not stand in the way of the applicant being considered for the said category;
- (iii) That as per the backward class certificate appended by the petitioner(s) alongwith the application, the unique PPP number ID had been duly mentioned therein. Attention of this court is drawn to B.C. “non-creamy layer” certificate pertaining to one of the candidates, which reflects the PPP number and specifically records that the said certificate has been issued as per the Haryana State Notification dated 17.11.2021 for the year



2023-24 and that the same was issued on 07.04.2023.

The same was found lacking only on the aspect of being non-compliant of the instructions dated 22.03.2022 issued by the Government of Haryana, on the subject matter regarding caste certificates including the certificates for Scheduled Caste, Deprived Scheduled Caste, Backward Class, Other Backward Class, Tapriwas, Vimukt Jati and Nomadic tribe through the Saral portal. He refers to Clause 4 of the said Government Instructions, which reads thus:

“4. Further, it is directed that no Government Department of Haryana shall obligate any Haryana resident to submit caste related documents if he/she provides PPN and his/her caste and caste category is marked as verified in Family Information Data Repository (FIDR).”

Referring to the above, he contends, that Government of Haryana had notified all the departments including the Public Service as well as the Staff Selection Commission, that in the event a candidate attaches his PPP or gives the PP number, the authorities or the department(s) shall not obligate such resident to submit any other caste related proof. He thus submits that the petitioners had mentioned their unique ID/PP number in the application form and that all other details pertaining to their



caste as well as their eligibility criteria were automatically available with the Commission. Hence, submission of the backward class certificate was only a duplicacy of an information, notwithstanding that the said information was already available with the Commission;

- (iv) That earlier the creamy layer income/wealth criteria had been fixed @ Rs.6 lakhs per annum or assets of Rs.1 crore and that the income limit had eventually been enhanced to Rs. 8 lakhs per annum as per the new instructions. He thus submits that once the petitioners were already fulfilling the criteria for claiming benefit under the backward class 'non-creamy layer' category having their annual income below Rs.6 lakhs, they were in any case compliant with the requirement of having an income below Rs. 8 lakhs. Hence, it was only that the backward class 'non-creamy layer' certificate was to be issued in a new format. Thus, formatting of the certificate should not be made as a basis for rejecting a candidate especially when there is no dispute with respect to the eligibility otherwise on the closing date;
- (v) That the respondent-Commission itself issued a notice to the candidates who had appended backward class certificate pertaining to a different year or where the certificate was not as per the format and granted them an opportunity to submit a representation and for removal of defects, if any. Once the



petitioners had responded to the said requirement and furnished fresh eligibility document in the proforma/format as prescribed by the respondent-authorities, there was no occasion for rejection of their candidature. The said act on the part of the respondent-Commission amounts to defeating their own decision of calling for representation by giving a show cause notice to rectify the defects;

- (vi) That the respondent-Commission, as a matter of practice and practicality, has been adhering to the same principle uniformly for all selection processes initiated at different points in time by them earlier. Reference is also made to the selection process pertaining to the Post Graduate Teachers (PGTs) (referred to in CWP-1902-2025) wherein under similar circumstances, the notices were sent to the candidates conveying the reasons for their tentative disqualification and that on the candidates submitting their fresh certificates as per the requirement prescribed, their candidature has been considered valid and their names had been recommended by the respondent-Commission for appointment. It is thus submitted that the respondent- Commission cannot apply two different yardsticks on the basis of different vacancies being advertised or the process of selection initiated by them. The continued practice that had been followed by the respondent-Commission for all the selection process(es) undertaken by them creates a



legitimate expectation in favour of the applicant(s) as well, that a similar opportunity of removing the technical defects shall also be extended to them and that their candidature shall not be rejected solely on that ground;

- (vii) Learned senior counsel for the petitioners further argues that the petitioners have otherwise secured more marks than the persons who are now likely to be recommended by the respondent-Commission (due to the petitioners having been declared ineligible), hence, equity as well as merit demands that the petitioners should not be denied an opportunity of public appointment on their own merit in their respective category, solely on the account of certain defects especially when the said defects or errors do not in any manner cast any aspersion or doubt on the fairness of the process of selection. It is submitted that the validity/genuineness of the documents submitted by the petitioners remains unchallenged and unblemished. Hence, a meritorious candidate should not be ignored by the respondent-Commission to give preference to the persons lower in the order of merit. The same would otherwise be in violation of merit which governs public appointment.
- (13) Learned counsel appearing on behalf of the petitioners have further argued that a similar controversy came up before this Court in relation to the selection process initiated by the Haryana Staff Selection Commission for recruitment to Police services in the State. Similar condition



had also been incorporated in that advertisement except for the point of difference being that there was no cut-off date for filing the BC certificate, however, the issue as regards the submission of the BC certificate and the cut-off date was decided by this Court in a batch of writ petitions including **CWP-17852-2024** tilted as ‘**Naveen and others Vs. State of Haryana and others**’ decided on 05.02.2025. The relevant extract reads thus:-

“2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of public notices dated 14.07.2024 (Annexure P-5), 18.07.2024 (Annexure P-11), 21.07.2024 (Annexure P-12), 21.07.2024 (Annexure P-13) and 26.07.2024 (Annexure P-14) whereby their candidature has been rejected in BC-A/BC-B Category on the ground that they have submitted BC-A/BC-B certificate of a date which is before the cut-off date i.e. 01.04.2023.

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4. Mr. D.S. Patwalia, Senior Advocate submits that impugned notices are bad on three counts namely: -

- i. There was no cut-off date prescribed in the advertisement, thus, respondent could not notify 01.04.2023 as cut-off date;*
- ii. Reservation is a substantial right conferred by Constitution of India which cannot be abridged on technical grounds;*



iii. *The petitioners along with application filed BC Certificate of a date prior to 01.04.2023 and thereafter submitted BC certificates of subsequent date, though after last date of filing application, thus, there is compliance of terms and conditions of the advertisement.*

Elaborating his arguments, Mr. Patwalia submits that advertisement required that every candidate shall submit his fresh latest certificate. There was no cut-off date to submit the certificate, thus, no cutoff date could be prescribed by the respondent. The respondent, as per its whims and caprices as well as after commencement of selection process introduced 01.04.2023 as cut-off date. In the absence of prescription of date either in advertisement or the rules, the respondent had no authority to prescribe cut-off date after commencement of selection process. It is trite law that rules of game cannot be changed after its commencement.

The petitioners were possessing BC certificates which were issued prior to 01.04.2023. The said certificates were uploaded while filing application. The petitioners claimed reservation in BC category. In the State of Haryana, BC certificate is linked with Parivar Pehchan Patra (for short 'PPP') issued by the State Government as per the Haryana Parivar Pehchan Act, 2021 (for short '2021 Act'). As per the



said Act, a resident of Haryana may upload particulars of his family which include names, address, caste, income, assets etc. The competent authority verifies data submitted by the applicant and on the basis of verification, a certificate bearing Unique ID is issued. BC certificate is directly linked with PPP. If any person applies for BC certificate, it is issued on the basis of data available on the portal of Family Information Data Repository (PPP). The petitioner(s) at the time of filing application submitted BC certificates obtained from the portal and information contained in the certificate was based upon information of PPP. The petitioners after filing application and on account of objection raised by respondent submitted fresh BC-A/BC-B certificates which were also obtained from portal and information contained in the certificate is based upon data available for PPP.

A candidate belonging to Backward Class gets his status by birth. On account of higher income, he may fall in creamy layer, however, his caste does not change. The petitioners undisputedly belong to BC Category. They along with application form had uploaded BC certificate though it was issued prior to 01.04.2023. Eligibility for reservation and proof of eligibility are two different aspects. The petitioners belong to BC Category, thus, their eligibility is undisputed. The respondent is disputing date of proof of eligibility. The



petitioner(s) in the absence of clarity submitted BC certificate as was available. Their financial status had not changed in the subsequent certificate, thus, there was no difficulty to get certificate of subsequent years, however, it was not submitted on account of lack of clarity.

The respondent is relying upon first part of clause 6.5 of the advertisement and ignoring second part of said clause. In clause 6.5, it is clearly mentioned that in the absence of submission of BC certificate, the status would be determined from PPP. The petitioners have submitted BC certificate inscribing Parivar Pehchan Patra Number (for short 'PPN'). The respondent as per advertisement was supposed to get information from the official site of Family Information Data Repository (PPP). The respondent in case of doubt could ask the petitioners to submit certificate of subsequent years. The respondent, as per its convenience, invited objections from candidates and carried out changes in the advertisement and selection process. If the respondent, for its convenience and to remove its mistakes, could carry out corrections after commencement of process, it could also permit petitioners to submit BC certificate of a later date.

Mr. Sarthak Gupta and Mr. Prashant Singh Chauhan, Advocates submit that petitioners at the time of conducting CET submitted their BC certificate. The advertisement was in



furtherance of CET. Only candidates who had qualified CET were eligible to apply. The name of petitioners figured in the merit list of CET. They had submitted BC certificate at the time of exam. The respondent did not permit candidates to apply across the board whereas result of CET was declared category-wise and applicants to the extent of four times of advertised posts were shortlisted in their category. In this way, the advertisement in question was in continuation of CET. The petitioners participated in the CET in their category and submitted requisite certificates. No objection was raised by authorities and the result was declared in their category. The eligibility of every candidate qua their category settled as soon as result of CET was declared and they fell within four times of advertised posts.

The certificate of BC is directly linked with PPN. Certificate of BC is downloaded from the official site of the Government. An applicant is not required to furnish fresh information at the time of getting fresh certificate whereas as and when an applicant desires to get latest certificate, he has to approach portal called 'SARAL' which is linked with the site of PPP. The applicant gets certificate which is based upon information available for PPP.

5. *Per contra, Ms. Shruti Jain Goyal, Senior Deputy Advocate General, Haryana and Ms. Dimple Jain, Deputy*



Advocate General, Haryana submit that as per advertisement, the petitioners were duty bound to furnish fresh latest BC certificate. Income and assets are linked with BC certificate. A certificate which is meant for Central Government jobs cannot be used for State Government jobs because income criteria of State and Central Government is different. Certificate of Scheduled Caste cannot be compared with Backward Class because principle of creamy layer is not applicable in case of SC/ST. In case latest BC certificate is not furnished, there are all possibilities that a candidate may apply and succeed whose income in last financial year has exceeded prescribed limit. The status of BC certificate is not absolute whereas it is fluid and variable. On account of change of income and assets of the family, the status of a candidate within BC category with respect to entitlement to benefits of reservation extended by the State Government may change. The petitioners were duty bound to upload their fresh latest BC certificate. There are different clauses of the advertisement which mandate that a candidate must possess certificate and upload it with his/her application which is basis for claiming benefit of reservation. The said certificate is required to be produced at the time of scrutiny. No certificate can be considered at the time of scrutiny which was neither uploaded nor was available at the time of filing application. The terms and conditions of the advertisement were



quite clear and lucid. The respondent cannot act contrary to terms and conditions of the advertisement. It is settled proposition of law that terms and conditions can neither be varied nor ignored. If the petitioners are permitted to participate in the selection process, it would prejudice interest of those who had submitted valid certificate or who had not participated on account of lack of eligibility certificate. 01.04.2023 was considered as cut-off date because advertisement No.6 dated 28.06.2024 was issued in continuation of advertisement No.1 dated 12.02.2024, thus, BC certificate issued post 31.03.2023 was valid.

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9. From the arguments of both sides and perusal of advertisement, the following questions arise for the consideration of this Court: -

- i. Was there any cut-off date for filing BC certificate?*
- ii. Were petitioners bound to submit fresh latest BC certificate along with application?*
- iii. Was respondent in the absence of latest BC certificate duty bound to rely upon PPP?*
- iv. Could petitioners on account of non-submission of fresh latest BC certificate be transposed to general category?*

xxxxxxx



13. *The dispute primarily revolves around clause 6 of the advertisement. For the ready reference, clause 6 of the advertisement is reproduced as below: -*

“6. Reservation:

6.1. Implementation of reservation policy, maintaining reservation roster and earmarking of vacancies for different categories comes under the domain of the concerned departments and Commission has nothing to do with the number of posts requisitioned under different categories. Benefit of reservation to the persons of reserved category will be as per Haryana Government instructions contained in letter No. 22/10/2013-1GS-III, dated 15.07.2014 and thereafter issued from time to time upto the date of advertisement shall be applicable.

6.2. The short listing of candidates shall be done on the basis of particulars filled in online application form for which supporting documents shall be uploaded. As candidates can update their particulars till closing date, thereafter, no change of particular at any stage shall be entertained. In absence of documentary evidence or mismatch in claimed category and uploaded documents, candidature of candidate shall be considered under General category/Parent category, subject to his/her fulfilling eligibility in General category/Parent category.



6.3. *The benefit of reservation will be given only to those SC/BCA/BCB/EWS and ESM candidates who are bonafide resident of Haryana State and submit the application against reserved category posts. As per letter No. 22/88/96-3GS III dated 25.06.1997, if any member/members belonging to Scheduled Castes/Backward classes is/are selected in the open competition for direct recruitment on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Castes/Backward classes, they will be treated as open competition candidates. However, such candidates should fulfill conditions of eligibility regarding age etc. as are meant for general category candidates.*

6.4 *EWS certificate (valid for State of Haryana) on prescribed proforma should be valid for the year in which the candidates have applied for the posts as per govt. instructions issued vide no. 22/12/2019-1GS-III, dated 25.02.2019. EWS certificate issued for jobs in Central Govt. will not be considered irrespective of income mentioned in certificate.*

6.5 *The candidates belonging to BC-A/BC-B categories should attach the fresh latest BC-A or BC-B certificate as the case may be as per Haryana Government instruction*



CWP-1262-2025 (O&M) and connected cases

issued vide no. 22/132/2013-1GS-III, dated 22.03.2022 or his/her caste/category mentioned/ verified in Parivar Pehchan Patra will be considered. OBC certificate issued for jobs in Central Govt. will not be considered irrespective of income mentioned in certificate.

6.6. The reserved category candidates belonging to other States will be allowed to compete against the posts meant for general category only and will be considered as general category candidates.”

[Emphasis supplied]”

14. From the plain reading of clause 6.5, it is evident that candidates belonging to BC category should attach fresh latest certificate or Commission would consider caste/category from PPP. There are different clauses in the advertisement which provide that the candidate is required to upload documents along with application and only uploaded documents/certificates would be considered at the time of scrutiny of documents. No certificate which is not uploaded can be submitted at the time of scrutiny of documents. Relevant clauses of the advertisement are reproduced as below: -

“7. Regulatory Framework

- (i) EWS certificate as per Annexure I.*
- (ii) Qualifications i.e. degree, diploma, certificates, experience and other terms & conditions of eligibility will*



CWP-1262-2025 (O&M) and connected cases

be determined with regard to the last date fixed for receipt of online applications also termed as closing date.

Important Guidelines:-

1. *Proforma/Formats for certificates are available as Annexure-I of this advertisement.*

2. *Claim of reservation etc., if any, shall be admissible to those candidates only, who upload the requisite valid original certificate along with their application in support of their claim and are of Haryana domicile.*

3. *The benefit of reservation will be given only to those SC/BCA/BCB/EWS and ESM candidates who are domicile of Haryana State.*

4. *The SC/BCA/BCB/EWS candidates are required to upload SC/BCA/BCB/EWS Certificates duly issued by competent authority with application form. The uploaded documents issued before the last date of application shall only be considered.*

8. **How to apply:**

8.1. *XXXX XXXX XXXX XXXX*

8.2. *Apply online well in advance without waiting for last date of submission of online application form. Before submission of the online application, candidates must check that they have filled correct details in each field of*



CWP-1262-2025 (O&M) and connected cases

the form. A candidate may edit his/her application form till the last date of submission of application forms i.e. closing date. After closing date of application, no change/correction/modification will be allowed under any circumstances. Requests received in this regard in any form like Post, Fax, Email, by hand etc. shall not be entertained and shall be deemed to be rejected.

8.3. XXXX XXXX XXXX XXXX

8.4. The hard copy of application form along with all uploaded documents must be brought at the time when called upon to do so by Haryana Staff Selection Commission. Documents which have not been uploaded shall not be entertained. However, HSSC may ask an additional paper in support of already submitted document for more clarity, if required.

8.5 & 8.6 XXXX XXXX XXXX XXXX

8.7. Candidates who do not fulfill the qualifications/eligibility conditions on cutoff date, their application shall be liable to be rejected. All the Certificates/Documents relating to educational qualification/eligibility conditions & experience etc. will be determined with regard to last date fixed to apply online applications or as mentioned in the notification, wherever applicable.



XXXX XXXX XXXX XXXX

10. **Documents to be uploaded with Application Form**
(MANDATORY)

- 10.1. Scanned Copy of Essential Academic Qualifications and Matriculation Certificate showing Date of Birth and other relevant details.
- 10.2. Scanned Copy of SC/BCA/BCB/EWS/ESM certificate, certificate for family member of ESM and children/grandchildren of Freedom Fighters.
- 10.3. Scanned copy of Certificate supporting claims of reservation/weightage/relaxation(s).”

XXXX XXXX XXXX XXXX

- 11.7 All rules/instructions prevailing on cut-off date shall be applicable.

XXXX XXXX XXXX XXXX

- 11.14 If any document is required to be renewed/reissued, candidate must bring both old and new documents.”

- 14.1 From the perusal of above quoted clauses of the advertisement, it is evident that every applicant was bound to possess and upload BC Certificate to claim benefit of reservation. If a candidate fails to upload a document or certificate, it cannot be produced or considered at the time of scrutiny of documents.



15. *The advertisement was issued on 28.06.2024 and last date for filing application was 08.07.2024. As per terms and conditions of the advertisement, every candidate claiming reservation was bound to upload his/her caste certificate. The last date for uploading the application along with documents was 08.07.2024 meaning thereby a candidate claiming reservation was supposed to have requisite certificates latest by 08.07.2024. If he opts to file application before the last date, he was supposed to have certificates by said date because in the absence of possession of certificates, he could not upload those certificates along with Application Form. Candidates belonging to BC category were supposed to file BC certificate along with Application Form. The format of certificate has been prescribed in the advertisement read with instructions. BC certificate available on SARAL Portal which is linked with PPP incorporates annual income and discloses that candidate does not fall within creamy layer. For the ready reference copies of BC certificate and PPP are reproduced as below: -*

“BC CERTIFICATE

Parivar Pechan Number: 4VKE6945

Certificate Number: HRBC/2024/63412

Government of Haryana

Backward Class Certificate



Raj Kumar	Munshi Ram	Jamna Bai	01/01/1970	Self	54Y 6M 22D	xxxxxx3 076	xxxx xxxx 5769	75000- 100000	Farmer	BC(A)	N
Naveen	Raj Kumar	Asha Rani	02/03/1998	Son	26Y 4M 21D	xxxxxx6 656	xxxx xxxx 7095	0	Student	BC(A)	N
Showing 1 to 3 of 3 entries											

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16. From the perusal of above quoted BC certificate, it is evident that it certifies that candidate does not belong to creamy layer as per State notification dated 17.11.2021. The notification dated 17.11.2021 prescribes limit of creamy layer. The limit prescribed by State Government is different from limit prescribed by Central Government. The limit has been modified from time to time. For the purpose of advertisement in question, the limit was Rs.6 lakh per annum. The notification dated 17.11.2021 is reproduced as below:

“Haryana Government

Welfare of Scheduled Castes and Backward Classes

Department

Notification

The 17th November, 2021



No. 491-SW(1)-2021. In exercise of the powers conferred under clause (d) of Section 2 and Sub-section (2) of Section 5 of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 (15 of 2016), and in supersession of the Haryana Government, Welfare of Scheduled Castes and Backward Classes Department, notification No. 808-SW(1), dated the 17th August, 2016 and the Haryana Government, Welfare of Scheduled Castes and Backward Classes Department, notification No. 1282-SW(1), dated the 28th August, 2018, the Governor of Haryana hereby specifies the following criteria or exclusion of persons within the Backward Classes as Creamy Layer as per Annexure appended hereto.

DESCRIPTION OF CATEGORY		TO WHOM RULE OF EXCLUSION SHALL APPLY
1	2	3
I.	XXXX	XXXX
V.	Income Test/Wealth Test	Son(s) and daughter(s) of parents Having gross annual income of Rs. 6 lakhs or above. OR Possessing wealth above Rs. 1 Crore for a period of last three consecutive years. Explanation:



		<i>Income from all sources shall be clubbed to arrive at the gross annual income.”</i>
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17. The notification dated 17.11.2021 has been issued in exercise of power conferred by Section 5 of Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 (for short ‘2016 Act’). Section 5 of 2016 Act provides that no member of BC shall be entitled to admission and job if he belongs to creamy layer. Section 5 of 2016 Act reads as: -

“5. (1) Notwithstanding anything contained in this Act, no person belonging to the creamy layer of Backward Classes shall be—

(a) considered for admission in educational institutions against the seats reserved therein for Backward Classes as specified in the Schedule; or

(b) entitled to claim reservation in or be considered for appointment in services under the State against the posts reserved for Backward Classes as specified in the Schedule.

(2) The Government shall, by notification, after taking into consideration social, economic and such other factors, as deemed appropriate, specify the criteria for



CWP-1262-2025 (O&M) and connected cases

exclusion and identification of persons belonging to the Backward Classes as creamy layer.

(3) The criteria fixed under sub-section (2) shall be reviewed every three years.”

18. In the advertisement dated 28.06.2024, it was prescribed that fresh latest certificate should be submitted. The certificate should be in terms of instructions dated 22.03.2022 issued by the State Government. For the sake of convenience and better appreciation of the issue, it would be useful to examine instructions dated 22.03.2022. The relevant extracts of the same are reproduced as below: -

“2. The Haryana Parivar Pehchan Act, 2021 provides for the assignment of the Parivar Pehchan Number (PPN) as a unique identifier number to each family. The database, namely Family Information Data Repository (FIDR), contains PPN along with corresponding information generally required for determining eligibility for, or the provision of any scheme, service, subsidy or benefit provided/implemented by or on behalf of the State Government/any Government agency/local authority. State Government has been empowered under section 8 of the Act to prescribe Parivar Pehchan Number (PPN) as a requirement for the purpose of determining above mentioned eligibility or provision. The verified



CWP-1262-2025 (O&M) and connected cases

information linked with PPN available in Family Information Data Repository (FIDR) has now made it feasible to issue Caste Certificates over the counter through the SARAL portal.

3. In view of the above, Government has decided to issue revised instructions/guidelines in supersession of all the previous instructions issued till now, as under:-

XXXX XXXX XXXX XXXX

(xiii) Validity of a Caste Certificate: -

- (i) A Caste Certificate once issued (in its standard format) shall be valid for the life time of the person so long as such caste/tribe is not removed or modified in the notifications issued by the Welfare of Scheduled Castes and Backward Classes Department, Haryana.*
- (ii) Where a Caste Certificate is requested for specific use outside the context of Government of Haryana, it shall be issued in the format prescribed by the Government of India.*
- (iii) Certificates which include income and/or assets based information like creamy layer criteria shall become invalid after the validity period prescribed on the said certificate. Such certificates shall be valid for the current financial year, i.e. till coming*



31st March (included) from the date it has been issued.

- (iv) A Caste Certificate may also become invalid if after due process, it has been concluded that the caste was incorrectly mentioned on the certificate or wrongly verified in the FIDR , due to any reason whatsoever.

XXXX XXXX XXXX XXXX

- (xv) General Terms and Conditions.-

XXXX XXXX XXXX XXXX

(d) Mere issuance of a Caste certificate does not entitle a person holding such certificate to any benefit that may be admissible under various Government Schemes implemented from time to time. Hence, it is important that the authority concerned examines the applicant's entitlement to any specific benefit in accordance with the instructions on the subject at any given point of time. For instance, a person from the Backward Class may not be entitled to certain benefits if he falls within the creamy layer as defined from time to time. Accordingly, the Caste Certificates shall address ONLY the caste of the certificate holder. Other eligibility criteria for a particular scheme shall be addressed separately by the authority extending any such benefit.



XXXX XXXX XXXX XXXX

4. Further, it is directed that no Government Department of Haryana shall obligate any Haryana resident to submit caste related proof documents if he/she provides PPN and his/her caste and caste category is marked as verified in Family information Data Repository (FIDR). ”

From the perusal of instructions dated 22.03.2022, it is evident that caste certificate once issued shall be valid for the lifetime of the person, however, the certificates which include income and/or assets based information like creamy layer criteria shall become invalid after the validity period prescribed on the said certificate. Such certificate shall be valid for the current financial year i.e. till 31st March (included) from the date it has been issued. Dichotomy between caste certificate and a certificate which includes information of creamy layer is stark. As per Clause 6.5 of the advertisement, BC certificate ought to be as per instruction dated 22.03.2022. As per instructions, the certificate having information of creamy layer is invalid after 31st March of the year. From the reading of above reproduced BC certificate, it is evident that it is disclosing that candidate does not belong to creamy layer.

19. From the conjoint reading of different instructions, enactments and terms of advertisement, the salient features of



the advertisement qua reservation for BC candidates are culled out as below:-

- i. Reservation for BC candidates is governed by 2016 Act;*
- ii. No BC candidate is entitled to reservation, if he belongs to creamy layer;*
- iii. Validity of BC certificate is lifetime;*
- iv. BC certificate can be obtained from SARAL portal;*
- v. SARAL portal is inter-linked with verified data of PPP portal;*
- vi. PPP portal comprises of information of a family which includes caste, income, address, number of family members, assets etc.;*
- vii. Information at PPP portal is fed by resident of Haryana and it is verified by competent authority. Data which cannot be verified is reported as unverified;*
- viii. BC certificate which gives information about creamy layer is valid till 31st March of the financial year;*
- ix. Any person whose data is available at PPP portal may obtain BC certificate through SARAL portal;*
- x. While obtaining BC certificate from SARAL portal, no information qua income is uploaded on SARAL portal;*
- xi. Data at PPP portal may be changed by furnishing fresh/additional information;*



xii. As soon as data at PPP portal is modified, data at SARAL portal stands modified e.g. if income is updated at PPP portal, updated income would be disclosed by SARAL portal while issuing BC certificate.

21. The CET notification provides that information with respect to caste and income/assets disclosed by applicant may be verified from PPN. The same clause is part of Clause 6.5 of the advertisement. At the cost of repetition but for the sake of convenience and better understanding, Clause 6.5 of the advertisement and relevant portion of Clause 5 of notification dated 05.05.2022 is reproduced as below:-

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Clauses 5 of the Notification:

“REGISTRATION FOR CET:

(i) All applicants shall register on a designated portal i.e. onetimereg.haryana.gov.in by such last date to be published by an advertisement issued by the Commission, providing all particulars relating to the identity of the applicant and uploading all the required documents relating to any claim including claim for reservation, educational qualifications, experience and socio-economic criteria weightage and such other details as the Government or the Commission may seek, from time to time, for the purpose of recruitment.



(ii) The Parivar Pehchan Number enables the recruiting agency to verify the applicant's claims in respect of residence, educational and other qualifications, caste and experience certificate, family income/assets, status of parents (if any parent is deceased the verification of death certificate is involved), marital status of female applicant, separation certificate of legally separated women, disability certificate, sports gradation certificate, de-notified tribe/Vimukt Jati certificate, certificate of ex-serviceman, dependent of ex-servicemen certificate, dependent of freedom fighter, FIR copy etc."

22. From the above quoted clauses of the advertisement and notification, inevitable conclusion which can be arrived at is that the respondent was able to verify applicants' claim in respect of caste and family income/assets from PPP. The facility was available at the time of CET as well as 2nd stage test. There was no question to deny benefit on the ground that the applicant had not submitted latest fresh BC certificate.

24. The respondent in the impugned order has held that BC certificate is of before cut-off date i.e. 01.04.2023. The petitioners downloaded BC certificate from SARAL Portal. The petitioners have enclosed BC certificates of different years e.g. BC certificates of Naveen S/o Raj Kumar is dated 23.03.2023



and another 10.03.2024. Both the certificates have been downloaded from SARAL Portal. As per procedure prescribed in the 2021 Act, an applicant uploads his particulars on the official site. The competent authority verifies said information. It is called as 'verified information' which forms basis of BC certificate obtained from SARAL port. The applicant may update 'verified information' and is bound to update if directed by competent authority. The petitioners uploaded information prior to filing application for CET. On the basis of said information, BC certificate was issued by SARAL portal. If a candidate applies either in 2022 or 2023 or 2024 for BC certificate, the contents of the certificate except date of certificate would remain same unless and until information available at PPP portal is undated. The respondent during the course of hearing harped on the question of date of certificate which indicates that either respondent has failed to understand the system of SARAL and PPP portal or there is some miscommunication. The respondent should ask BC certificate having incorporated income of a particular Financial Year.

The State Government with intent to achieve goal of upliftment of poor strata of the society has evolved a novel electronic mechanism of personal information. Information available on PPP portal is utilized for all beneficial schemes introduced by State Government. SARAL portal is part of benevolent schemes



introduced by State Government. Object of SARAL portal is to provide BC certificate without physically approaching the authorities and within shortest possible time. PPP portal discloses verified as well as non-verified information of the candidates. It opens horoscope of the family. The respondent knowing this fact jotted down in the notification of CET as well as advertisement in question that if latest BC certificate is not filed, status would be confirmed from PPP. Intent as well reason was stark and sound. There was not even an iota of doubt. Mess developed due to longtime gap in the date of filing application for CET, cancellation of first advertisement and issuance of second advertisement that too in the next financial year. In this process, three financial years came to be involved. Data available on PPP portal was not updated, thus, BC certificate obtained from SARAL port, irrespective of the date of request was bound to give same information. The respondent accepted BC certificate obtained from SARAL portal which on account of afore-stated reasons was bound to give same information irrespective of date of request made on SARAL portal. Object of denial of benefit of BC to a candidate belonging to creamy layer could not be achieved unless and until latest financial status as contemplated by notification issued under Section 5 of 2016 Act is gathered. This was possible either by asking the candidates to upload latest



financial information at PPP portal or furnish manual BC certificate disclosing latest financial information. The respondent in the notification issued for CET and Advertisement has provided for verifying BC status from PPP, thus, there was no reason to deny benefit of reservation on the ground of non-submission of latest fresh BC certificate.

25. A conspectus of BC certificate, notification dated 17.11.2021 and instructions dated 22.03.2022, reveals that BC certificate which includes income & assets-based information like creamy layer is valid till 31st March from the date it has been issued e.g. a certificate issued on 01.01.2024 shall be valid till 31.03.2024. As per Income Tax Act, 1961 financial year sprawls from 1st April to 31st March like 01.04.2022 to 31.03.2023 is one financial year. Creamy layer status is determined on the basis of income and assets held by family during a financial year. A person may not be covered by concept of creamy layer in one particular year but may be in subsequent years. As per notification dated 17.11.2021 issued under Section 5 of 2016 Act, a member of BC category belongs to creamy layer if his parents are having gross annual income of ₹6 Lakhs or above or possessing wealth above ₹1 Crore for a period of last three consecutive years.

From the conjoint reading of Section 5 of 2016 Act, notification issued thereunder, instruction dated 22.03.2022 and Clause 6.5



of the advertisement, it is evident that a candidate was not entitled to reservation under BC category, if his parents were having gross annual income of ₹6 Lakh or above. Claim of the petitioners that concept of creamy layer is not relevant and only BC certificate was required is misconceived. Section 5 of 2016 Act is a statutory provision which cannot be ignored. A candidate claiming reservation as BC was bound to prove that he did not belong to creamy layer. Concept of creamy layer as envisaged by Section 5 of 2016 Act cannot be ignored.

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30. The respondent is primarily relying on judgment of Supreme Court in Divya (supra) to contend that backward class status is fluid and variable. It may change year to year because it is directly linked with income and assets of the family. The Court has clearly held that in case certificate is not uploaded along with the application form, benefit should be denied.

The facts of the instant case are entirely different. In the case in hand, it is no one's case that BC certificate was not uploaded. The dispute is confined to year of the certificate. There is no judgment where condition of obtaining data from PPP was existing and under consideration of the Court. As facts of present case are entirely different, the judgments cited by respondent cannot be relied upon.



31. *There is another aspect of the matter which needs to be taken care of. By way of this bunch of petitions more than thousand candidates have approached this court. Mistake or negligence may be on the part of one or few but cannot be on the part of large number of candidates. It shows that there was mis-communication which led to filing of BC certificates of dates other than expected by respondent. Merely because of some mis-understanding, candidates who are more meritorious should not be deprived from the post. The petitioners after all are going to hold public post and selection of less meritorious candidates would be prejudicial to the interest of public at large.*

32. *The respondent after last date for filing application, to remove doubts, made minor corrections in the advertisement. Stand of the petitioners that they should be permitted to file BC certificates without any cut-off because respondent has made correction in the advertisement after last date for filing application is mis-conceived and needs to be rejected. The respondent for the sake clarity and without prejudice to the interest of candidates may remove doubts or carry out small repair.*

33. *In the wake of above facts and findings, the above raised questions are answered as:*



- i. In the absence of particular date in the rules or advertisement, last date prescribed for filing application for the advertised post is cut-off date. In the instant case, cut-off date for limited purpose i.e. to upload documents, was last date notified for filing application. The said date had no bearing with the date of BC certificate.*
 - ii. BC-A or BC-B certificate filed at the time of CET is valid for all intent and purposes. The respondent could not ask for fresh latest BC certificate at the 2nd stage of selection process. Three financial years came to involved in view of peculiar facts and circumstances, thus, BC certificates filed at the time of CET are valid.*
 - iii. The respondent was bound to verify PPP in the absence of fresh latest BC certificate.*
 - iv. No candidate could be transposed from BC category to general category on account of non-submission of fresh latest BC certificate at the second stage.*
- 34. In the above premise, all the petitions deserve to be allowed and accordingly allowed. The impugned orders are hereby set aside. To avoid the filing of further petitions, it is hereby made clear that benefit of this judgment would be available to all the candidates who have been transposed from BC to general category. No order as to costs.*



(14) In support of their arguments, learned counsel for the petitioner(s) have placed reliance on the judgment of Hon'ble Supreme Court in the matter of '**Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board**' reported as (2016) 4 SCC 754. The relevant extract of the same reads thus:-

14. The Division Bench of the High Court erred in not considering the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281]. In that case, the learned Single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned Single Judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] as well as Valsamma Paul v. Cochin University [Valsamma Paul v. Cochin University, (1996) 3 SCC 545]. The learned Single Judge in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] also considered another judgment of the Delhi High Court, in Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine



Del 1092], wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the SC and ST categories could not be rejected simply on account of the late submission of caste certificate.

The relevant paragraph from the judgment of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] has been extracted in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] along with the speech delivered by Dr Ambedkar in the Constituent Assembly and reads thus:

“9. ... ‘251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the Draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr. Ambedkar emphatically declared that reservation should be confined to “a minority of seats”, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

“... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of



certain communities which have not so far had a 'proper look-in' so to say into the administration. ... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. ... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10. It is then only that the first principle could find its place in the Constitution and effective in operation. ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State...." [Constituent Assembly Debates, Vol. 7, pp. 701-02 (1948-1949).

These words embody the raison d'être of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic



backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.'

15. In *Pushpa* [*Pushpa v. Govt. (NCT of Delhi)*, 2009 SCC OnLine Del 281], relevant paragraphs from *Tej Pal Singh* [*Tej Pal Singh v. Govt. (NCT of Delhi)*, 1999 SCC OnLine Del 1092] have also been extracted, which read thus:

"11. ... '17. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 issued by the Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by



competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the fundamental rights and



directive principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.’

(15) Further reliance is placed on the judgment of Hon’ble Supreme Court in the matter of ‘**Karan Singh Yadav Vs. State (NCT of Delhi)**’ reported as **(2024) 2 SCC 588**, wherein a Large Bench of the Hon’ble Supreme Court upheld the ratio laid down in the matter of **Ram Kumar Gijroya** (supra).

(16) Reliance is also placed on the judgment of Hon’ble Supreme Court in the matter of ‘**Dolly Chhanda Vs. Chairman, JEE (SC)**’ reported as **2005 (9) SCC 779**, to contend that every infraction of rule relating to submitting of proof need not necessarily result of rejection of candidature. A candidate who is higher in order of merit should not be denied his due on account of delayed submission of proof of his eligibility. The relevant extract of the said judgment reads thus:-

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 marksheets. 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 to 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.

8. This principle was explained and applied in Charles K. Skaria v. Dr. C. Mathew [(1980) 2 SCC 752]. The controversy here related to admission to a postgraduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or subspecialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to postgraduate course was



set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below: (SCC pp. 762 & 763)

“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the



diploma and is not an independent factor. ... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems de-humanises the administrative, judicial and even legislative processes in the wider perspective of



law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like marklists from universities, why, even bail orders from courts and government orders from public offices.”

(emphasis in original)

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.*



(17) Reference is also made to the judgment dated 24.03.2023 of a Division Bench of this Court passed in LPA-1199-2019 titled as '**Haryana Staff Selection Commission Vs. Subhash Chand**' reported as **2023 SCC OnLine P&H 568**, wherein the Division Bench of this Court considered the delayed production of EPBGC Certificates by the candidates therein and to ascertain as to whether such delay could be a ground to not consider the claim of respondent No.1 therein for appointment under the said category. The relevant extract of the same reads thus:-

"Merely on the ground that there was a delay in production of EPBGC certificate from the competent authority, in our opinion, respondent No.1 cannot be denied employment.

In Dolly Chhanda Vs. Chairman, JEE, the Supreme Court held as under:-

"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....."

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, 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, 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.

We may also point out that the decision in Dolly Chhanda (Supra) was applied by the Supreme Court in Archana Chouhan Pundhir (Dr.) Vs. State of Madhya Pradesh and others reported as 2011 (11) SCC 486.



In Archana Chouhan Pundhir (Dr.) as on 30.04.2007, the appellant had completed more than 7 years service as Medical Officer in Public Health and Family Welfare Department of Government of Madhya Pradesh. Her services were regularized w.e.f. 31.12.2005 vide order dt. 10.04.2007. Her application for admission to the post of graduate course as an in service candidate was accepted by the authorities and she was allowed to appear in the entrance exam of 2007, but she was denied admission because of non award of remarks in lieu of her 7 years service. The High Court dismissed her Writ Petition for admission into the Post Graduate course as an in-service candidate on the ground that the result of the entrance examination was declared on 09.04.2007 and the order of regularization of her service was issued on 10.04.2007. The Supreme Court reversed the order of the High Court and held that the date on which the order of regularization was issued was purely fortuitous and the same cannot be made basis for depriving the appellant of her legitimate right as an in-service candidate. It noted that the appellant had worked as Assistant Surgeon in District Hospital, Raisen on contract basis vide order dt. 26.10.1999 and her Writ Petition had been allowed by the learned Single Judge on 21.04.2004 directing consideration of regularization of her services in three months, but the respondents took three years and only on 10.04.2007



regularized her service w.e.f. 31.12.2005. It observed that if the State Government had issued the order of regularization before 05.03.2007 i.e. the last date fixed for receipt of the application, the appellant would have been saved of the harassment, mental agony and financial loss suffered by her on account of unwarranted and post litigation.

Thus importance was given to the possession of the eligible qualification by the candidate as on the cut off date and not on the possession of the proof of such eligibility on that date.

Similar view has also been taken by this Court in Rina and another Vs. Vice Chancellor, Pt. B.D. Sharma University of Health Sciences, Rohtak and others.”

(18) Reliance is also placed on the judgment dated 19.10.2023 passed in **LPA-205-2023** by a Division Bench of this Court in the matter of **‘Nirdosh Kumar Vs. Pb. & Hry. High, Chandigarh & others’**. The operative part of the said judgment reads thus:

“9. In the present case, as noticed, it is not the issue of ineligibility of the candidates regarding their qualifications which they necessarily had. It was only the fact that they had not appended the necessary certificate regarding the proof of date of birth and neither it is the case of the respondents that they were ineligible on account of being overage or underage. The Apex Court has, thus, held that relaxation can be there in



the matter of submission of proof and it would not be proper to apply any rigid principle as it pertains in the domain of procedure. Relevant observation in Dolly Chhanda (supra) reads 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..... 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.”

xxxxxxx

13. *Similar view was also taken by the Co-ordinate Bench in LPA-1199-2019 titled Haryana Staff Selection Commission Vs. Subhash Chand decided on 24.03.2023, wherein it was noticed that the eligibility and possessing the educational qualifications is an important criteria by the cut-off date and the EBPGC*



certificate issued which was subsequent to the last date would not as such debar the writ petitioner for consideration for appointment. Accordingly, the order of the Learned Single Judge was upheld. The same principle would also apply herein.

14. In such circumstances, we are of the considered opinion that once the writ petitioners had got the benefit of the interim order and had due qualifications and are in the merit list and also had given undertaking that they would not claim seniority, merely on the ground of technicality that the date of birth certificate had not been appended with the application should not debar them from consideration. It is not the case of the respondents that the appellants were not between the age of 27-30 years as on 27.06.2017 and therefore to be denied appointment on the said post would be without justification. The judgments relied upon by counsel for the High Court pertains mainly to the question of admission in the University wherein it was held that there is no scope for enlarging the time as interest of other candidates would come in and also on the question of non-possessing the eligibility qualifications before the cut-off date which is not the case herein.”

(19) Reliance is also placed on the order dated 16.01.2025 passed by a Division Bench of this Court in LPA-61/2025 tilted as ‘**Haryana State Selection Commission Vs. Sumit and others**’. The operative part of the said order reads thus:-



“3. The learned Single Judge noticed that when the writ petitioner appeared for scrutiny of his documents and produced certificate reflecting that he was ward of an Ex-serviceman, the same was not accepted by the authorities and even asked to produce the certificate duly issued by the District Sainik and Ardh. Sainik Welfare Officer, Sonapat which he produced after getting the same on 10.02.2022. Learned Single Judge having noticed the said facts also noticed that the Commission had extended the date of scrutiny of documents subsequently for candidates who did not appear for scrutiny during the earlier dates as notified and absenting candidates were allowed to produce documents and were considered for verification on 11.03.2022. The judgment passed by this Court in the case of ‘Anil Kumar Vs. State of Haryana and others’ in CWP-1808-2022 and the judgment of Hon’ble Supreme Court in the case of ‘Dolly Chandra Vs. Chairman JEE, 2005(9) SCC 779 as well as in the case of ‘Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another’, 2016(4) SCC 754 were considered. We find that in the case of Ram Kumar (supra), the Hon’ble Supreme Court allowed the candidature of the writ petitioner who had produced caste certificate subsequently holding that the status of a reserved category candidate cannot be denied merely on account of late issuance of the certificate where certificates were issued later than the cut date. We,



therefore, do not find any reasons to differ from the view as taken by the learned Single Judge and respectfully followed the judgment passed by the Hon'ble Supreme Court to hold that the status of the petitioner would not change merely because the certificate is issued in the later date. We are also of the view that on account of such discrepancies, merit should not be a failure on a person having higher than ought not be denied his right to claim for selection of the candidature.

4. In view thereto, the judgment passed by the learned Single Judge does not warrant any interference and the same is upheld. Accordingly, the appeal is dismissed.”

(20) In support of their contentions in CWP-30312-2024 titled ‘Neha Dhiman Vs. State of Haryana and another’, learned counsel has placed reliance on the judgment of this Court in the matter of ‘**Poonam Devi Vs. State of Haryana and others**’ reported as **2024 NCPHHC 95034**. The operative part of the same reads thus:

*“3. Hon'ble the Supreme Court in **Vashist Narayan Kumar vs. State of Bihar**, had held that if the application form contains a genuine and bona fide mistake, penalising the candidate would be unjust. The possibly distracting environment of the cyber cafe may have led to the error on the part of the appellant, therefore, making a mountain out of a molehill would be unjust on the part of the State. The cancellation order was consequently set aside, while acknowledging the successful*



participation and completion of the selection process by the appellant. Further, “In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 [Prince Jaibir Singh v. Union of India], this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.” While relying on the said judgment, the Division Bench in Haryana Staff Selection Commission vs. Vishvajeet Singh and another 3 dismissed the appeal, by affirming the relief as granted by the Single Bench and observed that the lapse was on account of the respondent having mistakenly opted for the wrong category of BC-‘A’, instead of BC-‘B’, in support of which he had uploaded the appropriate certificate. It was also the case that the marks obtained by him were more than the cut off in both categories. There would have been no benefit derived by him by mentioning the wrong category.

4. *The factum of the petitioner having uploaded the EWS certificate and not ESM, by itself unequivocally establishes her intention to be considered in the said category, however, the mistake occurred in selecting a wrong option, which was due to her having filled the application form with aid of cyber cafe, for the correction of which, since there was no provision in the website, she also approached the Commission prior to the*



written exam being conducted on 25.07.2021 but to no avail. She would have gained nothing by choosing a category of which she did not have a certificate. Thus, it would be highly unjust to oust her of consideration from the category she belonged.”

(21) Reliance is also placed on a Division Bench of this Court in the matter of ‘**Haryana Staff Selection Commission through its Secretary Vs. Sarla and others**’ reported as 2019 SCC Online P&H 5446. The relevant extract of the same reads thus:

“4. The case set up by the respondent-petitioner was that as soon as the mistake committed in filling up online form came to her knowledge she immediately made a representation dated 27.04.2017 before respondent No.2 requesting for necessary correction in the application form. She was assured that at the time of verification of the documents she will be allowed to carry out necessary corrections and was permitted to appear in the written test. However, subsequently when she appeared for verification of documents on 03.07.2017 she was not allowed to participate in the interview and her candidature was cancelled.

5. We cannot loose sight of the fact that in view of the prevailing socio economic condition in our country, every citizen is neither net savvy nor has a computer or laptop readily available for use. In these circumstances, when such a candidate has to submit an application on-line he has to



dependent upon the cyber cafés providing the net services. Being himself/herself not computer and net savvy the candidate has to depend upon the operator in the cyber café to fill in online form and in such a circumstance if any mistake occurs it would be wholly unrealistic and arbitrary to make such a candidate suffer. It is also to be taken note of that if an incorrect entry is made due to human error, there is no provision on the website of the Commission allowing correction in the online application form. In these circumstances, if a mistake is committed, there being no provision for carrying out correction, even if it is noticed subsequently, a poor candidate is to suffer for no fault.

6. *In the case in hand, the respondent-petitioner is a poor widow lady and is resident of village Karora, District Kaithal, where she was working as an Anganwari Worker. It is pleaded in the writ petition that online application form was submitted by her through computer centre in the village. In view of the aforesaid facts and circumstances we find no illegality in the view taken by the learned Single Judge allowing the claim of the respondent-petitioner.”*

(22) Adverting to the above, learned counsel for the petitioners have vehemently argued that the stand of the respondent-HPSC is towards an extreme having taken recourse to the last resort by rejecting their candidature notwithstanding their merit. They have submitted that the



backward class ‘non-creamy layer’ certificate is merely a document as a proof of their eligibility and is valid for a given financial year. Hence, attaching much significance to the date of issuance of the certificate is not in furtherance of the objective sought to be achieved by providing for reservation. Once the said certificate, despite the time of its issuance is valid for the complete financial year, the date of its issuance is insignificant for determining the eligibility. Hence, the petitioners ought to be considered eligible in their respective categories and they should not be ousted from the zone of consideration only on account of delayed submission of the certificate or erroneously appending other certificates, that were otherwise in compliance to the Government notification, but may not be in compliant of the advertisement.

Arguments by State:

(23) Learned counsel for the respondent-State of Haryana, however, submits that they have no competing interest at this juncture and that the decisions taken by the Haryana Public Service Commission is required to be defended by the Commission itself.

Arguments by H.P.S.C.:

(24) Learned counsel appearing on behalf of the respondent-Commission however responds that the arguments advanced by the learned counsel for the petitioners are misconceived and based on wrong interpretation and appreciation of the essential terms & conditions published by the Commission. He contends that the closing date had been specified by the Commission to be 12.07.2024 and that even though by virtue of a



corrigendum, the date was extended, however, the said date was extended only for submission of the online application forms and the same should not be construed as an extension for determination of eligibility. He further submits that the Commission had given a specific note that the eligibility of a candidate with reference to the documents submitted by him/her has to be seen as on the closing date and that no document which was obtained or furnished after the cut-off date shall be taken into consideration by the Commission and the candidature of such a candidate shall be liable to be rejected. The said aspect having been specifically clarified in Note 2, it was expected that all the candidates who are qualified doctors, would exercise the required prudence at their end while submitting the online application forms. He re-emphasises the need to consider Sub-Clause (iii) of Clause-11, which specifies that the latest/updated certificate has to be appended by a candidate which has to be not only in conformity with the Notification dated 17.11.2021, but also has to be in conformity with the Government instruction dated 22.03.2022.

(25) Further, in relation to the candidate who were in possession of their OBC certificates, they were also apprised to submit BC-A/BC-B certificate(s) as per the new instructions. It is contended that despite repeated cautions having been put by the commission in the advertisement, the petitioners have failed to submit the compliant documents and hence, their candidature has rightly been rejected by the Commission. No leverage could have been extended by the Commission in supersession of its own instructions and terms & conditions prescribed in the advertisement and the



same were sacrosanct. The sanctity of the cut-off date cannot be diluted on account of the negligence/omission committed by the candidates, which such negligence is attributable to their own lapse and is not on account of any act/omission on the part of the respondent-Commission.

(26) He further contends that allowing the petitioners to participate in the process of selection despite them being ineligible on account of having failed to submit the requisite documents, would tantamount to giving premium to a person who is himself at lapse and that he cannot claim sympathy from this Court by portraying as if he is being victimized by the Commission. Considering them eligible at this stage would deprive the other candidates, who now fall in the zone of selection for an appointment. Besides, in the event such liberty/sympathy is extended to the candidates who were themselves negligent and have been rendered ineligible on account of the same, the process of selection would never be finalised and all essential terms & conditions would lose the sanctity, enforceability and meaning.

(27) He further submits that in so far as the submissions of the petitioners, that the PPP had been appended by them alongwith reliance on condition No.4 of the Govt. Instruction dated 22.03.2022 is concerned, the same was in relation to the caste certificate that has been issued. Since the dispute involved in the present cases does not pertain as to whether the petitioners belong to the respective caste or not and is rather whether they are entitled to the benefit under the 'creamy/non-creamy layer', hence, the financial boundaries for claiming eligibility/consideration in respect of their



category was dependent upon the certificate issued by the competent authority. The petitioners thus cannot take benefit of said clause as incorporated in Govt. Instructions dated 22.03.2022 and to equate the same to the backward class certificate required to be issued in terms of the Govt. Notification dated 17.11.2021. The financial discipline and the asset/income being the determining criteria for ascertaining the eligibility of a person to claim benefit of reservation under non-creamy layer, hence, the burden lies upon the candidate to append the requisite documents, as would establish his/her entitlement to claim benefit of consideration in the respective category.

(28) He further contends that the arguments of the learned counsel appearing on behalf of the petitioners that a letter was sent by the Commission to the candidates, provisionally apprising them about their ineligibility and thus, granting an opportunity to submit a representation, does not confer any right on the petitioners, since granting of the opportunity to submit their representation cannot be equated as granting an opportunity to remove a defect. The said process had been initiated only to allow a candidate, where he was otherwise compliant of all the terms & conditions as on the cut-off date, however, due to inadvertence some document is misplaced or is not available. The same cannot be equated as submission of an altogether new document which has come to light after the cut-off date.

(29) He further submits that the same was only a show cause to verify as to whether any mistake has been committed by the Commission itself and was not for extending any opportunity to the candidates to make



good a deficiency. The candidate thus was at liberty to point out any error that may have crept in on the part of the Commission, resulting in rejection of the candidature and cannot thus be construed as vesting of a right in a candidate to make good a defect.

(30) Responding to the case of Neha Dhiman, learned counsel for the Commission contends that under the garb of seeking correction of a ministerial error, the petitioner herein is seeking a change in the category from creamy to non-creamy layer and that the same cannot be permitted at this juncture. It has tested the eligibility of the candidates solely on the basis of the documents appended by them and comparing them with the requirements prescribed by the respondent-Commission.

(31) Responding to the judgment of a Coordinate Bench of this court pertaining to the selection undertaken by the Haryana Staff Selection Commission relied upon by the petitioners, learned counsel appearing on behalf of the respondent-Commission contends that the said judgment is not applicable to the facts of the present case, as no cut-off date was prescribed in the said case whereas a cut-off date has been specified by the Commission in the present case. He contends that in the said advertisement, the caste certificate was only required to be issued as per the Notification dated 17.11.2021 or as per the PPP, which is not the case in the advertisement issued by the respondent-Commission. He submits that the judgment of Hon'ble Supreme Court in the matter of *Divya* (supra) has been distinguished by the Coordinate Bench of this Court solely on the aforesaid factual aspect. Hence, once the terms & conditions have been prescribed and



published by the respondent-Commission in the advertisement, the ratio of the said judgment would not be applicable to the facts of the present case and accordingly, the ratio as laid by Hon'ble Supreme Court in the matter of *Divya* (supra) would become applicable.

Judgments Relied Upon by the Respondent-HPSC:

(32) Reliance is placed by the learned counsel for the respondent-Commission on the judgment of Hon'ble Supreme Court in the matter of '*Divya Vs. Union of India and others*' reported as **2024 (1) SCC 448**. The relevant extract thereof reads thus:-

7. A careful perusal of the Rules would disclose that, under Rule 28, candidates seeking reservation under EWS for the purpose of CSE-2022 must ensure that they are entitled to such reservation as per the eligibility prescribed in the Rules. The eligibility prescribed for EWS under Rule 27(3) is that the candidate should meet the criteria issued by the Central Government and should be in possession of requisite Income & Asset Certificate (I&AC) based on the income for Financial Year 2020-2021. Secondly, the candidates should also be in possession of all the requisite certificates in the prescribed format by the closing date of the application for Civil Services (Preliminary) Examination - 2022.

It can be seen from the above-mentioned clauses that the benefit of reservation can be availed on possession of Income & Asset Certificate [I&AC] issued by a Competent Authority.



Under Clause 5.3 of the OM, the crucial date for submitting I&AC may be treated as the closing date for receipt of application for the post, except in cases where crucial date is fixed otherwise.

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9. The applicable date for possession in this case is 22.02.2022. This is because after the promulgation of the Rules, the third respondent - Union Public Service Commission [UPSC] issued the examination notice on 02.02.2022 and the last date for submission of the application was 22.02.2022 and the time of deadline was 6.00 p.m. on that day.

10. As is clear from Rule 13 extracted above, the uploading of the certificates happens only after the declaration of the results of the Preliminary Examination and before the Main Examination is held. For the Main Examination, a candidate is required to submit an on-line Detailed Application Form-I (DAF-I) along with scanned documents/certificates in support of the claim for EWS category within the prescribed time.

11. Any delay in submission of the DAF-I or documents in support beyond the prescribed date was not to be allowed and would lead to cancellation of the candidature.

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21. The detailed facts pertaining to the petitioners in W.P.(C) Nos. 705 and 764 have been set out in the later part of this



judgment. Insofar as the petitioners in W.P. (C) Nos. 705 and 764 are concerned, there is no dispute on one fact that with regard to all of them, the documents submitted with DAF-I were not the correct documents reflecting their eligibility. Admittedly, there was some lacunae or the other which they claim were rectified beyond the date of submission of DAF-I. The UPSC, in its counter affidavit, has clearly urged that with regard to the 298 EWS candidates, who were ultimately shortlisted, the I&AC as uploaded by them in DAF-I was scrutinized and they have rejected their candidature or converted some of them to the General Category.

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38. In the light of the pleadings and the contentions set out above, the following main questions arise for consideration:

- a) What is the eligibility criterion for a candidate to stake a valid claim under the EWS Category as per the CSE Rules, 2022 read with OM dated 19.01.2019 and 31.01.2019?*
- b) Was the UPSC justified in prescribing the cut-off date for possession and for uploading of the I&AC certificates in the prescribed format to stake a valid claim under the EWS category, as done in the instant case?*
- c) Are the CSE-Rules 2022 enforceable in law? d) Are Rules 13, 27(3) and 28 of the CSE-Rules 2022 constitutionally valid?*



e) Was the UPSC justified in rejecting the claim of the petitioners for consideration under the EWS category?

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41. It is very clear that an EWS candidate acquired eligibility to be an EWS candidate for the purpose of CSE-2022 only if the candidate met the criterion prescribed by the Central Government and is in possession of the requisite I&AC based on the income for the F.Y. 2020-2021. Read with Rule 28, the candidate should also be in possession of the certificate as on 22.02.2022. So it is beyond cavil that one cannot decide for oneself that the candidate is an EWS candidate and only on the fulfilment of the criteria and the issuance of the certificate before 22.02.2022 will the eligibility as an EWS candidate, enure to the benefit of the candidate for the CSE-2022. The argument of Shri K. Parameshwar, learned counsel, that being from the "EWS" category is a status and the I&AC to be produced is only a proof and as such the I&AC can be produced at any stage cannot be accepted in the teeth of the clear prescription in the Office Memoranda read with the CSE-2022 Rules. Further, as required under Rule 13, at the stage of DAF-I the document had to be submitted on-line before the prescribed date (in the present case for CSE-2022 the date was 15.07.2022) and that any delay in submission of DAF-I or document beyond the prescribed date was not allowed. These



clear stipulations run counter to the submissions of learned counsel that on the rectification of a certificate it relates back to the date of the certificate.

42. The entire burden of the song of the petitioners is that they were eligible EWS candidates and that it was only a delay caused in the production of proof thereof. They repeatedly urge before us the dictum of Krishna Iyer, J., in Charles K. Skaria (supra), namely:-

"...To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence."

43. In Charles K. Skaria (supra), most candidates possessed the eligibility viz. the diploma. Only the proof in the form of certificate was awaited. The authorities had also accepted them as eligible, expressly informing the selection committee that for



eligible candidates even if proof came later and before the final selection, it should be considered as valid. This was also equally the situation in Dolly Chhanda (supra), Alok Kumar Singh (supra) and Dheerender Singh Paliwal (supra) where the factual position about the eligibility was not in dispute. Those cases and the cases of that ilk cannot support the petitioners in this case for the purpose of claiming eligibility in CSE-2022 as an EWS candidate.

44. The meaning of the word "eligible" as defined in P. Ramanatha Aiyar's Advanced Law Lexicon is set out hereunder:-

"Applied to the selection of persons, the word has two meanings i.e. "legally qualified," or "fit to be chosen."

Applied to our context, a person can be found eligible as an economically weaker section candidate and he can be considered as a fit person to be chosen under that category only if the requirement of the OM of 31.01.2019 and Rule 27(3) read with Rule 28 are fulfilled. In Gaurav Singh's case (supra), it has been categorically held that assets for the particular Financial Year, prior to the year of submission, goes to the root of eligibility of the candidate in the EWS category. It has been further held therein that the candidates whose I&ACs are not in order did not have any legal right to be considered. It has also been held that no candidate can claim any legal right for



reconsideration of the candidature by submitting a fresh certificate and/or a rectified certificate.

45. That is the fundamental distinction between the Charles J. Skaria (supra) line of cases and the cases at hand. As pointed out earlier, the eligibility for being categorized as EWS candidate crystallizes only when the I&AC is issued and, in this case, as required under the rules, it was to be issued and possessed by the candidate before 22.02.2022.

46. It is also very well settled that if there are relevant rules which prescribe the date on which the eligibility should be possessed, those rules will prevail. In the absence of rules or any other date prescribed in the prospectus/advertisement for determining the eligibility, there is a judicial chorus holding that it would be the last date for submission of the application. (See Rekha Chaturvedi v. University of Rajasthan [1993 Supp (3) SCC 168]; Bhupinderpal Singh v. State of Punjab [(2000) 5 SCC 262]; Ashok Kumar Sonkar v. Union of India [(2007) 4 SCC 54].

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54. The strong reliance placed on Ram Kumar Gijroya case (supra) also does not impress us. Not only was there no rule, like we have in the present case, it was only while declaring the result, the requirement of submitting the OBC certificate before the cut-off date was introduced by the Selection Authority there.



Moreover, unlike the present, there was no contention or issue raised in that case that eligibility enures or crystallizes only on the issuance of the certificate and on possession of the certificate, before the prescribed cut-off date.

55. The judgment in Ram Kumar Gijroya case (supra) is also directly in conflict with the judgment of three Hon'ble Judges in Ashok Kumar Sharma and Others v. Chander Shekhar and Another (1997) 4 SCC 18 wherein in para 6, it was held as under:-

".. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr.T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date, cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this



proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis...."

56. *Apart from all of this, the correctness of Ram Kumar Gijroya case (supra) was referred to a three-Judge Bench in the case of Karn Singh Yadav (two-Judges). A perusal of para six of the referral order clearly shows that the Bench was echoing the ratio of the three-judge Bench in Ashok Kumar Sharma's case (supra) though there is no express reference to the said case. However, when the matter came before a three- Judge Bench, the reference was not answered and even after noticing that Ram Kumar Gijroya case (supra) covered the case of Karn Singh Yadav (two-Judges), the Court, however, denied relief to Karn Singh Yadav, the petitioner by holding that since the appellant was never appointed to the post at that length of time it was not possible to grant any relief to the appellant. Ram Kumar Gijorya (supra) is clearly distinguishable.*

57. *Be that as it may, we are bound by the judgment of the three-Judge Bench in Ashok Kumar Sharma (supra) and we*



follow the said judgment and reiterate the principle laid down thereon. It is also interesting to note that even in Deepak Yadav (supra), a judgment, strongly relied upon by the learned counsel for the petitioners, the principle in Ashok Kumar Sharma (supra) has been reiterated. However, because of what the Court called an abnormal and cataclysmal year, an exception was made due to the ongoing pandemic, lockdown and restrictions imposed thereof. In Alok Kumar Singh (supra), no rules like the ones present in this case are shown to have existed. In the present case, there are clear prescriptions as to eligibility, as has been discussed herein above.

58. In Gaurav Singh's case (supra), this Court has held as under:-

"A technical irregularity in a certificate issued by the competent authority in respect of the correct financial year cannot be equated with an Income and Asset Certificate in respect of a different financial year when the Income and Assets for the particular financial year prior to the year of submission of the application, goes to the root of eligibility of a candidate to qualify in the EWS category.

The Respondent-Writ Petitioners were well aware that they had to furnish Income and Asset Certificates issued by the Competent Authority for the financial year prior to



the year of application. If the applications were made pursuant to a notification published on 24th April 2019 with 20th May 2019 notified as the last date for submission of the applications, the financial year prior to the year of submission of application could not possibly be the financial year 2019-2020, to which the Certificates related. The observation in the impugned judgment and order of the High Court of the expediency of specifying the financial year in the notification for recruitment is in the nature of an advisory, which may be kept in mind when recruitment notifications are issued by the Appellant in future. The Respondent writ petitioner Nos. 2 and 4, in whose Income and Asset certificates were not in order, did not have any legal right to be considered EWS candidates.

The Respondent-Writ Petitioners were required to submit Certificates for the relevant financial year. The negligence of the Respondent-Writ Petitioners in not checking if the Certificate related to the correct financial year, cannot be lightly brushed aside as inadvertent lapses of the certifying authority. A candidate applying for a post pursuant to an advertisement, cannot afford to be negligent. Documents required to be submitted have to be carefully checked by the candidate concerned before



CWP-1262-2025 (O&M) and connected cases

submission. An appointing authority proceeds on the basis of what is stated in a certificate. When a certificate pertains to a different financial year, the same is liable to be outright rejected. No candidate can, in such case, claim any legal right to reconsideration of his/her candidature by submission of a fresh certificate and/or rectified certificate.

... ..

In the case of Respondent-Writ Petitioner No.3, the Income and Asset certificate, which had initially been questioned as having been issued by an authority not competent, was later accepted as it was found that the authority issuing the certificate was in fact competent. The certificate of the Respondent-Writ Petitioner No.1 was also accepted as there was no discrepancy in either the date of issuance or the year. It was just that the seal had been stamped without the full name of the officer concerned and that was accepted as an error not attributable to the candidate concerned."

(Emphasis is ours)

59. The attempt by Ms. Preetika Dwivedi and Shri K. Parameshwar, learned counsels for the petitioners to get over Gaurav Singh's case (supra) by relying on the case of Deepak Yadav (supra) does not also impress us. Deepak Yadav case



(supra) pertained to the Civil Services Examination for 2020. It was during the middle of the peak pandemic in 2020. In that scenario, the Court observed as follows:-

"7. Indeed, the last part of Note I of clause 7 clearly provides that proof of passing the requisite examination should be dated earlier than the due date (closing date) of Detailed Application Form-I of the Civil Services (Main) Examination. There is nothing wrong in UPSC strictly adhering to this stipulation, being in the nature of an eligibility criterion. The respondents are justified and right in urging that this stipulation is inviolable as expounded in *Ashok Kumar Sharma & Ors. v. Chander Shekhar & Anr.*, (1997) 4 SCC 18 and subsequent decisions of this Court which need not be multiplied.

8. At the same time, it cannot, however, be denied that 2020 was an abnormal and cataclysmal year due to the ongoing pandemic, lockdowns and restrictions. UPSC had to postpone their examination like all other Universities/Boards. The results of the qualifying examination in the case of petitioners, thus, got delayed. This was entirely beyond control of the petitioners who were certainly eligible on the date they appeared in the preliminary examination and had qualified for the main examination, in which they had appeared. Admittedly, the



CWP-1262-2025 (O&M) and connected cases

petitioners had attained the qualifying eligibility criteria before the main examination was conducted by UPSC in January, 2021 (i.e., between 08.01.2021 and 17.01.2021).

.. ...

12. Accordingly, we issue direction to UPSC to permit the 5 candidates, as a special case, to participate in the personality test/interview in the respective categories in which they have qualified. The addition of these 5 candidates would not be to the disadvantage of any already empanelled candidate in the published list for personality test/interview in the respective branches/categories. We also clarify that this order should not be treated as a precedent."

60. This exceptional situation cannot be made a rule. In this case, the petitioner (Ms. Divya) had an opportunity to obtain I&AC from 01.04.2021 till 21.02.2022. In fact, admittedly she obtained her EWS certificate for the F.Y. 2019-2020 on 09.10.2020 and obtained her I&AC for F.Y. 2021-2022 on 13.12.2022 but obtained her I&AC 2020-2021 only on 01.06.2023. If she was in a position to obtain a certificate for F.Y. 2019-2020 on 09.10.2020 when the country was still reeling under a heightened pandemic, there is no reason why she could not have obtained her I&AC for the F.Y. 2021-2022 on any of the days between 01.04.2021 and 21.02.2022. We are



not satisfied with the explanation adduced by the petitioner. Hence her claim challenging the e-mail cancelling the candidature under the EWS category is also rejected.

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65. Insofar as Petition No.2 - Ashwani Dubey is concerned, according to the petitioner, he was in possession of the I&AC dated 25.01.2022 which mentioned the Financial Year as 2021-2022. He received an intimation dated 10.01.2023 advising him to make up the deficiencies and was requested to produce original EWS Certificate for the F.Y. 2020-2021 in the prescribed format issued on or before the cut-off date i.e. 22.02.2022, on the date of the Personality Test. According to the petitioner, he obtained the Certificate from Tehsildar Dindhori dated 16.01.2023 certifying that the Financial Year mentioned as 2021-2022 was a mistake and it should be read as 2020-2021 in the Certificate dated 25.01.2022. He submitted the clarification on 09.02.2023 when the Personality Test was held.

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74. Could we fault this exercise of the UPSC in rejecting their candidature under the EWS Category, is the question that arises for consideration? We are constrained to conclude that we cannot fault the method adopted by the UPSC. This is for the reason that the UPSC has strictly acted in accordance with the



mandate of Rule 13 read with Rule 27 & 28. They had an obligation to scrutinize the forms as uploaded with DAF-I. Rules 13, 27 & 28 of the CSE-Rules 2022 are to be read with the Office Memoranda of 19.01.2019 & 31.01.2019 especially clause 5 of the Office Memorandum of 31.01.2019. The examining body has not considered the defects as insignificant. If this is so, then we have no option but to reject the writ petitions of all the petitioners.

75. In our view, the case of the petitioners in Writ Petition (C) Nos. 705 and 764 fails additionally, for being directly covered by the judgment in Gaurav Singh's case (supra).

76. In T. Jayakumar v. A. Gopu and Another, (2008) 9 SCC 403, it has been held that the defect in the application form which renders the candidate ineligible even if overlooked in the initial screening and even if the candidate is called for the interview, does not dis-entitle the examining body to hold the candidate ineligible for selection at a later stage, once the defect in the application comes to light.

77. Shri K. Parameshwar, learned counsel, who appeared for the petitioners in W.P. (C) Nos. 705 and 764 has submitted that the communications by the UPSC asking them to make up the deficiencies and to produce the certificate on the date of the Personality Test should be treated as waiver of the rules. He submitted that the communications are a clear indicia to



construe Rules 13, 27 & 28 as directory. We are not impressed with the submission. The communications do not guarantee the petitioners' that their candidature would be accepted as valid. In any event, these communications cannot be understood dehors the rules.

78. The rules clearly mandate and as has been held in the case of Gaurav Singh (supra), any mistake/omission/ negligence cannot be condoned so as to extend the deadline for production of the documents. Neither the Office Memorandum nor the rules in question can be construed as directory. They prescribe clearly the eligibility criterion and the date before which the certificate should be possessed and the date before which the certificate should be submitted. They also prescribe the consequence for the omission. As the old ditty goes for a want of a horseshoe nail, kingdoms have been lost. Here we are dealing with crucial documents determining eligibility. The petitioners who did not possess the valid documentation determining their eligibility, before the prescribed cut-off date, cannot complain, if their claim for categorization as EWS was rejected.

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80. It will be noticed that UPSC has considered these omissions as trivial and as not going to the root of the eligibility, unlike in the case of the petitioners herein. In Ajay Kumar Mishra v. Union of India [2016] SCC OnLine Del 6563, Indira Banerjee,



J. (as Her Ladyship then was) speaking for the Division Bench of the Delhi High Court felicitously put the issue about the examining body's right to decide as to which errors are material and which are inessential and trivial. We do nothing more except to extract paras 6, 7 & 9 from the said judgment :-

"6. There can be no doubt that a candidate applying for a government job, or for that matter, any job should fill in the application form carefully. No candidate can claim any vested right to rectification of arrears in an application. Union Public Service Commission and the State Public Service Commissions deal with lacs of applications, which are received pursuant to an advertisement. Such applications are required to be processed within a short time. A candidate, who is not short-listed and/or not allowed to participate in the selection process by reason of his own laches in making careless mistakes, cannot claim any right to be allowed to participate in the selection process.

7. It is for the body conducting the selection process to decide whether mistakes should be allowed to be rectified, if so, whether they should be rectified within any specific time and what are the mistakes which can be allowed to be rectified and other similar questions. However, in view of the mandate of Articles 14 to 16 of



the Constitution of India, there should be no discrimination or arbitrariness in deciding these questions. All candidates applying for the particular post/posts should be treated equally.

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/ or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors."

81. In Gaurav Singh's case (supra) also the distinction between a defect that is material and not material and the right of the examining body to condone has been noticed. We hold that the UPSC was justified, in the case of the petitioners, in denying the benefit of categorization as EWS candidates.

82. Shri K. Parameshwar, learned Counsel, made a valiant attempt by drawing support from the letter of the UPSC dated 12.05.2023 by which the original EWS Certificate dated 19.02.2022 submitted by email dated 06.04.2023 by the petitioner Ved Prakash Singh was returned. The UPSC has, in



their response, clarified that as a practice original documents submitted after the Personality Test are returned, after scrutiny and a standard format letter is used for the same. They have also stated that since the Certificate produced by the candidate was not as per Rules and conditions in the advertisement, the same was returned and not accepted. In view of this, we find no merit in that submission too.

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86. Based on the above discussion, our conclusions are as under :-

i) The candidates claiming benefit of EWS Category for the purpose of CSE-2022, acquire eligibility only if they meet the criterion prescribed by the Central Government in the O.M. dated 19.01.2019 and 31.01.2019 and are in possession of the required Income and Asset Certificate (I&AC), based on the income for the year 2020-21. Further, as required under Rule 28 of the CSE Rules, 2022 read with the O.M. of 19.01.2019 and 31.01.2019 the candidate should have been in possession of the Income and Asset Certificate (I&AC) as on 22.02.2022. Any candidate not in possession of the I&AC in the prescribed format as mentioned herein above cannot claim the benefit of EWS Category. Equally, as required under Rule 13 of the CSE Rules, 2022 at the stage of DAF-I, the document in possession as on 22.02.2022 in the prescribed format, had to be submitted



online before the prescribed date. The UPSC was justified in rejecting the candidature of those candidates claiming benefit under the EWS Category if they had submitted their I&AC beyond the stipulated deadline. This conclusion has to be read with the reasoning in the judgment, particularly in paragraphs 39, 40 and 41 under the heading "Eligibility for EWS category candidates for CSE-2022".

ii) As a sequel to conclusion (i) above, we record that the UPSC was justified in prescribing the cut-off date for possession and for uploading of the I&AC in the prescribed format for claimants claiming benefits under the EWS Category. This flows from the O.M. dated 19.01.2019 & 31.01.2019 read with Rules 13, 27(3) and 28 of the CSE-Rules, 2022 and the long line of judgments in which principles for prescription of cut-off for eligibility are laid down.

iii) For the reasons set out in paragraphs 47 to 50 herein above under the sub-heading "Legal Status of CSE-2022 Rules", we hold that the CSE-2022 Rules have the force of an enforceable law. They are traceable to the All India Services Act, 1951 read with the Indian Administrative Service (Recruitment) Rules, 1954 read with the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 and all this read with Article 73 of the Constitution of India.



iv) *Rules 13, 27(3) and 28 of the CSE-Rules, 2022 are constitutionally valid for the reasons set out in para 61 herein above under the sub-heading "Validity of CSE Rules, 2022 - Validity of the cut-off date".*

v) *The UPSC was justified in rejecting the claim of the petitioners, for consideration under the EWS Category in CSE-2022.*

(33) Reliance is also placed by the learned counsel for the respondent-Commission on the judgment of a Division Bench of this Court in the matter of '**Raminder Kaur Vs. State of Punjab and others**' reported as 2022 (2) S.C.T. 795. The relevant extract thereof reads thus:-

3. The reasoning given by the Learned Single Judge in the first set of 3 appeals was that consideration under the Reserved Category of Backward Class unlike the Scheduled Caste was a shifting boundary on account of the income limit as per the instructions of the Punjab Government and it could not be compared to the members of the Scheduled Caste Category who are governed by the status at birth without any income criteria. Resultantly, it was held that the petitioner had not produced the Backward Class certificate on the date of the application within the range of one year prior to the last date of application and she relied upon a certificate dated 14.09.2007 which was stale and it could not be her case that she was eligible on the date when she



applied. Resultantly, keeping in view the conditions of the advertisement wherein it was prescribed that all the prescribed qualifications had to be fulfilled on the last date of submission of the application and that said certificate should be valid within a period of one year from the last date of submission of the application, as per the instructions issued on 17.01.1994 (Annexure P-4/1) and 17.08.2005 (Annexure P-15). It was held that the petitioner was fully aware of the prescribed qualifications which had to be met on or before the last date of submission of the application. Resultantly, it was held that the instructions are directive in nature and candidate could not insist that relaxation could be awarded in the eligibility conditions.

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7. Mr. B.S. Sidhu, Senior Counsel appearing in LPA-1233-2016 has further supplemented the argument on the ground that it was not an academic qualification but the identification of the certified categories and only the current fact has to be ascertained and therefore, the benefit should have been granted by taking the cut-off as 15.12.2009. It is further submitted that in compliance of the interim order dated 21.08.2018, additional affidavit dated 31.07.2018 had been filed and it was noticed that 34 posts in the Backward Class category had been left vacant and the State had been



asked as to why the certificate claiming the benefit of Ex-serviceman had not been accepted once the corrigendum had been issued on 06.12.2009. The same had been wrongly sought to be distinguished by the State by filing an affidavit dated 22.01.2019 that the corrigendum related only to certain set of candidates and not to Backward Class Category candidates.

8. State Counsel has justified the action of the authorities on the ground that the corrigendum never extended the cut-off date to the present category of candidates. Neither any persons who had got lessor marks had been appointed and therefore, the recruitment process itself had come to an end on 09.08.2013 (Annexure R-1) and the waiting list had also been cancelled which was submitted along with the additional affidavit dated 31.07.2018. Thus, it was argued that the petitioners were not liable to be considered even if the vacancies were available as the posts had again been advertised in the year 2012.

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18. The appellant thus cannot rely upon the first certificate dated 14.09.2007 which was only showing her family income as less than Rs.2.50 lakhs per annum which was as per the earlier instructions dated 17.08.2005 and therefore, the currency of the said certificate had validly run out and



as per the terms of the advertisement, the same was not liable to be taken into consideration. Thereafter the certificate was issued only on 10.11.2009 (Annexure P-2) and the same was after the cut-off date of 09.10.2009 and therefore the same was rightly not taken into consideration. It was the duty of the appellant-writ petitioner to have obtained a valid certificate which had been issued prior to the advertisement upto the extent of one year and thus, no fault could be found with the action of the State which has been duly noticed by the Learned Single Judge that the income of the family can keep on fluctuating. It was not the case of the appellant-writ petitioner that she fell under such a Reserved Category wherein by virtue of birth in the said category she was entitled to get the benefit irrespective of the cut-off date.

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21. The judgment in Ram Kumar Gijroya (supra) has also been relied upon wherein the benefit was granted to a candidate under the OBC category who submitted the certificate after the last date. The said view is under re-consideration by the Apex Court in SLP(C) No.14948 of 2016 titled Karn Singh Yadav v. Govt. of NCT of Delhi & others and therefore the same would not be distinguishable



in the facts and circumstances. The said reference order dated 24.01.2020 reads as under:

"In view of the acute problem of unemployment, whenever few vacancies are notified by any public authority, it is common that thousands of applicants apply for such posts. If the applicants are permitted to rectify applications after cut-off dates, the same would render the scrutiny process indefinite. In the course of such recruitment process, many persons, though they belong to the OBC category or SC/ST category, might not have obtained the required caste certificate before the cut-off date. Such persons, being law abiding and being conscious of the bar contained in the notification of the cut-off date, might not have applied seeking employment. In case the authority starts accepting caste certificates subsequent to the prescribed cut-off dates whenever a candidate approaches the authority, the remaining candidates who had not applied would definitely be affected. If the applicants are allowed to submit certificates in proof of their claim of reservation subsequent to the notified cut-off date, it would create administrative chaos.



In practice, for every advertisement, there are such belated claims claiming reservation, though the candidates did not submit certificate from the competent authority, before the cut-off date. In view of the general importance of the question, we are of the view that the issue which fell for consideration in the case of Ram Kumar Gijroya (supra) requires to be considered by a larger Bench of three-Judges.

Accordingly, we refer the matter for consideration by a larger Bench of three Judges. Registry to place the papers before Hon'ble the Chief Justice for appropriate orders."

22. Rather on a subsequent occasion in the State of Bihar & others v. Madhu Kant Ranjan & another 2022 (1) SCT 223 the Apex Court had set aside the judgment of the Division Bench which had reversed the view of the Learned Single Judge who had specifically noted that there was no pleading in the writ petition that the petitioner had the NCC 'B' certificate. Relevant observations read as under:

"9. As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned



therein unless extended by the recruiting authority.

Also, only those documents, which are submitted along with the application form, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent No.1 - original writ petitioner did not produce the photocopy of the NCC 'B' certificate along with the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC 'B' certificate. In these circumstances, the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No.1 - original writ petitioner on the post of Constable considering the select list dated 08.09.2007 and allotting five additional marks of NCC 'B' certificate.

10. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the Division Bench of the High Court is hereby quashed and set aside and judgment and order passed by the learned Single Judge dismissing the writ petition is



restored. In the facts and circumstances of the case, there shall be no order as to costs."

23. The argument raised by Mr. Sidhu that it was not an academic qualification but an identification to a certain reserved categories has already been dealt by the Learned Single Judge. The consideration is to be on the basis of the instructions issued by the Government dated 24.02.2009 and the requisite certificate had to be obtained within a period of one year for a candidate to fall in the Backward Class category to claim the benefit of reservation. Therefore, the eligibility has to be as per the instructions of the Government itself and therefore, the argument that the benefit has to be granted as it is only a fact which is to be ascertained, cannot be accepted. The factual matrix can be varying from candidate to candidate at the given point of time as per the instructions. The applicant may be dependent of a family who possess Government employment and if the income goes beyond Rs.4.50 lakhs per annum, the candidate would not be entitled to get benefit of the Reserved Category on account of lack of financial exigency.

(34) He contends that the aforesaid Division Bench judgment in the matter of **Raminder Kaur** (supra) was upheld by the Hon'ble Supreme Court and the SLP against the same also stands dismissed.



(35) Reliance is also placed by the learned counsel for the respondent-Commission to the judgment of a Division Bench of this Court in the matter of '***Sweety Nagar Vs. State of Haryana and another***' reported as **2022 (4) SCT 301**. The relevant extract thereof reads thus:-

“2. The brief facts leading to filing of the appeal are that the appellant applied for appointment pursuant to an advertisement issued by the Haryana Staff Selection Commission, Panchkula, dated 05.07.2019. Admittedly and undisputedly, the appellant applied for the post of LDC under category No.26 in General Category. At the time of selection and scrutiny of documents, the appellant sought to change her category from General to BC-B and for consideration of a claim against the post reserved for BC-B category. The respondent-authorities vide order dated 13.07.2021 rejected the claim of the appellant being aggrieved by which the appellant filed CWP-25698-2021 which has been dismissed by the learned Single Judge vide the impugned order.

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6. *From a perusal of Clause 1.2(f) of the Advertisement, it is evident that no request for change of any particular on the application form shall be entertained by the Haryana Staff Selection Commission after the same has been filled. The important note appended to clause 1.2 of the advertisement makes this fact further clear, which is reproduced for the purpose of convenience as under:*

**“Important Note:**

1. *Candidates are advised to fill their application form carefully such as Name, Father’s/Mother’s name, Date of Birth and Category, Qualification, marks obtained, passing year, photo, Signature, details & fee etc. No request for change of any particular on the online application form shall be entertained by the Haryana Staff Selection Commission after submission of application form.*
2. *After final submission of application form, no change will be allowed. Candidate will be responsible for any mistake in the data of application form and fees paid by him/her.*
3. *In case candidate feels that he/she has filled up the form erroneously, he/she should fill up a fresh online application form alongwith fresh requisite fee before closing date.”*
7. *From a perusal of the aforesaid clauses, it is clear that the authorities having contemplated such a situation and having faced them in the past has inserted these important notes in the advertisement cautioning every candidate and advising them to carefully read the application form while filling up the name, father’s name, mother’s name, date of birth and category, qualification, marks obtained, passing year,*



photo, signature, details and fee as no request for change of any particular as mentioned in the online application would be entertained subsequently. The clause further makes it clear that any mistake in the application form would be the sole responsibility of the candidate. The authorities have also been cautious enough to include a clause permitting candidate to change the details in the form and for that purpose in note No.3 has stated that in case the candidate feels that the form has erroneously been filled up, he/she should fill up a fresh online application along with fresh requisite fee before the closing date. Apparently, the appellant was well aware of these notes in spite of which no such fresh application seeking correction etc. was filed by the appellant in the present case before the closing date i.e. 25.07.2019, which is the last date by which any such correction by way of a fresh application could have been filled/applied by the candidate.”

(36) In support of the argument regarding change of category, learned counsel appearing on behalf of the respondent-Commission has placed reliance on the judgment of Hon’ble Supreme Court in the matter of **‘J&K Public Service Commission Vs. Ishar Ahmad & Anr.’** reported as **(2005) 12 SCC 498**. The relevant extract thereof reads thus:-

“6. We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate



entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.”

(37) Reliance is also placed by the learned counsel for respondent-Commission on an order dated 12.05.2022 passed by a Division Bench of this Court in LPA-380-2022 titled as ‘**Suman Khatri Vs. Haryana Public Service Commission**’. The relevant extract thereof reads thus:-

3. It is submitted that the learned Single Judge has failed to take this aspect into consideration as well as the decision of Division Bench, rendered in the case of Usha Dhillon v.



State of Haryana and others, passed in 2015 (2) PLR 412, and, therefore, the impugned order deserves to be set aside, for, it suffers from material illegality and infirmity. Learned counsel for the appellant further submits that the learned Single Judge also failed to consider another judgement of Single Bench, passed in CWP No.31185 of 2018 (Robina v. State of Haryana and others), decided on 20.05.2019.

4. We have heard learned counsel for the appellant at length and perused the records.

5. From a perusal of the advertisement, issued by the authorities, pursuant to which, the appellant applied for appointment to the post of Assistant Professor (Political Science), clause 1(d&e) and note appended thereto are material and decisive to decide this appeal. For, it envisage that a candidate must make sure about the category in which he/she applies and no change in this regard would be permitted. Further, in case, a candidate applies under the physically handicapped category then he/she is also required to specify whether the physically handicapped candidate belongs to the general/SC/BC-A/BC-B category.

The relevant clauses are as under:-

"(d) No request regarding any change in any entry i.e. Name, DOB, Educational Qualifications, Experience, Category etc. In the on line application



form will be entertained by the Commission. So the candidates are advised to read the instructions carefully before applying on line. Incomplete application form and application without fee will be rejected straight way and no correspondence will be entertained in the regard by the Commission.

(e) The online application can be filled up to 15.04.2019 at 05:00 PM by using Commission's website after which the link will be disabled. The candidates are strictly advised to apply on line in time without waiting for last date of submission of on line application. No offline application form will be accepted by the office. Eligibility with regards qualifications, any certificate and other conditions of eligibility etc. will be determined as on last date of submission of on line application forms i.e. 15.04.2019 (Closing date).

Note:

- 1. The Service Rules of this post are available at website WWW.highereduhry.com.*
- 2. In case of any clarification, office of HPSC may be contacted.*



3. *The candidates belonging to the category of PH(PwD i.e. Person with Disabilities) will enclose necessary certificates with their application form from a Competent Authority in support of their claim of Disability. All such certificates should clearly mention the type of disabilities as defined in the Govt. Letter dated 25.04.2018.*
4. *The candidates claiming benefit/reservation under ESM/ESP i.e. Eligible Sports Person/PH (Pw D i.e. Person with Disabilities) category of Haryana are directed to also fill their respective category i.e. General/SC/BC-'A'/BC-'B' to which they belong".*
6. *In the present case, it is an undisputed fact that the appellant applied in the general category, and not as a physically handicapped candidate. It is not disputed either that the appellant while filling up the application form mentioned 'No' in column No.24 of the form which relates to Physically Handicapped Category. Further, in the said form she did not mention if she was/is a physically handicapped general category candidate, but simply stated that she applied as a general category candidate. Evidently, she did not comply with the requirements, in terms of, clause 1 of the advertisement. Not only that, in terms of, clause 1(b&e)*



of the advertisement, eligibility, category and qualification has to be determined on the last basis of date of submission of the application form which, in the present case, was 15.04.2019. The record shows for, the appellant applied in the general category, she was issued an admit card by the authorities to appear in the examination under general category. However, while appearing in the examination she clearly mentioned PH(OH) in the OMR sheet and it was on account of this fact that the result of the appellant was declared under the PH(OH) category on 12.12.2019. However, on scrutiny of documents, it was found that she had in fact applied in the general category and, therefore, her candidature was considered under the general category and was rejected as persons more meritorious than her were available in that category. Learned Single Judge has recorded a finding and we are also in respectful agreement therewith that no representation dated 01.10.2019, was ever submitted by her, as is sought to be alleged in the petition. There is no acknowledgement in this regard and the same has categorically been denied by the respondents-authorities. It is, significant to note, in case, there was any confusion under clause 1 and note (ii) of the advertisement, she was free to obtain any clarification from the office of the Haryana Public Service Commission, before filling up the



application form as provided in the advertisement. Admittedly, she had not done so. In such circumstances, the respondents-authorities have rejected her claim.

7. Leaned counsel for the appellant submits that in similar case, the Division Bench of this Court in Usha Dhillon (supra) had permitted the petitioner to change her category. Having examined the said decision, we are of the considered opinion that reliance placed thereon by learned counsel for the appellant is wholly misplaced. The claim of the petitioner in the said case was considered in isolation of Clause 1 (d) and (e) and Note that have been referred to by us in the preceding paragraph. Further, in that case even before the last date of filing the application form, the candidate had sought correction in the application form. But that is not the position in the present case. As, no such clarification was sought or made by the appellant prior to the last date of filling up of the application form.

8. We have also taken into consideration this fact that the learned Single Judge has dismissed the case of the appellant by placing reliance upon the decision of the Supreme Court , rendered in the case of J & K Public Service Commission v. Israr Ahmad and others, 2005 (1) SCC 498, wherein the Supreme Court has held that the candidate has chosen to opt



for the category to which he is entitled, he cannot later change the status and make a fresh claim.

Rebuttal Arguments:

(38) Responding to the submissions made by the learned counsel for the respondent-Commission, counsel for the petitioners submit that even though an emphatic reliance has been placed by the learned counsel for the respondent-Commission on the judgment of Hon'ble Supreme Court in the matter of *Divya (supra)*, however, the said judgment would not be applicable to the facts of the present case considering that in the said judgment statutory rules had been notified by the Government under Article 309 of the Constitution of India prescribing a cutoff date whereas, no such rules exist in the present case. Moreover, there was no eligibility certificate i.e. EWS certificate attached by the petitioner in the said case which is not the case in hand and the petitioners had duly appended the certificates in support of their claim, but it was only not in the desired format as notified and that the eligibility of the petitioners is nowhere being disputed or denied by the respondents.

(39) Responding to the submission of the learned counsel for the respondent-Commission that only the last date of submission of online application had been extended and the date of eligibility would not *ipso facto* stands extended as a result thereof, counsel contends that '**closing date**' has been defined in the advertisement as '**the last date for submission of online application**' and as such, no distinction can be carved by the Commission by contending that the corrigendum only extended the date of



submission of online application form, since the definition of closing date itself equates to the last date of submission of online application as well as the eligibility. Hence, the eligibility is to be seen in terms thereof and would thus automatically deemed to be extended to 20.08.2024.

(40) Responding to the submission of the learned counsel for the respondent-Commission about the change of category not being permissible, learned counsel for the petitioner(s) in Neha Dhiman's case has argued that the judgment of Hon'ble Supreme Court in the matter of ***J&K Public Service Commission*** (*supra*) as well as in the Division Bench's order in the matter of ***Suman Khatri*** (*supra*) would not be applicable since the petitioner is not seeking a change of the category. The specific document in support of the category under which she is claiming the benefit had already been appended by her alongwith her application as well and, hence, once the supporting document clearly establishes beyond doubt that the selection of a category (creamy) was only an inadvertent mistake, then such mistake ought not to be held sufficient to deny the right of consideration to the petitioner in the respective category.

(41) No other argument has been raised nor any other judgment cited.

Consideration:

(42) I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition and the judgments cited by the respective parties.



(43) To proceed further, it becomes essential to ascertain whether the certificate sought for by the Commission is an “eligibility” or is a “proof of eligibility”.

(44) In its ordinary understanding, an ‘eligibility’ refers to ‘a requirement that meets the necessary criteria for the required purpose’ while ‘proof of eligibility’ is understood as ‘a document which establishes fulfillment of the eligibility’. A proof is hence the evidence to show that the eligibility requirement is met on the date when it was required. In the above understanding it now has to be analysed as to whether the certificate issued for the “non-creamy layer” by the competent authority is the eligibility or a proof of eligibility. The eligibility for availing the benefit of reservation under the ‘non-creamy layer’ and the parameters/requirements for the same are prescribed by the government from time to time. Government thus prescribes parameters for exclusion of creamy layer on the basis of service categories; property ownership (agricultural and otherwise) and income and wealth etc. Hence, if a person falls under the said description or category, he would not be eligible for being included in the ‘non-creamy layer’ segment.

(45) The government instructions of 22.03.2022, referred to in the advertisement in reference to the obtaining of the certificate pertain to the issuance of caste certificate through the SARAL portal and prescribed the guidelines for the same. The same was not providing any condition of eligibility but was only the revised guidelines laid down for issuance of a verified caste certificate, after the coming into force of the Haryana Parivar Pehchan Patra Act, 2021 and the availability of the database containing



eligibility for different schemes for subsidy or services etc. In the said background, the notification of 2021 as well as instruction of 2022 have to be examined as per the advertisement.

(46) For claiming benefit of reservation under the ‘non-creamy layer’ or ‘EWS’, as the case may be, the notification for the year 2021 prescribed the criteria/requirements of eligibility. The eligibility thus is to be ascertained from the criteria prescribed in the notification for the given financial year. If a person does not fall in any of the described categories for creamy layer, as per the notification dated 17/11/2021, he is eligible to claim the said benefit of ‘non-creamy layer’ in services or under other beneficial schemes.

(47) The certificate issued by the authority is thus a proof of fulfilling the eligibility as per the requirements as laid down under the notification. The government instructions dated 22/3/2022 provide for guidelines to obtain the certificate from the SARAL portal, hence, it only prescribes a simplified procedure for obtaining the verified certificate. The same thus cannot be even construed as a document for proof of eligibility on a fair reading and interpretation of the same. The respondent commission has however construed the certificate to be the eligibility whereas in its essence, it only certifies the existence of the eligibility in terms of the parameters prescribed.

(48) Now adverting to the question of the cut-off date and as to whether late submission of the certificate would render the candidate ineligible or not.



(49) For examining the same, it has to be kept in mind that reservation is imbibed as a constitutional feature to provide equality of opportunity in its real import and essence. The object of providing a classification between ‘creamy’ and ‘non-creamy’ layer is further devised to ensure that the benefit of reservation is extended to the actual needy and marginalized person even from amongst the reserved castes and the same do not remain concentrated in the hands of those who have already reaped the benefits. With that object in mind, the criteria and eligibility for ‘non-creamy layer’ is provided.

(50) Undisputedly, the certificate for ‘non-creamy layer’ issued is valid for one financial year commencing from 1st April every year and is valid up to 31st March of the next year. The income and assets over the last three years lay the basis for determining the eligibility criteria for issuance of the certificate, hence, the actual date of issuance of the certificate becomes insignificant and inconsequential. The eligibility criteria for issuance of certificate having been laid down on a fixed date and having validity for a fixed duration, there is no probability of any undue advantage in a mere delay in obtaining the certificate of eligibility. The sanctity of the certificate does not get compromised irrespective of the date of its issuance. Only if the criteria for creamy layer would have been 12 months preceding the date of issuance of the certificate, a person could have manipulated his income to fall below the ‘creamy layer’ requirement and thus acquire an eligibility which he may not otherwise fulfill. The same not being the case



here, hence, the delayed issuance of certificate would have no ultimate impact on the eligibility of the person.

(51) Hence, the cutoff date in such circumstances would not be given much significance or may occasion defeating the object of the reservation scheme. An undue over-significance thus should not be attached to the cut-off date for certificate in a prescribed format as it does not tend to advance any object and is rather only propelled by the desire to complete the process expeditiously.

(52) This court thus is enjoined upon to decide whether an intent to expedite the selection process should be sufficient to justify upholding the said clause to disqualify meritorious people or it must be propelled by the constitutional objective to protect rights of the individuals who have scored higher marks in the order of merit than the candidates who is otherwise likely to be recommended for public appointment. A court of law would ordinarily champion merit over a technical rejection and is required to keep in mind that the laws are made for people and not vice-versa. Any ministerial or robotic enforcement of the letter of law potentially increases the risk of losing the soul behind the law. The object behind all laws being to ultimately protect and promote welfare, well being and security of the men, its implementation cannot be done treating the human beings as things. The insensitivity in dealing with the real problems and inadvertent human error with the touch that it deserves, dehumanizes the growth of mankind, sacrifices aspiration, expectations and prospects at an altar of technicality. The same certainly is not the object behind law. I find support in my above



view from the judgments of the Hon'ble Supreme Court in the cases of Ram Kumar Gijroya (*supra*); Dolly Chanda (*supra*); as well as from the judgment of Charles K. Skaria (*supra*), noticeably as well as from the other judgments cited by the counsel for the petitioners.

(53) Other crucial factors that require to be noticed and that weigh with this court in coming to the above conclusion are that the candidates had appended old certificates/PPP's and also obtained the new 'non-creamy layer' certificate, since new instructions had been issued by the state government between the closing date and the show cause notice sent to the petitioners informing them of their ineligibility and seeking response. The income certificate under the new notification was increased from 6 to 8 lakhs per annum. Thus, all the petitioners continued to remain eligible and it is not that the criteria became stringent as would exclude certain petitioners from being included under the 'non-creamy layer' category. They thus were and continue to remain in the same category.

(54) At the same time, the Govt. instructions of 22/3/2022 relating to the procedure for issuance of caste certificate under the SARAL portal shows that the Parivar Pehchan Patra, which is now made as a mandatory document under the Act of 2021, assigns a distinct unique ID and the Citizen Resource Information Department (CRID) records a verified detail of family income. Even though essentially portrayed as a caste certificate related instruction, verification of family income under the 'non-creamy layer' certificate is also done from the same source as both these certificates are being issued and maintained by the same authority/department i.e. Citizen



Resource Information Department. The petitioners had already filled up their PPP ID Number, which is a unique ID and has the primary database for verification of the different certificates to be issued thereunder as well, which sufficiently establishes the eligibility of the petitioners even otherwise.

(55) All the petitioners had mentioned their PPP ID and filling up the same, all other data automatically gets uploaded/accessible. Hence, status and information about the petitioners was already available with the HPSC but it has seemingly not made any efforts to revisit the terms and conditions of the advertisement except for cosmetic changes and retained the structured advertisement. Had they been alive to the new directions as well as the Act of 2021, there may actually not have been any need for such additional documents to be filed, which are apparently nothing more than duplicity and multiplicity of certificates based on extracts of Parivar Pehchan Patra and information available thereunder. The commission has thus proceeded to seek compliance mechanically rather than any justified reasons for the same and notwithstanding that the eligibility of petitioners, as on the closing date, was already available with them from the other document- which is in fact the primary document.

(56) Still further, the State Government does not deny the issuance of the said certificates later in point of time in favour of the petitioners or even their eligibility on cutoff date and even during the course of arguments, they have remained largely non-contesting. Furthermore, so far as the validity of the documents or eligibility is concerned, the Commission is not



vested with the authority or powers or function to determine validity or legality of such documents and the same is to be ascertained by the State Government before offering an appointment to a candidate. Merely because a person had participated in the selection process, on the strength of certain documents, on the basis whereof a recommendation has been made, does not hold such a candidate entitled to an appointment or estop the Government from ascertaining his eligibility. In the event such a document is found to be false or invalid, the State is always within its power to not accept the recommendation or to remove a person/candidate from service, if already appointed.

(57) The claim in hand is being examined also from another angle. Assuming that in the given circumstance, any of the candidates/petitioners would have furnished a document(s), which was forged/fabricated or such a document had been obtained by a candidate/petitioner by a mischievous act or on account of concealment of vital information from the issuing authority. Under such circumstances, the respondent-Haryana Public Service Commission would have nonetheless treated such a person as an eligible candidate and made an appropriate recommendation of such candidate in the respective category for which such a person would have applied. I find no reason as to why the claim of an eligible candidate be put at a lower pedestal than a person who is mischievous and may have committed a fraud. In case, the respondent-Commission pleads that it is not a nodal agency for determining the correctness of the documents and that the same is within domain of the appointing authority viz. the Government, hence, merely



because the documents in support of the claim has been submitted later, which conclusively establishes the eligibility as on the cutoff date, no prejudice should ordinarily be inflicted upon such candidate.

(58) Now adverting to the argument of the respondent regarding a right having accrued in favour of other persons (who otherwise would not fall in the merit list in case the candidature of the petitioners is accepted), the same is rejected as misplaced. It is not a case where the petitioners, despite not being eligible, had been allowed to participate in the process of selection. It is in fact an instance where the petitioners have competed with all others including the persons who are now perceived to tentatively figure in the list of candidates to be recommended. Having competed with the said candidates in the same selection process and having secured more marks than the others, the petitioners would not be infringing upon any right of any other person. There would be no right in favour of any candidate to steal a march over more meritorious candidate merely by seeking rejection of other candidates on technicalities that may have crept in at the stage of submission of certain documents and/or certain errors/omission committed by them while filling up an application form. Alleviating the same to a status of accrual of a right in their favour takes away all powers that may otherwise be vested with the Commission to rectify any such mistake. Derogation of power of the Commission to remedy the defect, under an assumed right in a candidate, is not only uncalled for but is also undesirable.



(59) The right in each candidate is only to the extent of being provided with an equal opportunity to compete with all others, unassuming that a defect or error may be noted in their application form.

(60) Even though there sure is some element of an error in document of proof of eligibility not being prior to the closing date but, the said mistake should not be held out as an extreme punishment and be perceived sufficient to annihilate all future career prospects of the candidate, more importantly those who know that but for the said mistake they would have been appointed to Government service. Needless to impress that a government job in gazetted services is a dream for even the well settled and it sure is a step on cloud nine for the marginalized segment of the society. Shattered aspirations emanating from a self inflicted cause leads to desperation and may proceed to self destruction.

(61) Mistakes are not to be equated to offenses for which a person needs to be penalized. While the law and society look forward to the schemes to rehabilitate even the offenders by granting opportunities and generosity. Why should the same approach be denied to someone who ignorantly or out of anxiety or under certain circumstances ended up committing a mistake and more so when such error does not impeach the fairness of the selection.

(62) Any form of governance or rule of law which feasts on merit to nurture mediocrity is surely on a path to decline. Leaving out a meritorious candidate to make way for reduced merit does not advance any greater public good.



(63) A person cannot be made to suffer lifelong for his/her mistake when such a mistake does not in any manner infringe upon or cast doubt upon the sanctity of the process of selection or the recommendation made. It is not the case of the respondent-State or the Public Service Commission that the process of the selection was in any manner compromised or that the petitioners have taken any unfair advantage or marks on the basis whereof, in the event of consideration of candidature of the petitioners, they would be infringing upon any accrued right in favour of the other respondents. A substantive right must be shown to exist in favour of other candidates and it should not flow from any remote inferences or conclusions.

(64) Further, this Court also has taken note of the specific contention raised by the learned counsel for the petitioners that the respondent-Commission has been following a similar uniform practice in the various earlier selection processes undertaken by it. In reference to the process of selection undertaken by it for the Post Graduate Teachers in different streams, notices for submission of representation, similar to the present advertisement, were issued to them as well and the rectification had been allowed. The recommendation of such candidates, who were initially issued provisional communication about ineligibility, has also been made after they submitted fresh certificates. The argument of the respondent- Commission that the said notice was only to afford an opportunity to point out the mistake, if any, carried out at the ends of the Commission in communicating the provisional ineligibility to the petitioners could be rectified, thus stands contradicted by their own conduct in other selection processes undertaken by



them, wherein the documents have been allowed to be submitted even later in point of time and that the candidates therein have still been considered eligible by the respondent-Commission. Such a shift in the stand by Constitutional authority is impermissible and that uniformity has to be followed by the respondent-Commission. A consistent and continuous practice itself gives birth to legitimate expectations in favour of each candidate and to assume that the purpose behind issuance of the notice was only to rectify the defect, if any, on the part of the candidate in submission of his/her documents. The understanding of the letter has to be seen in the context of the procedure that has been followed successively by the Commission and where in other selection process, the candidates were allowed to participate and they would not earn any disqualification only on the late submission of the documents as a proof of eligibility from the perspective of the candidate. A shift from the consistent stand in the instant selection process would cause travesty of justice and is thus not acceptable.

(65) Under the given circumstances and considering the rival judgments relied upon by the learned counsel for the petitioners as well as the respondents, I am of the opinion that so far as the judgment in the matter of *Divya* (supra) is concerned, the same was passed in light of the specific Rules that were in force and when no document had been appended by the petitioner therein for claiming benefit under the EWS category. In the present cases, the factual aspect does not support the same in as much as not only there are no statutory Rules but also the petitioners herein had appended some documents in support of them belonging to the respective



categories and being eligible to claim the benefit under the said category and they were held ineligible only for the reason of its not being in the form as asked for. The subsequent certificate issued by the authority as per the instructions/Notifications also supports the claim made by the petitioner that they fell in non-creamy layer. Hence, there was no change in so far as the ultimate eligibility of the petitioners is concerned. The judgments in the matter of **Ram Kumar Gijroya** (supra) and **Karan Singh Yadav** (supra) lead the position in law as laid down by the Hon'ble Supreme Court and the same was also followed by a Division Bench of this Court in **Haryana Staff Selection Commission Vs. Subhash Chand** (supra) laying down law promoting and intending to enlarge the interest of justice by balancing equities and satisfying the expectations.

(66) While referring to the issue of Neha Dhiman, I am of the opinion that the judgments in the matters of **J&K Public Service Commission** (supra) and **Suman Khatri** (supra) relate to an eventuality where a person had originally not appended any document in respect of the category under which a specific claim is being sought for. It was only later that the petitioner sought a change of his category from the original category wherein he had applied. Per contra in the given case, the petitioner had specifically appended the requisite certificate in support of the category wherein she is claiming to be considered. Besides, the representation was immediately forwarded by her to the respondent-Public Service Commission pointing out that necessary documents already stands submitted and the mistake in clicking the creamy layer was inadvertent and by mistake.



(67) This Court in **Renu Sharma and others Vs. Haryana Public Service Commission** reported as **2025 NCPHHC 008003** has held that inadvertent error should not be escalated to an extent which lead only to the extreme conclusions and that interest of justice would be better served in case inadvertence is allowed to be condoned so that the expectations of a citizen for public appointment are not defeated and they don't live under a constant curse.

(68) It is also noticed by this Court that the respondent-Commission in the present case, in relation to persons belonging to different nationalities in Clause 9 of the advertisement, have notified the need to verify the eligibility before offering of appointment. While in the present scenario they are insisting upon the certificate of eligibility of petitioners only on or before 12.07.2024, in the same process of selection they have thus prescribed a different date for consideration of eligibility of documents for others. I find that there could have been no legitimate basis for setting two different dates and if such a concession is already being made available by the respondent-Commission to a specified section of the candidates, there was no justification as to why such an opportunity could not have been extended to the other candidates as well.

(69) Notwithstanding the observations recorded above, the Government of Haryana is still at liberty to verify the documents that have been appended by the respective petitioners in support of their respective application forms and in the event of the declaration/claim made by them being found to be factually incorrect or having been obtained by fraud or



228 CWP-1262-2025 (O&M) and connected cases

malpractices, the competent authority shall always be at liberty to cancel such an appointment or to reject such a recommendation made by the respondent-Haryana Public Service Commission and take appropriate action.

(70) This Court has not gone into the validity of the documents submitted by each petitioner and has dealt only with the legal issue as regards the eligibility and entitlement.

(71) The order of the respondent-Commission holding the petitioners in these writ petitions ineligible is hence held liable to be set aside and the writ petitions deserves to be allowed. The Commission is further directed to re-determine the eligibility of the petitioners on the strength of documents furnished by them consequent to the show cause notice sent by the Commission. If the petitioners are found to be eligible as on the cutoff date, from the said documents, and are also meritorious, their result be declared in the respective category and an appropriate recommendation be made.

(72) The writ petitions as well as the application(s) stand(s) disposed of accordingly.

15.02.2025
Mangal Singh

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No