

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

**CWP No.3065 of 2012 (O&M)
Date of decision: 25.05.2015.**

Jatinder Kumar

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. Neeraj Kumar, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for respondent No.1 – State.

Mr. H.N. Mehtani, Advocate
for respondent No.2.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned action/information dated 12.01.2012 (Annexure P-13), whereby, the application form of the petitioner has been considered under general category whereas he applied under Ex-servicemen category.

An advertisement for filling up various posts of Lecturers (College Cadre) in various subjects in Haryana Education Department

was issued. Petitioner being Dependent of Ex-serviceman applied under the Ex-servicemen category as it was clearly mentioned in the guidelines that in case, suitable ex-serviceman is not available, then Dependent of Ex-serviceman will be considered against the posts reserved for Ex-servicemen. After submission of the application, an admit card was sent to the petitioner under dependent of Ex-servicemen category intimating therein the details regarding the conduct of the examination. Petitioner being eligible for the post passed eligibility test in accordance with the UGC norms. Three candidates, who were higher in merit to the petitioner were not found to be eligible as they did not fulfill the essential qualifications prescribed by UGC. The petitioner made a representation on 29.10.2011 to the respondent-Commission stating that he was the only eligible candidate for the post as he had obtained 44 marks, but as there being no column for Dependent of Ex-serviceman in the OMR sheet, his case was not considered under the said category. Subsequently, the petitioner filed an application under RTI and asked regarding the status of his representation, whereby, he was informed that the same is under consideration. A letter was also sent to the petitioner stating therein that he had applied under Dependent of Ex-serviceman Category whereas as he was already working as a Guest Lecturer and drawing salary of ₹13,500/-, therefore, he was considered under General Category. His case was rejected on the basis of lower merit in General Category. Consequent thereupon, the petitioner made various representations but still no action was taken.

Learned counsel for the petitioner submits that the case of the petitioner was wrongly considered under General Category as nobody from his family had ever taken the benefit of reservation as per Policy. Even the petitioner did not avail any chance under the Dependent of Ex-serviceman category. Learned counsel further submits that the petitioner was working on contractual basis for a period of one year and in view of the decision in **CWP No.6090 of 2010** titled as '**Tilak Raj vs. State of Haryana and others**', on **30.03.2011**, the benefit was also extended to Guest Teachers also. Learned counsel also submits that as per the terms and conditions of appointment, the petitioner was not working on adhoc basis and the claim of the petitioner cannot be rejected on this ground only. The petitioner has even submitted the certificate of Dependent of Ex-serviceman issued by the competent authority, still his case was considered under General Category. Learned counsel also submits that the case of the petitioner is squarely covered by decision in **Sunita Devi vs. State of Haryana and others, 2000 (4) SCT 187.** Learned counsel for the petitioner has relied upon judgment of this Court in **Sat Pal vs. State of Haryana, 1998(4) SCT 1.**

Written statements on behalf of respondent No.1-State as well as respondent No.2-Haryana Public Service Commission are already on record.

Mr. H.N. Mehtani, Advocate appearing for respondent No.2 submits that the petitioner cannot be considered as dependent of Ex-serviceman in spite of the fact that he has applied under the category

of Dependent of Ex-serviceman. On scrutiny of application form, it was found that he was not dependent of Ex-serviceman and accordingly, he was considered under General Category. Learned counsel for respondent No.2 further submits that it was specifically mentioned by the petitioner himself in the application form that he was employed as Lecturer in the subject of History School Cadre and was getting salary of ₹13,500/- per month. A certificate of his employment was also attached with the application form. Keeping in view the salary of the petitioner, he was not considered as dependent of Ex-serviceman. The cut off marks of the last candidate of General Category was 58 and the petitioner has secured only 44 marks in the screening test and as such, he was not considered eligible and was not called for interview. Learned counsel for respondent No.2 also submits that even cut off marks for calling Ex-serviceman candidate for interview was fixed as 47 and the petitioner has secured 44 marks in the screening test. Even in the category of dependent of Ex-serviceman, he was not found to be eligible and, therefore, was not called for interview. Learned counsel for respondent No.2 has relied upon judgment of this Court in **Parhlad Singh vs. State of Haryana and others, 2005(4) RSJ 120.**

Learned State counsel has also reiterated the arguments raised by learned counsel for respondent No.2.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the respondents.

Admittedly, the petitioner applied in the category of

Dependent of Ex-serviceman but subsequently, he was considered in General Category. It is not disputed that the petitioner was already employed and was getting salary of ₹13,500/- per month, which would show that the petitioner is already gainfully employed and cannot be considered under the definition of 'dependent of Ex-servicemen'.

Hon'ble the Apex Court in **Haryana Public Service Commission vs. Harinder Singh and another, 1998(6) SLR 328**

has held as under: -

“The whole idea of the reservation is that those who are dependent for their survival on men who have lost their lives or became disabled in the service of the nation should not suffer. The public purpose of such reservation would be totally lost if it were to be made available to those who are gainfully employed. There is no justification for construing the words “dependents of ex-serviceman” in any manner other than that in which the appellant has construed them. This is in accord with the reservation policy itself, as shown by the quotation therefrom aforestated.”

The aforesaid judgment of **Harinder Singh's case (supra)** has been relied upon by this Court in **Parhlad Singh's case (supra)** wherein it has been held that in case, any employee is gainfully employed, then he cannot be considered as dependent of Ex-

serviceman.

Similarly in **Ramesh Chander Dimri vs. R.S. Verma, 1998(3) SCT 655**, this Court has held that the petitioner, who was practising as an Advocate cannot be considered as dependent of Ex-serviceman.

Moreover, even if the name of the petitioner is considered under Dependent of Ex-servicemen category, even then, he was not found to be eligible on the basis of marks obtained in screening test. The cut off marks for calling Ex-serviceman candidates for interview was fixed as 47 whereas the petitioner secured only 44 marks. Similarly, the cut off marks of candidate of General Category for calling for interview was 58 and the petitioner secured only 44 marks and as such, he was not considered eligible and was not called for interview.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the present writ petition being devoid of any merit is hereby dismissed.

25.05.2015
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(DAYA CHAUDHARY)
JUDGE