

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

Civil Writ Petition No.1905 of 2015

Date of decision: 6.2.2015

Ajay Rajan Yadav and another

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Malik, Sr.Advocate with
Mr.Teupal Dhull, Advocate
for the petitioners.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

Mr.Malik learned senior counsel appearing for the petitioners submits that the names of both of his clients were placed in the waiting list, i.e., one at serial No.1 while the other at serial No.7 in the recruitment drive of drivers in the Transport Department involving a large number of posts. Both the petitioners belong to the Backward Class (B) category. On information received under the Right to Information Act, 2005, the position was confirmed that two categories of posts remained unfilled from BC[B] category [6 posts] while the other from BC [B Sports] category [2 posts]. The petitioners lay their claim from the waiting list against unfilled vacancy which is a right recognized by Haryana Government policy dated 7th October, 1998 [P-4] which ensures that the waiting list can be operated only

if a candidate from the original list does not assume the charge of his assignment or any vacancy from this list remains unfilled for any other reason.

It is averred that 6 candidates who had qualified the examination for direct recruitment were found with bogus certificates and, therefore, their candidature was rejected and they were not permitted to join the posts. That is how, 6 posts remained vacant.

So far as the sports category is concerned, Mr.Malik relies on Haryana Government policy dated 7th October, 2008 [P-3] which lays down that if suitable candidates of Outstanding Sports Persons are not available in a particular category, from which category, the posts will be filled up, then the vacancy will be filled from amongst the same category. Therefore, the petitioners have a right either as BC[B] candidates and as BC [B] [Sports] category candidates and in this manner, stake their claim for appointment.

Mr.Malik submits that since the matter is covered by the policy instructions of the Government issued under article 162 of the Constitution, there may be no necessity to keep the matter pending in motion hearing and waste the time of both the petitioners and the Court on a matter which *ex facie* appears to be covered by the policy instructions given the fact that vacancies are available.

Notice of motion.

Mr.Manoj Dhankhar, AAG, Haryana accepts notice on behalf of the respondents and waives service on them.

This Court find no necessity for calling the written statement by the State since the Government have not considered their own instructions nor have taken a final decision on the request of the petitioners made in

writing through representation dated 10th December, 2014 [P-11].

Before this Court enters upon judicial review, it is appropriate that the decision of the primary authority should be made available. Therefore, a direction is issued to respondent No.2 to consider and decide the aforesaid representation [P-11] within a period of 30 days from the date of receipt of a certified copy of this order.

If the claim of the petitioners are found based on facts and they are, otherwise, eligible, it would not be necessary for the competent authority either to hear the petitioners or to pass an order and can offer appointments directly which may render this petition infructuous. However, in case, a different view is required in law to be taken, then there would be a necessity of passing a reasoned order after affording effective opportunity of hearing to the petitioners to address their cases before the Administrator. In case, hearing is required, then the period of 30 days shall stand extended to 45 days.

Disposed of with following directions.

(RAJIV NARAIN RAINA)
JUDGE

February 6, 2015
Paritosh Kumar