

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

CWP No. 24605 of 2022

Ashish Kumar & Another

.....Petitioners

Versus


State of Haryana & others

.....Respondents

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Place: Chandigarh
Date: 18-01-2023


Special Secretary to Government of Haryana,
Human Resources Department

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Short reply of Dr. Aditya Dahiya, Special Secretary to Government, Haryana, Human Resources Department on behalf of Respondents No. 1 to 3.

RESPECTFULLY SHOWTH:

1. That the petitioners have prayed for issuance of any appropriate writ, order or directions, especially in the nature of certiorari for setting aside/quashing the impugned clause(s) of the notification dated 05.05.2022 policy for recruitment to Group C & D post through Common Eligibility Test (CET), 2022 (Annexure P-1) whereby the Common Eligibility Test (CET) qualified candidate are restricted to join the recruitment process of Group C & D post being illegal, arbitrary & against the settled principles of law and for setting aside/quashing the advertisement (Annexure P-2) issued by respondent No. 3 for CET for Group C post and to consider Common Eligibility Test (CET) qualified candidates for the purpose of recruitment of Group C post and for direction to consider all the Common Eligibility Test (CET) qualified candidates for the purpose



of recruitment on Group-C & Group-D post. Petitioners have also prayed that operation & any proceedings arising out of the impugned clause(s) of the notification dated 05.05.2022 policy for recruitment to Group-C & Group-D post through Common Eligibility Test (CET), 2022 (Annexure P-1) and advertisement (Annexure P-2) issued by Respondent no. 3 for Common Eligibility Test (CET) for Group C post may kindly be stayed and direction to declare of Common Eligibility Test (CET) as qualifying by nature for all intent and purposes and for direction to allow all the CET qualified candidates to participate in the recruitment process for all posts of Group-C & Group-D without any condition thereon.

2. That at the very outset it is submitted that vide notification dated 10 September, 2021 Common Eligibility Test (CET) was introduced with a view to secure and sustain the confidence of public in general and to ensure unquestionable trustworthiness in the public recruitment examinations and to simplify and standardize the recruitment process for Government employment in Group C & D posts. Provision under challenge, i.e., calling of specified number of candidates for "Skill Test", is framed after proper appreciation of relevant material by constitutional authorities, for just reasons. The same is neither discriminatory nor violates the "Rights of Equality", "equality of opportunity" and is based on reasonable classification. The same is constitutionally valid.
3. That the object of CET 'Group C', is to shortlist from a specified number large number of candidates who appear for Skill test/examination. If more candidates are called by declaring their



result in preliminary examination the object of the policy would be frustrated.

In Civil Appeal No. 6103 of 1994 titled as M.P. Public Service Commission v. Navnit Kumar Potdar & Anr., decided on 19 September, 1994, Hon'ble Supreme Court has upheld short listing of candidates on a rational and reasonable basis. In the said case, for the purpose of short listing, a longer period of experience than the minimum prescribed was used as a criterion by the Union Public Service Commission for calling candidates for an interview and the same was upheld by the Hon'ble Court.

In Civil Appeal No. 1710 of 1990 titled as Govt. of A.P. vs. P. Dilip Kumar & Anr. decided on 03 February, 1993 Hon'ble Supreme Court observed that it is always open to recruiting agency to screen candidates, due for consideration, at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate.

4. That it is also submitted that the provision under challenge, is being followed by the UPSC in respect of Civil Services Examination. Number of candidates admitted to the Civil Services (Main) Examination, by UPSC, is about twelve to thirteen times the total number of vacancies to be filled in that year through the Examination. Minimum qualifying marks as specified in the notification/advertisements are minimum marks to be eligible for



entry into the zone of consideration for "Skill test". However the same is not a guarantee for appearing in "Skill test", for which a candidate has to be sufficiently high in the order of merit, as per the result of written test. That after issuing advertisement, the Commission shall invite applications electronically, of the eligible candidates, based on merit list of CET score, to know whether the candidate is willing to appear for skill and/or written examination for that post.

5. That relevant clauses of the policy, 2022 are being reproduced below:-

7. CET EXAMINATION AND MARKS FOR GROUP C POSTS:

- (i) *An applicant who intends to apply for direct recruitment to any applicable Group-C post shall have to appear in CET for Group-C posts.*
- (ii) *The Commission shall issue an advertisement for Group C posts based on requisition received from the Departments of State Government or any Board, Corporation, Statutory body or any other agency owned and controlled by the State Government stating its intent to conduct the CET.*
- (iii) *An applicant who does not possess the CET minimum educational specified for CET before the last date of registration for CET on the designated portal but it due to appear for the examination to attain the appropriate educational qualification during the year in which the CET is conducted shall also be eligible to appear in the CET.*



Provided that the name of such applicant shall not be considered for skill and/or written examination for this advertised posts until he acquires the minimum essential educational qualification and/or experience, if any, specified for that post by the last date for attaining such minimum qualification specified in the advertisement issued by the Commission for the conduct of skill and/or written examination.

- (iv) *An applicant who has not attained the minimum age or who has crossed the maximum age limit prescribed by Government for entry into Government service for Group C post as on the last date fixed in the advertisement published by the Commission for registration for CET shall be ineligible to appear in CET. The relaxation in upper age limit to the applicants of Scheduled Castes, Backward Classes and other categories and of experience shall be admissible as per Rules or instructions issued by Government from time to time.*
- (v) *Every applicant, who appears in the CET, shall be given marks based on his performance in the CET. An applicant of general category shall have to obtain minimum 50 marks in CET (excluding the socio-economic criteria weightages) to be eligible for skill and/or written examination of second stage, however, an applicant of reserved category (both vertical and horizontal) shall receive concession @ 10%, for the purpose of eligibility for CET, i.e. the minimum cut-off for such candidates shall be 40% (excluding the socio-economic*



criteria weightage). An applicant of any category who obtain less than the minimum marks in CET, shall have to re-appear in CET in the next or any subsequent attempt.

- (vi) The CET marks of applicants shall be declared on the website of the Commission.*
- (vii) An applicant shall be eligible to reappear in CET whenever conducted on a subsequent date and the CET marks shall be revised if the applicant improves it in the next or any subsequent attempts.*
- (viii) There shall be no restriction on the number of attempts to appear in the written examination component of the CET. If an applicant who has already qualified the CET for Group C post will have the option to appear again in CET to improve his CET marks in the next or any subsequent occasion, if he so desires.*
- (ix) The CET marks attained by an applicant shall be valid for a period of three years from the date of declaration of the result of CET. Provided that if an applicant improves his CET marks in the next or any subsequent attempt, then the fresh period of validity of three years will commence from the date of declaration of result of such attempt.*

For clarification on validity of CET marks, see illustration No. 1 at Annexure C of this policy.

- (x) For calculation of CET score of an applicant, the marks obtained in the CET shall be added to the score, if any, on account of*



socio-economic criteria weightage to arrive at the CET score of the applicant. The calculation methodology for arriving at the CET score has been illustrated at illustration No. 2 at Annexure C.

- (xi) *CET marks and the marks of socio-economic criteria weightage, if any, shall be declared on the website of the Commission in respect of the applicants who have achieved the specified cut-off as per sub clause (v) above.*

9. PROCESS FOR RECRUITMENT OF GROUP C POSTS:

- (i) *After publication of CET Score in accordance with sub clause (xi) of clause 7 above, the posts available for recruitment shall be advertised by the Commission alongwith the syllabus, procedure/manner of conducting skill and/or written examination of the advertised posts and last date for attaining minimum educational qualifications and/or experience. On the advertisement being issued, the Commission shall invite applications electronically of the eligible candidates based on the merit list of CET Score to know whether the candidate is willing to appear for skill and/or written examination for that post.*

Provided that the maximum number of eligible candidates for the skill and/or written examination who shall be eligible to appear in such examination based on number of posts advertised to the Commission as under:-

- (a) *candidates equal to five times the number of posts advertised if the numbers less than 30;*



(b) 150 candidates if the number is between 30 and 40;

(c) candidates equal to four times the number of posts advertised if the number is greater than 40;

The eligible candidates shall apply electronically on the website of the Commission using their registration number. The last date for submission of application shall also be mentioned in the advertisement by the Commission.

- (ii) If the CET score of the last candidate who has applied for the post in terms of sub-clause (i) above is achieved by more than one candidate, then all the candidates at the cut off CET score who have applied for the posts shall be entitled to be considered for appearing in the skill and/or written examination for the post(s) advertised by the Commission.
- (iii) Only those candidates, who fulfil the minimum educational qualifications and other eligibility conditions for a post advertised by the Commission as on the last date specified in the advertisement issued by the Commission under sub-clause (i) above who applied for the post for consideration shall be issued in Admit Card and be eligible to appear in the skill and/or written examination to be conducted by the Commission.
- (iv) On receipt of requisitions of the posts of different nomenclature but of similar educational qualifications, the Commission shall be competent to hold one common skill and/or written examination with the condition that the distribution allocation shall be on merit-based option given by the successful candidates.



- (v) *When the number of candidates applying under sub-clause (i) who are eligible is less than the number limit specified in the above said clause then the Commission may extend the date by publication on the website for enabling further eligible candidates to apply.*
- (vi) *For consideration of a candidate against a post of general category, such candidate has to secure minimum 50% marks (excluding socio-economic criteria weightage, in the skill and/or written examination to be considered for selection/recruitment. In case of consideration against the reserved category post (whether vertical or horizontal) the candidate shall receive a concession @10% for the purpose of eligibility for the purpose of skill and/or written examination, i.e. the minimum cut off for such candidates shall be 40% (excluding socio-economic criteria weightage) because they have been given 10% concession in minimum marks.*

For calculation of marks of skill and/or written examination of Group C post, see illustration no. 4 at annexure C of this policy.

- (vii) *The Commission shall on the basis of marks obtained in the written/skill examination and the socio- economic criteria weightage @ 2.5%, admissible if any, shortlist the candidates for selection, recommendation or waiting list in the respective categories and publish on the website in accordance with clause 12.*

For calculation of total marks of skill and/or written examination of a candidate, the marks obtained in skill and/or written examination shall be added to the score, if any, on



account of socio-economic criteria weightage to derive at the total marks of skill and/or written examination of the candidate.

The calculation methodology for deriving at the total marks of skill and/or written examination of a candidate has been illustrated at illustration No. 5 at annexure C for ease of understanding.

Save as otherwise provided in any instructions of Government, in case of non-availability of eligible candidate(s) of respective category after the skill and/or written examination for the post which remain unfilled shall be re-advertised as per reservation policy. A clear mention of this condition shall be made in the advertisement issued by the Commission.

6. That Article 16 of Indian Constitution guarantees equal opportunity to all citizens in matters related to employment in the public sector. Article 16 (i) states that there shall be equal opportunity for the citizens in the matter of employment or appointment to any office under the State. The State is free to lay down the requisite qualifications for the recruitment of employees for the Government services. The Government can also shortlist / select applicants on the basis of any rational procedure/criteria for the purpose of employment as long as the applicants have been given an equal opportunity to apply for the Government service.

Article 16 (2) lays down the grounds on which the citizens should not be discriminated against for the purpose of employment/or any office under the State. The prohibited grounds of discrimination under Article 16 (2) are religion, race, caste, sex, descent, birthplace, residence, or any of them. The policy dated 05 May, 2022 does not violates Constitution of India and the policy decision is a conscious

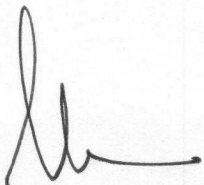


decision which has been passed with the approval of Legal Remembrancer, Finance Department and Cabinet, Government of Haryana.

The Hon'ble Supreme Court has recently held in Civil Appeal no. 1422 of 2022 titled as Satyadev Bhagaur and others Vs. State of Rajasthan and others, decided on 17 February, 2022, "*It is trite that the Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that such intelligible differentia has a nexus with the object sought to be achieved.*" It has further been observed by the Court that, "*A three judge bench of the Hon'ble Supreme Court in Sher Singh and other Vs. Union of India has observed thus:*

As a matter of fact the Courts would be slow in interfering with matter of Government policy except where it is shown that the decision is unfair, mala fide or contrary to any statutory directions."

7. That there is no discrimination in the policy, as all the candidates pass through the same examination process and the CET exam and the skill and/or written exam are just like the preliminary and main exams to separate the grain from the chaff. In the CET exam, the candidate has to obtain minimum qualifying marks and after that as per clause 9 (i) of the policy, 2022, options are invited from all the eligible candidates based on the merit list of CET score. Accordingly, the candidates are called for skill and/or written examination based on number of posts advertised by the Commission as provided in clause 9 (i) of the policy, 2022. The impugned clause 9 (i) of the policy is applicable to all the candidates participating in



the CET exam and one single platform to perform has been provided to all the candidates. Minimum qualifying marks are different from cut-off marks as are pre-decided by the Board/Government. Cut-off marks will be released only after the successful conduct of the skill and/or written examination.

8. That for proper appreciation and to make the scheme workable, clause 9 (i) of the policy cannot be taken/read in isolation. Rights of all the candidates have been safeguarded, by allowing them to appear time and again in the CET, irrespective of their score as there is no restriction of the number of attempts to appear in written examination component of the CET. If an applicant, who has already qualified the CET for Group-C post, will have the option to appear again for the CET, to improve his CET marks in the next or any subsequent exam, if he so desires. Once the candidate enters the chain, there is no stop and the candidate can keep raising his level by competing for higher score/level. If an applicant improves his CET marks, then fresh period of validity of 3 years will commence from the date of declaration of result of such attempt. This binds the candidate(s) to excel further to be in the top, for appearing in the skill and/or written test. The written examination component of the CET 2022 is to let the applicant know where he stands in the crowd and on the basis of skill and/or written examination the candidate who deserves, gets the seat i.e. by the CET score, you get the recognition and by skill and/or written exam, you get the selection.
9. That the Common Eligibility Test (CET)-2022, Haryana for Group-C posts has already been conducted on 05 November, 2022 and 06 November, 2022 (Morning and Evening Session) and the result of the same is awaiting to be declared. In this state of affairs, the examination



process which once has been almost concluded, policy cannot be changed at this stage.

In Civil Appeals nos. 4255-58 of 2014 decided on 2 April, 2014, Hon'ble Supreme Court has discussed the judgment of K. Manjusree Vs. State of A.P. (2008) 3 SCC 512, wherein, Hon'ble Supreme Court has held that:

“selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The Rules of the game cannot be changed after the game is over the competent authority, if the statutory Rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview but such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

Thus, the law on the issue can be summarized to the effect that in case the statutory Rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the Rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as viva voce.”

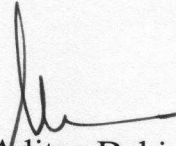
10. That the answering respondent is filing this short reply at this stage and craves the indulgence of this Hon'ble Court to allow to file a detailed reply



at later stage, if needed or this Hon'ble Court directs for the same in the interest of justice and to decide the matter in question.


In view of the submissions made above, it is respectfully prayed that the writ petition may kindly be dismissed being devoid of merits.

Place: Chandigarh
Date: 18.01.2023


(Dr. Aditya Dahiya)
Special Secretary to Government of Haryana
Human Resource Department

Verified that the contents of Para no. 1 to 10 of the above short reply are true and correct to my knowledge based on the information derived from office record. No part of it is false. Nothing material has been concealed therein.

Place: Chandigarh
Date: 18.01.2023


(Dr. Aditya Dahiya)
Special Secretary to Government of Haryana
Human Resource Department