

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

CWP No.12642 of 2015 (O&M)

Date of decision : 26.09.2016

Sonu Kumar

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. N.P. Bhardwaj, Advocate for the petitioners.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

...

TEJINDER SINGH DHINDSA, J.

Counsel for the parties have been heard at length and pleadings on record have been perused.

The uncontroverted facts that emerge from the pleadings are that the respondent/Irrigation Department, State of Haryana issued an advertisement in the year 2011 inviting applications from male candidates to fill up 712 posts of Canal Guard (Group D) in the Irrigation Department, State of Haryana. The distribution of such posts was done Circle wise. Insofar as Sirsa Circle was concerned, 130 posts of Canal Guards had been advertised and out of which 16 were reserved for BC(A) category. Reservation was also provided for the ESM category. Under the ESM category itself, there was a sub categorisation i.e. ESM-General-8 posts, ESM-SC-3 posts, ESM-BC(A)-4 posts and ESM-BC(B)-4 posts.

Petitioner had applied for the post in question in Sirsa Circle and against BC(A) category. It has gone uncontroverted that in the process of selection that ensued, result was declared and the name of the petitioner

figured at Sr.No.17 in the BC(A) category pertaining to Sirsa Circle. In

other words, name of the petitioner was at Sr.No.1 in the waiting list.

Chief Secretary to Government of Haryana circulated Instructions dated 02.07.2010 on the subject of reservation of posts for Ex-servicemen in direct recruitment to Class-III and Class-IV posts. Such Instructions have been placed on record at Annexure P-10. Perusal of such Instructions at Annexure P-10 would reveal that a situation had been taken note of that while making recruitment under ESM category, most of the vacancies of direct quota remain unfilled on account of non-availability of eligible ESM/DESM candidates. In such a situation, the concerned department has to undertake a fresh process of recruitment. Accordingly, a decision was taken that in case no candidate is found suitable for appointment even on re-advertisement, the vacancies reserved for ESM of a particular category were to be filled up from amongst the same category candidates. An example was also cited i.e. if suitable candidates belonging to SC of ESM category is not available then the posts can be filled up from amongst the candidates of SC. It was also decided that the same position would be followed for other categories as well.

In the light of Instructions dated 02.07.2010 at Annexure P-10, the petitioner herein set up a claim that pertaining to Sirsa Circle, 4 posts that had been advertised for ESM-BC(A) category had remained unfilled and as such, such posts were to be diverted and to be filled up from amongst the BC(A) category.

Such claim stands declined in the light of order dated 20.08.2014 at Annexure P-7.

It is against such factual backdrop that the instant petition has been filed impugning the order dated 20.08.2014 at Annexure P-7.

Perusal of the impugned order dated 20.08.2014 at Annexure P-7 would reveal that the same has been passed by taking into account the Instructions dated 02.07.2010 and the decision, not to entertain the claim of the petitioner, has been taken on the ground that since the vacancies reserved for ESM in a particular category and which have remained unfilled were advertised for the first time, therefore, the petitioner cannot be accommodated. It has further been recited in the impugned order that the benefit envisaged under the Instructions dated 02.07.2010 would be available only the posts are re-advertised.

In the considered view of this Court, the order dated 20.08.2014 at Annexure P-7 cannot sustain and a case has made out for remand of the matter back to the Competent Authority for passing of an order afresh.

Such view is being taken for the reason that the State Government had issued subsequent Instructions dated 23.05.2014 at Annexure P-12 and issued from the office of the Chief Secretary to State of Haryana. The contents of the Instructions dated 23.05.2014 at Annexure P-12 have not been disputed by learned counsel appearing for the State. As per such Instructions at Annexure P-12, the matter has been reconsidered and the words **“even on re-advertised”** were deleted from the earlier Instructions dated 02.07.2010.

Strangely, even though, such clarification had been issued on 23.05.2014 itself and at Annexure P-12 but the same had been completely overlooked and ignored while passing the impugned order dated 20.08.2014 at Annexure P-7.

In the light of the clarificatory Instructions dated 23.05.2014 at

Annexure P-12, the petitioner prima facie is vested with a right to be considered for the post of Canal Guard as his name figured at Sr.No.17 in order of merit against the category of BC(A) i.e. Sr.No.1 in the waiting list and coupled with the fact that 3 posts reserved for ESM-BC(A) category pertaining to Sirsa Circle have remained unfilled.

Accordingly, the writ petition is allowed. Order dated 20.08.2014 at Annexure P-7 insofar as denies consideration of the claim of the petitioner for appointment to the post of Canal Guard is set aside.

Matter is remanded back to respondent No.2 i.e. Engineer-in-Chief, Irrigation and Water Resources Department, State of Haryana to pass an order afresh as regards claim of the petitioner seeking appointment to the post of Canal Guard in Sirsa Circle in the light of observations contained in this order and against the backdrop of the clarificatory Instructions dated 23.05.2014 at Annexure P-12.

Such exercise of reconsideration be finalized and a fresh order be passed positively within a period of eight weeks from the date of receipt of a certified copy of this order.

Writ petition is allowed in the aforesaid terms.

26.09.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | No |