

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

Date of decision: 26.07.2016

CWP No.3235 of 1997

Suman Lata & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Shiv Kumar, Advocate, for petitioner No.6.

Ms. Shruti Jain Goel, AAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

Mr. Shiv Kumar, learned counsel represents only petitioner No.6 - Raj Kumar and has no instructions from remaining petitioners. Learned counsel who filed the writ petition has been elevated to the Bench of this Court long years ago. The succeeding counsel is also a Judicial Member of the Tribunal. The present counsel has instructions only to represent petitioner No.6. This petition has been heard qua petitioner No.6. Since remaining petitioners i.e. petitioners No.1 to 5, 7 & 8 have not come forward, so their cases will be covered by this decision as their interests are protected by the counsel present for petitioner No.6.

Petitioner No.6 alongwith other petitioners applied for the post of Lecturer (School Cadre) to the Subordinate Services Selection Board, Haryana in response to an advertisement dated 22.01.1995 inviting applications for filling up 253 vacancies. Some posts were reserved for Ex-

servicemen and Dependent of Ex-servicemen. Petitioner No.6 applied for the post under the category of Dependent of Ex-servicemen. He was selected in the category as his roll number found mention in the Public Notice issued in 'The Tribune' dated 02.03.1996. Petitioners were informed vide memo dated 29.02.1996 that the Dependent of Ex-servicemen certificate and Experience Certificate were not found available with the application received from the Board. Petitioner No.6 supplied the eligibility certificate, but in spite of all this, the respondents have not issued offer of appointment. The prayer is to direct respondent No.2 to issue offer of appointment to the petitioner in pursuance of the selection by the Board in the category of Dependent of Ex-servicemen.

On notice, the respondents have contested the case by filing written statement. It is maintained that the petitioners were not appointed as they were already in service on ad hoc basis. As per instructions of Government dated 16.05.1996 (Annex R-1), a person working on ad hoc basis or earning from other sources did not fall within the ambit of dependent of ex-servicemen and, therefore, were disentitled to be appointed. The State has placed Annex R-1 with its written statement, which provides for reservation of posts for children of ex-servicemen in services of Haryana State. The right of children of ex-servicemen flows from non-availability of suitable Ex-servicemen and the entitlement would be available to one dependent child only. The Government decided by policy that such Ex-servicemen after joining services under the State Government are like other State Government employees, their dependent sons and daughters should not be considered for appointment to the posts reserved for Ex-servicemen. The exclusion clauses of the policy read as under:

- “(i) a person may be working on an ad hoc basis against the posts advertised or somewhere also.
- (ii) a person may be unemployed at the time of making the application but he may have other sources of income vis from agriculture, trade, property, bank balance etc.
- (iii) an unemployed person who is a member of the joint family may also contribute to the pool of the family income by lending help.
- (iv) a person who has already done his graduation and is doing post-graduation and is getting merit scholarship for the studies.
- (v) a person who is a member of the joint Hindu family and remains dependent upon the Karta till there is partition in the family or he ceases to be a member of the joint Hindu family and is obliged to pass on all his income to the Karta and draws money for his subsistence from the pool of the joint Hindu family with the consent of the Karta.
- (vi) a candidate who is a member of the joint Hindu family is employed on ad hoc basis but he is otherwise dependent on his father.

None of the persons mentioned at Sr.Nos.(i), (ii) and (vi) falls within the definition of the word ‘dependent’ because each of them appears to have some independent source of livelihood and therefore none of these can be said to be dependent on his father or mother. The persons falling under Sr.No.(iv) would be deemed as dependents and their father or mother. The persons falling under category (iii) will also be termed as dependents if the joint Hindu family consists of the father

and the sons. In such a situation the sons will be termed as dependents.”

Clause (i) above excludes the petitioners from consideration since it is not disputed that they were working on ad hoc basis in other employment. They would carry no benefit under the advertisement in the EDSM category and can be considered only against general vacancies.

The petitioners have filed a replication including petitioner No.6. It is submitted that the appointment of the petitioners have been withheld on a wholly erroneous premise that they were already working on ad hoc basis and, therefore, they were not entitled for the benefits of being dependents of Ex-servicemen. They submit that they joined and worked for private schools only to gain some experience so that they can get better merit in terms of experience in competitive selection made by the Board from time to time. The schools where the petitioners taught were neither controlled by the Government nor were the schools in receipt of any grant-in-aid from the Government. These were private schools paying paltry remuneration. It is asserted that some of the petitioners, without specifying any, were working on honorarium. The amounts received by the petitioners as remuneration were not comparable with the salaries and perks admissible to the ad hoc teachers working in the Government controlled schools and, therefore, these engagements in private schools cannot be termed as ad hoc mentioned in the sub-rule. It is argued that appointments have been denied citing circular dated 16.05.1996, which in turn is based on instructions and corrigendum issued on 11.10.1995 and would be inapplicable as the selection process pursuant to the two advertisements (original and corrigendum) was concluded and result declared on 02.03.1996 before the Haryana Government circular was issued and, therefore, it does not apply

retrospectively. The circular cannot be applied retrospectively so as to cover recruitment against vacancies advertised in January/October, 1995. Therefore, the denial of appointments to the petitioners under the garb of circular dated 16.05.1996 is wholly arbitrary, unreasonable and is nothing, but colourable exercise of power. Even if it is assumed that the instructions applied even then petitioners could not be said to be in gainful employment and ad hoc service means service with Government on ad hoc basis and the expression is not associated with private bodies. In this manner, the instructions are interpreted to mean gainful employment under the State on ad hoc basis.

By order dated 14.10.1997, the Division Bench directed the counsel for the petitioners to produce before the Court documents evidencing their employment in Government/Private institution and the file was ordered to be put up after relevant documents are filed. Those documents have not been filed till date and a presumption can well be drawn that if produced those documents would go against the petitioners.

On 05.12.2012, the petition was dismissed for non-prosecution by noticing in the order that some of the petitioners have been duly served, but none has chosen to appear. The Court recorded that it appears that the petitioners are not interested in pursuing the case further. On 14.05.2013, the order was recalled and the petition was restored to its original number.

Be that as it may, the avowed purpose and object of the instructions relied upon by the State is to exclude Dependent of Ex-servicemen, who have their own independent source of income and, therefore, cannot be held to be dependent on father or mother. However, a person who has already done his graduation and is doing post-graduation

and getting scholarship for the studies is deemed to be dependent of father or mother. Where a person claiming rights as DESM may be unemployed at the time of making of application, but has source of income from agriculture, trade, property, maintains bank balance etc. are also excluded from the reservation. I would, therefore, read clause (i) in the broadest terms when it speaks of work on ad hoc basis. In the absence of any definition of the expression “ad hoc” or material placed by petitioner No.6 or the other petitioners no final opinion can be formed or expressed as to their financial status but one thing is certain by virtue of salary, emoluments or honorarium paid they cease to be dependent. If the petitioners have deprived themselves of such consideration by their own act of not complying with the order of the Division Bench, then this Court can be of no help to them. They had sufficient time to obey the order which remains in violation. Those who violate orders of court and fail to respond to them lose their right to further consideration. This is a court of equity and equity demands appropriate conduct.

Still further, reliance placed by Mr. Shiv Kumar on the judgment of the Supreme Court in State of J&K & others Vs. Vijay Sharma & others, (2005) 13 SCC 403 is misjudged since the case turns on its own facts and is distinguishable when directions were issued to fill remaining unfilled vacancies coming from 1997. The dispute pertained to vacancies in various Districts and whether the selection could be made District-wise or State-wise against cadre posts. There is no such scenario drawn in the present case on facts to obtain relief.

Thus, I find no reason to interfere or to direct the State to offer appointment to the petitioners for the above reasons and also for the reason it

is almost two decades past. Any affirmative direction, if issued, would inevitably lead to administrative chaos and grave complication in the cadre respecting seniority and promotions which the Court should avoid the consequences of as it will be difficult if not impossible to judicially manage the unforeseeable fallout on third party rights by long lapse of time. Besides, the petitioners these past two decades must have found employment elsewhere and settled down in other avocations and callings. If they are not teaching as in a career, they would presumably have lost their skills by now to rust. Time is a great healer.

Dismissed.

[RAJIV NARAIN RAINA]
JUDGE

26.07.2016

Vimal

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Whether speaking/reasoned: Yes

Whether Reportable: Yes |