

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

**CWP No.8125 of 2014
Date of decision: 07.05.2015**

Ram Kishan

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Jatinder Kumar Kamboj, Advocate for the petitioner.

Ms. Vishal Garg, Addl.A.G.Haryana.

Mr. Deepak Balyan, Advocate for HUDA.

Ajay Kumar Mittal, J.

1. The petitioner seeks quashing of letter dated 10.3.2014, Annexure P.3 vide which his claim for issuance of letter for allotment of 14 marlas plot No.257, Sector 32, Karnal has been rejected.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The respondents invited applications from the ex-servicemen category for allotment of residential plots in Sector 32, Karnal. The petitioner applied for a 14 marla plot under this category. An amount of ₹ 2,82,200/- was deposited by him. In the draw of lots, the petitioner was declared successful. When the allotment letter was not issued to the petitioner, he sought information under the Right to

Information Act, 2005. Vide letter dated 18.9.2012, Annexure P.2, the

respondents informed the petitioner that as per eligibility condition, officers upto Lt. Colonel and equivalent rank were eligible for 14 and 10 marlas plots whereas the case of the petitioner being Subedar Major (Honorary Captain) was referred for verification whether the Honorary Captain was a Commissioned Officer. It was also intimated to the petitioner that the respondents had filed SLP before the Apex Court against the order of this Court dated 1.2.2012 in CWP No.2510 of 2011 (***The Hisar Ex. Naval Personnel Welfare Society, 88 Defence Colony, Hisar vs. State of Haryana and another***) and that the decision for allotment of plot in question will be taken after the final outcome of the SLP. Thereafter vide letter dated 10.3.2014, Annexure P.3, the respondents informed the petitioner that the said SLP had been dismissed but the competent authority had decided that the decision would be implemented qua those who succeeded upto the Apex Court. Since the name of the petitioner was not in the case decided by the Apex Court so his claim could not be accepted and allotment letter could not be issued to him. Since the petitioner retired from the Army as Subedar/Honorary Captain and as per condition mentioned in the application form, he was entitled for allotment of a 14 marlas plot. The Zila Sainik Board, Karnal had also issued certificate to the effect that the petitioner served in the Army as Subedar/Honorary Captain from 23.11.1957 to 30.11.1985, Annexure P.6. According to the petitioner, the impugned order is against the law laid down by the this Court in CWP No.18393 of 2008 (***The Hisar Ex. Naval Personnel Welfare Society vs. State of Haryana and others***) decided on 1.2.2012. In that case, this Court relying upon judgment dated 18.7.2006 rendered in CWP No.16064 of 2004 (***Prem Singh vs. HUDA and another***) held that eligibility criteria for

allotment of a plot dependent upon rank held by the applicants could not be sustained and was set aside. The SLP filed by the respondents against the said order was dismissed by the Apex Court. Hence the instant writ petition.

3. A written statement has been filed by Estate Officer, HUDA, Karnal on behalf of respondent Nos. 2 and 3 wherein it has been inter alia stated that as per policy of HUDA, the petitioner being Subedar Major is not entitled to allotment of plot in question.

4. We have heard learned counsel for the parties.

5. In the present case, as per extract from the terms and conditions of allotment of residential plots, Annexure P.4, the relevant portion of clause (i) reads thus:-

“(i)...Officers of the ranks of Colonel and above and equivalent ranks of Navy and Air Force/Para Military forces are eligible to apply for 1 kanal plot and other officers upto Lt. Col. and equivalent rank are eligible for 14 marla and 10 marla plots. JCOs/equivalent and other ranks are eligible for plots of 8,6 and 4 marlas.”

The petitioner who was Subedar Major (Honorary Captain) applied for allotment of a 14 marlas plot in Sector 32 Karnal under ex-servicemen category in response to the advertisement issued by the respondents. He deposited the requisite amount. He was declared successful in the draw. However, the allotment letter was not issued to him on the ground of his rank in the Army. The question that arises for consideration in the present case is whether the classification on the basis of rank was reasonable and the petitioner being Subedar Major could be denied allotment of 14 marlas plot after being declared successful in the draw of lots.

6. The matter is no longer *res integra*. Identical issue has already been decided by this Court in **Prem Singh's** case (supra) wherein it has been

held that the classification for allotment of a plot based upon the rank of an officer is unreasonable. The relevant portion reads thus:-

“The claim of the petitioner has been contested by the respondents. In the written statement filed on behalf of the respondents, it has been maintained that the petitioner was not eligible for allotment of a 10 marla plot inasmuch as he was eligible for 8 marla, 6 marla and 4 marla plots being merely a constable in BSF. In support of the aforesaid plea, respondents have appended a copy of the Information Brochure as Annexure R-2 alongwith the written statement, wherein the aforesaid condition has been specified. We may also note that a specific challenge has been made by the petitioner to the aforesaid eligibility criteria adopted by the respondents.

We have heard learned counsel for the parties and have also gone through the record of the case. Sh. Raj Mohan Singh, learned counsel for the petitioner has contended that there is absolutely no justification nor any rationale for subdividing the various defence personnel/ex-servicemen/widows of ex-servicemen/para-military forces personnel in various categories on the basis of their rank. Learned counsel maintains that the aforesaid classification was totally superficial and was not justified and was in fact discriminatory. It has also been argued by the learned counsel that in civil services, no such distinction/classification has been made and even a class IV employee of civil services was eligible for allotment of a 10 marla or a bigger plot.

After hearing learned counsel for the parties, we find that the grievance made by the petitioner is wholly justified. In the Information Brochure or even in the written statement, no justification has been offered by the respondents as to why there was any such sub-division/classification amongst the defence personnel/ex-servicemen etc. As a matter of fact, in

our considered view, the aforesaid classification amounts to discrimination amongst the persons who have ex-service background and as such have been granted a reservation.

Consequently, we quash the order Annexure P-4 and the plot in question which had been allotted to the petitioner shall stand restored back to him. Of course, the petitioner shall be required to deposit the remaining amount due from him, as per terms and conditions of the allotment.”

The SLP filed by the HUDA against the said order was dismissed by the Apex Court on 29.11.2010. Thus, the rejection of the claim of the petitioner for issuance of letter of allotment of 14 marlas Plot No.257, Sector 32, Karnal is legally unsustainable.

7. In view of the above, the present writ petition is allowed. The impugned letter Annexure P.3 dated 10.3.2014 is quashed. The plot in question which had been allotted to the petitioner shall stand restored back to him. He shall deposit the outstanding amount due from him as per the terms and conditions of the allotment letter.

(Ajay Kumar Mittal)
Judge

May 07, 2015
'gs'

(Rekha Mittal)
Judge