

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. C.W.P. No. 16426 of 2013

Sandeep Kumar and othersPetitioners

Versus

State of Haryana and othersRespondents

2. C.W.P. No. 18061 of 2014

Dharambir Singh and othersPetitioners

Versus

State of Haryana and othersRespondents

DATE OF DECISION: 03.08.2015

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present:- Mr. R.K. Malik, Sr. Advocate with
Ms. Rimple Sohi Kadyan, Advocate
for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

DAYA CHAUDHARY, J.

This order of mine shall dispose of two writ petitions bearing C.W.P. Nos. 16426 of 2013 and 18061 of 2014 as an identical issue is involved in both the petitions. However, for the sake of convenience, the facts have been extracted from C.W.P. No. 16426 of 2013.

The prayer in the present petition is for quashing of order

dated 5.6.2013 (Annexure P-8), vide which, the claim of the petitioners has been rejected. A further prayer has also been made for issuance of directions to the respondents to fill up the posts of Ex-servicemen BC-B category which remained vacant due to non-availability of the candidates of Ex-servicemen BC-B category from the waiting list of BC-B category.

Briefly the facts of the case are that the Police Department, Haryana has advertised total 5456 posts of Constables on 20.7.2008 and the petitioners being eligible applied in District Jind against BC-B category. There were 54 posts of BC-B category and 21 posts of Ex-servicemen BC-B category in District Jind. The petitioners were interviewed in the month of July, 2011 and the result was declared in the month of January, 2012. The names of the petitioners were kept in the waiting list of BC-B category. The petitioners sought information under the RTI Act and came to know that out of 21 posts of Ex-servicemen BC-B category, only one candidate was selected and qua 20 posts, no candidate was found eligible. As per instructions dated 20.7.1995, the reservation for Ex-servicemen and outstanding sports persons is horizontal in nature and as per instructions dated 7.10.2008, in case no candidate of horizontal reservation is available, the post will be diverted to the main category. The petitioners approached the respondents and served notice that since 20 posts of Ex-servicemen BC-B category remained vacant due to non-availability of the candidates, the same were to be diverted to the main category i.e. BC-B category as there were only four candidates in the waiting list but no action was taken thereon. The petitioners thereafter approached this Court by way of filing C.W.P. No. 7349 of 2013, which was disposed of vide order dated 5.4.2013 with a direction to the respondents to decide the legal notice served by the petitioners within a period of two months by passing a speaking order. The claim of the petitioners was rejected by the

respondents vide impugned order dated 5.6.2013, which is subject matter of challenge in the present writ petition.

Learned senior counsel for the petitioners contends that while rejecting the claim of the petitioners, the respondents have not taken into consideration the judgment passed by this Court in the case of **Garima Jindal Vs. Haryana Vidyut Parsaran Nigam Ltd. and another** (C.W.P. No. 13384 of 2011 decided on 6.8.2012), wherein, it has been held that in case the posts which are meant for Ex-servicemen category are not filled up, the same is to be shifted to the main category. Learned senior counsel further contends that against the aforesaid judgment of Single Bench, Haryana Vidyut Prasaran Nigam Limited filed L.P.A. No. 1775 of 2012, which was dismissed on 9.11.2012 and the judgment of Single Bench was upheld. Learned senior counsel also contends that the controversy in the case in hand is squarely covered by the decision of this Court in **Garima Jindal's case (supra)**, which has been upheld by the LPA Bench. Learned counsel has also relied upon the judgment passed by this Court in the case of **Mukesh Kumar and others Vs. State of Haryana and others** (C.W.P. No. 14823 of 2011 decided on 26.5.2014), which was allowed by relying upon the judgment in **Garima Jindal's case (supra)**.

Learned counsel for the respondent-State contends that the instructions dated 7.10.2008 are not applicable as the case in hand is for recruitment of Constables and there is no provision for maintaining a waiting list of candidates in Police Department. Learned counsel further contends that the impugned order is well reasoned and speaking one as the same has been passed as per the directions issued by this Court on 5.4.2013 in the earlier petition filed by the petitioners.

Heard the arguments advanced by learned counsel for the parties and have gone through the documents available on the file.

Admittedly, the petitioners applied for the post of Constables in BC-B category and their names were kept in the waiting list. The claim of the petitioners is that as 20 posts, which were meant for Ex-servicemen BC-B category were not filled up and the same are lying vacant due to non-availability of the candidates, the same is to be shifted to the main category i.e. BC-B category. It is also the argument of learned senior counsel for the petitioners that the posts, which are lying vacant in Ex-servicemen BC-B category are to be filled up by from amongst the petitioners being in the waiting list of BC-B category as per instructions dated 20.7.1995 as well as judgment of this Court in **Garima Jindal's case (supra)**, which has been upheld by LPA Bench. The submission made by learned senior counsel for the petitioners has been opposed by learned State counsel on the ground that there is no provision for preparing a waiting list under the Punjab Police Rules, 1934 and the petitioners have no right to be appointed.

On perusal of impugned order, it is apparent that the claim of the petitioners has been rejected on the ground that instructions dated 7.10.2008 are not applicable to the horizontal reservation of Ex-servicemen quota and unfilled vacancies reserved for Ex-servicemen BC-B category are to be carried forward to the next recruitment. With regard to argument raised by learned State counsel that there is no provision for preparing a waiting list of Constables in Police Department as provided under Rule 12.16 of the Punjab Police Rules, 1934, a contradictory stand have been taken in the written statement as well as in the argument of learned counsel for the respondent-State. In spite of the directions issued by this Court in the earlier petition to decide the legal notice in accordance with law, the claim of the petitioners has been rejected on different grounds.

Accordingly, impugned order dated 5.6.2013 is set aside and the present petitions are disposed of with a direction to the respondents to

consider the case of the petitioners afresh in view of the judgment of this Court in **Garima Jindal's case (supra)** and also by considering the relevant instructions and Rules i.e. The Punjab Police Rules, 1934 within a period of two months from the date of receipt of certified copy of this order and pass necessary order after hearing the petitioners, if necessary.

August 03, 2015
pooja

(DAYA CHAUDHARY)
JUDGE