

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

Date of decision: 15.07.2016

1. CWP No.22873 of 2010 (O&M)

Krishan Kumar and others

...Petitioners

Versus

Haryana Vidut Parsaran Nigam Ltd. and others

...Respondents

2. CWP No.6101 of 2010 (O&M)

Balram Singh

...Petitioner

versus

Haryana Vidhyut Parsaran Nigam Ltd. and another

...Respondents

3. CWP No.16745 of 2015 (O&M)

Harbans Lal and others

...Petitioners

versus

Haryana Vidyut Parsaran Nigam Ltd. and others

...Respondents

4. CWP No.16751 of 2015

Chand Ram and others

...Petitioners

versus

Haryana Vidyut Parsaran Nigam Ltd. and others

...Respondents

5. CWP No.19626 of 2015 (O&M)

Anil Kumar and others

...Petitioners

versus

Haryana Vidhyt Parsaran Nigam Ltd. and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Sangita Dhanda, Advocate,
for the petitioners (in CWP No.22873 of 2010).

Mr. R.K. Malik, Senior Advocate,
with Ms. Rimple Kadyan, Advocate,
for the petitioners (in CWP Nos.16745 and 16751 of 2015).

Mr. Ashok S. Chaudhary, Advocate,
for the respondents (in CWP Nos.16751 and 16745 of 2015).

Mr. B.S. Rana, Senior Advocate,
with Mr. Rajinder Paul, Advocate,
for the respondents (in CWP No.22873 of 2010 & 6101 of 2010).

Mr. Pardeep Singh Poonia, Advocate,
for the respondents.

Mr. Keshav Gupta, AAG, Haryana.

Mr. Saurabh Goel, Advocate,
for the respondents (in CWP No.19626 of 2015).

Ritu Bahri, J.

This judgment will dispose of CWP Nos.22873, 6101 of 2010, 16745, 16751 and 19626 of 2015 together as common questions of law and facts are involved in all the petitions. For reference, facts are being taken from CWP No.22873 of 2010.

The petitioners are seeking quashing of the orders dated 26.02.2005, 09.03.2015, 10.03.2015 & 11.03.2015 (Annexures P-25 & 26), collectively), terminating their services without issuing any show cause notice and opportunity of hearing.

Pursuant to a selection process, the petitioners were appointed as Assistant Lineman/Shift Attendants in the respondent-Nigam and had been working from 1993 to 1996. The selection made in the year 1992 was

quashed by this Court being faulty and the said decision was upheld by the

Hon'ble Supreme Court. Thereafter, the services of the petitioners who were appointed in 1993 were terminated by passing similar order on 23.09.1997. Experience certificates dated 22.05.1997 and 26.07.1997 were issued to those persons, who had worked as Assistant Lineman/Shift Attendant w.e.f. 16.04.1993 to 22.09.1997 in the respondent-Nigam. Thereafter, vide advertisement dated 04.03.1996 (Annexure P-5) the respondent-Nigam (erstwhile HSEB) advertised 2056 posts of Assistant Lineman and 556 posts of Shift Attendant and all those persons, who were appointed as Assistant Lineman or Shift Attendant in the year 1992, were given liberty to appear in the test without applying for the said posts again. Written test was conducted on 05.05.1996 at Circle level and the result was declared on 23.09.1997. This selection was also challenged by way of CWP Nos. 15558, 16278, 17812 of 1997, which were allowed by this Court vide judgment dated 03.12.2008 (Annexure P-7) on the limited ground that the reserved category candidates, who had obtained more marks than the general category candidates, may be selected and offer appointments in the general category and the remaining vacancies of the reserved category may be filled up by offering appointment to 336 reserved category candidates for the post of Assistant Lineman and 75 reserved category candidates for the post of Shift Attendant. In the said judgment it has been further held as under:-

“.....It is further clarified that any such candidates who are appointed as a result of this exercise would not be entitled to receive any back-wages but would be entitled to all other consequential benefits. In view of the admitted fact about the existence of vacancies, I further hold that it would not be in the interest of justice to displace those general category candidates who may have been given appointments because of the illegal ouster of reserved category candidates since they have now been in service for the last 11 years and no fault can be found with them.”

In the process of implementing the judgment dated 03.12.2008

(Annexure P-7), a fresh merit list was declared in the year 2009, which is subject matter of the present petition(s).

Grievance of the petitioners is that the result has been declared in wrong category, therefore, the Association of the petitioners filed a contempt petition i.e. COCP No.1632 of 2010 before this Court. Upon notice, the respondents filed reply (Annexure P-8) to the contempt petition, wherein it had been stated that offers of appointment were issued to 336 Assistant Lineman and 75 Shift Attendants of different reserved categories. No waiting list was prepared as the offers were issued pursuant to the recruitment process carried out in 1997. Thus, the validity of waiting list would have been over by the year 1998. The respondent-Nigam had issued merit list of candidates, who were placed in the selection zone with reserved category wise i.e. SC-A, SC-B, BC-A, BC-B indicating the marks obtained by each candidates. They had been given sufficient time for joining their duties. However, a number of candidates did not join their duties. Details of the candidates are given as under:-

No. of post	Offer of appointment issued in pursuance to Hon'ble High Court order dated 03.12.2008	No. of candidates joined	No. of candidates not joined
Assistant Lineman	336	242	94
Shift Attendant	75	16	59

Thereafter, the petitioners came to know that as per the bifurcation of 94 posts of ALM, 11 posts came to the share of SC (B) and 22 posts came to the share of SC (A) and remaining 61 posts were to be filled from amongst BC (A) and BC (B) category. After reframing the merit list in 2009, there was difference in marks with respect to the selection list of 1997, which is reproduced as under:-

YEAR	SC-A	SC-B	BC-A	BC-B
1997	73	64	77	71
2009	64	69	70	68

Thereafter, the petitioners filed the present petition, which was allowed vide order dated 22.12.2010 on the basis of a similar petition i.e. CWP No.5356 of 2010, titled as **Amir Chand Vs. HVPNL and others.** Thereafter, COCP No.1632 of 2010 was disposed of vide order dated 14.01.2011 (Annexure P-10) by giving liberty to the petitioner to seek his remedy with respect to the vacant posts, in accordance with law. The stand taken by the respondents, in their reply (Annexure P-8) was that no merit list was prepared as offers of appointments were issued pursuant to the recruitment process carried out in 1997. Thus, the validity of waiting list would have been over by the year 1998. Accordingly, the appointment letters were issued to 336 Assistant Lineman and 75 Shift Attendants.

The petitioners are seeking appointments on the vacant posts on the ground that the persons, who had been appointed way back in the year 1997 had got less marks than the petitioners. Their claim is that in the merit list prepared in 1997, they had got higher marks than the selected candidates in SC-A, SC-B, BC-A and BC-B categories. In 2009 while giving appointments to 336 ALMs and 75 SAs, the petitioners should have been accommodated on account of non joining of some of the candidates. Further grouse of the petitioners is that in the year 1997, their result was declared in wrong category, that is why despite getting more marks, they could not be appointed.

A review application was filed by the respondents against the order dated 22.12.2010 passed by this Court in CWP No.22873 of 2010 and CWP No.6101 of 2010 (Annexure P-9), in which no stay was granted.

Thereafter, COCP No.2987 of 2012, titled as **Krishan Kumar Vs. Devender Kumar and another**, was filed, in which notice of motion was issued for 15.11.2012. After receipt of notice, the respondents gave appointments to all the petitioners of aforesaid contempt petition against existing vacancies vide orders dated 15.11.2012 and 23.11.2012 (Annexures P-17 & P-18, collectively). In some of the appointment letters, a condition was imposed that the said appointments would be subject to decision of the review petition. A public notice dated 07.01.2014 (Annexure P-19) was issued, according to which, all the candidates of reserved categories, who have not been recruited as ALM or SA in DHBVN pursuant to Advertisement No. CRA-143 dated 04.03.1996, but consider themselves eligible in view of the decision dated 03.12.2008 given by this Court in CWP No.17812/1997, may contact the department for appointment, within one month from the publication of said notice. Thereafter, the said public notice was withdrawn on 05.09.2014.

In CWP No.12605 of 2014, titled as **Balwinder Singh Vs. HVPN and others**, (Annexure P-21), counsel for the respondents informed the Court that the public notice dated 07.01.2014 has since been withdrawn. Finally, this petition was disposed of vide order dated 11.12.2014 (Annexure P-24) on the statement made by learned counsel for the respondents that if, Balwinder Singh was found higher in merit than the last selected candidate, he could approach the respondents by making an appropriate representation, pointing out his marks secured in the merit list and his claim would be considered as per merit list dated 05.10.2009. It was further reiterated that this benefit would be extended to the petitioner, who had been wrongly treated in the General Category and he would be entitled

appointed.

Grievance of the petitioners is that after issuance of notice in CPCP No.2987 of 2012, titled as **Krishan Kumar Vs. Devender Kumar and others**, the respondents gave them appointments against existing vacancies vide orders dated 15.11.2012 and 23.11.2012 (Annexures P-17 & P-18, collectively) and the contempt petition was disposed of on 15.11.2012 as having been rendered infructuous. They have now completed their period of probation and the respondents have decided to terminate their services simply on the ground that the order dated 22.12.2010 has been recalled while allowing Review Application Nos.137 of 2011 in CWP No.6101 of 2010 and 138 of 2011 in CWP No.22873 of 2010 on 11.12.2014 (Annexure P-23).

The question for consideration would be, 'whether the petitioners who were given appointments pursuant to the order dated 22.12.2010 can be terminated once that order has been reviewed vide order dated 11.12.2014 (Annexure P-23).'

Vide order dated 24.02.2016, the respondents were directed to assist the Court, as to whether in compliance of the judgment passed by this Court in 2008, the department was required to prepare a waiting list in case of non-joining of some Assistant Linemen (ALM) and Shift Attendants (SAs). Learned counsel for the respondents was to get instructions with regard to availability of the posts as the petitioners were appointed in the year 2012 during the pendency of the contempt petition.

In compliance of the said order, an affidavit dated 29.03.2016 of the Deputy Secretary/HR & SR, HVPNL, Panchkula, has been filed, clarifying that in pursuance of the directions given in CWP Nos.15558 of

336 ALMs & 75 SAs. No waiting list was prepared as the offers were issued in pursuance of the recruitment process carried out in 1997 and as per instructions dated 20.01.1998, the validity of the waiting list of the year 1997 would be over by 1998. No post pursuant to recruitment carried out in the year 1997 as per advertisement No. CRA-143, is lying vacant. After issuing offer of appointment to 336 reserve category candidates for the post of ALM and 75 reserved candidates for the post of SA, requisition for filling up of various posts including ALM and SA was sent and subsequently, 2329 posts of ALM were advertised on 08.07.2008 by Haryana Staff Selection Commission on behalf of UHBVNL, DHBVNL and HVPNL and the recruitment was made in the year 2010. Further, 1000 posts of ALM were again advertised vide advertisement dated 19.03.2011 by Haryana Staff Selection Commission on behalf of UHBVNL & DHBVNL and recruitment has been made in the year 2012. Recruitment process of filling up of 552 posts of Shift Attendant (SA) was initiated vide Advertisement No.13/2007 and recruitment was made in 2010. Offer of appointment to 12 candidates/petitioners was given in compliance of the order dated 22.12.2010 in CWP No.22873 of 2010 and 6101 of 2010 subject to outcome of Review Application Nos.137 of 2011 and 138 of 2011. Vacancy position for the posts of ALM & SA in Haryana Power Utilities i.e. UHBVNL, DHBVNL & HVPNL as on 24.02.2016 is as under:-

Sr. No.	Name of Utility	Name of Post	No. of vacant posts	Requisition sent to HSSC
1	UHBVNL	Assistant Lineman	4202	Nil
		Shift Attendant	720	746 already advertised by HSSC vide Advt. No.3/2016 dated 20.02.2016.

Sr. No.	Name of Utility	Name of Post	No. of vacant posts	Requisition sent to HSSC
2	DHBVNL	Assistant Lineman	4112	Nil
		Shift Attendant	863	806 already advertised by HSSC vide Advt. No.3/2016 dated 20.02.2016.
3	HVPNL	Assistant Lineman	803	Nil
		Shift Attendant	1035	874 already advertised by HSSC vide Advt. No.3/2016 dated 20.02.2016.

Since these vacancies became available in 2012 and no backlog of vacancies is available qua selection carried out in the year 1997, the petitioners cannot be appointed on the above said posts.

Respondents have placed on record a judgment passed by this Court in CWP No.28663 of 2013, titled as **Phool Singh Vs. State of Haryana and others**, decided on 13.01.2016 (Annexure R-7). The petitioner (in that petition) was seeking the benefit of judgment rendered in CWP No.17812 of 1997, titled as **Scheduled Caste/Scheduled Tribe and Backward Classes Employee Association Vs. Haryana State Electricity Board and others**, decided on 03.12.2008. His claim was that the persons junior to him had been appointed and he had a prior right of appointment. The said petition was dismissed on the ground that he was not party to the writ petitions and validity of waiting list was over by 1998, therefore, he had no right to be appointed on account of non joining of some candidates pursuant to a selection made way back in the year 1997 and the decision given by this Court vide judgment dated 03.12.2008.

The ratio of the aforesaid judgment is directly applicable to the facts of the present case. The petitioners have approached this Court in the year 2010 and are seeking appointment on the vacant posts on the ground

that the persons, who had been appointed way back in the year 1997, had

got less marks than the petitioners. Their claim is that in the merit list prepared in 1997, they had got higher marks than the selected candidates in SC-A, SC-B, BC-A and BC-B categories. They are seeking accommodation on account of non joining of some of the candidates. Instead of approaching this Court in the year 1997, they have filed the present petition in the year 2010.

This question came up for consideration before a Co-ordinate Bench of this Court in CWP No.14137 of 2010, titled as **Hoshiar Singh Vs. Haryana Vidhut Parsaran Nigam Ltd.**, decided on 23.08.2011. The said petition was dismissed by making reference to the judgment passed by the Hon'ble Supreme Court in **S.S. Balu and another Vs. State of Kerala and others**, 2009 (2) SCC 479, whereby SLP had been dismissed on the ground that the candidates who had filed original petition had been given appointments out of the earlier ranking list. While dismissing the appeal, it was held that they were not party to the original writ petition and therefore, they had no right to claim appointment on account of non joining of some candidates. Case of the present petitioners is squarely covered by the judgment passed in **Hoshiar Singh's** case (supra). Therefore, no case for issuing direction for appointment is made out.

Dismissed.

15.07.2016
ajp

(RITU BAHRI)
JUDGE