

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

Date of decision: 18.05.2016

1. CWP No.17706 of 2013 (O&M)

Prem Chand and others

...Petitioners

Versus

State of Haryana and others

...Respondents

2. CWP No.24915 of 2015

Kapil and another

...Petitioners

versus

Haryana Vidyut Parsaran Nigam Ltd. & others

...Respondents

3. CWP No.22946 of 2015

Kani Ram and others

...Petitioners

versus

State of Haryana and others

...Respondents

4. CWP No.22897 of 2015

Ram Mehar and another

...Petitioners

versus

State of Haryana and others

...Respondents

5. CWP No.21962 of 2013

Sachin Yadav and another

...Petitioners

versus

State of Haryana and others

...Respondents

6. CWP No.18731 of 2015

Satish Kumar

...Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Ltd. & others

...Respondents

7. CWP No.17442 of 2015

Sunil Kundu

...Petitioners

versus

Uttar Haryana Bijli Vitran Nigam Ltd. & others

...Respondents

8. CWP No.17389 of 2015

Parmod Kumar and another

...Petitioners

versus

Uttar Haryana Bijli Vitran Nigam Ltd. & others

...Respondents

9. CWP No.16178 of 2015

Davender Kumar

...Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

10. CWP No.13763 of 2015

Gopal Kumar and others

...Petitioners

versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

11. CWP No.13656 of 2015

Jitender Kumar and others

...Petitioners

versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

12.

CWP No.11569 of 2015

Satish Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

13.

CWP No.5151 of 2015

Shyam Sunder

...Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Ltd. & others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Sangita Dhanda, Advocate,
for the petitioners (in CWP Nos.17706, 21962 of 2013,
11569, 5151 and 22897 of 2015).

Mr. R.K. Malik, Senior Advocate,
with Mr. Samrat Malik, Advocate,
for the petitioners (in CWP Nos.13656, 13763, 16178
and 18731 of 2015).

Mr. Jitender Kumar Sehrawat, Advocate,
for the petitioners (in CWP No.24916 of 2015).

Mr. H.N. Sahu, Advocate,
for the petitioners (in CWP Nos.17389 and 17442 of 2015).

Ms. Anu Chatrath, Senior Advocate,
with Mr. Rakesh Sobti, Advocate,
for the petitioners (in CWP No.22946 of 2015).

Mr. Keshav Gupta, AAG, Haryana.

Mr. B.R. Mahajan, Advocate General, Haryana with
Mr. R.S. Longia, Advocate,
and Mr. Namit Kumar, Advocate,
for respondents-UHBVNL and DHBVNL
(in CWP Nos.17442, 13656, 17389, 11569, 13763,
16178, 18731, 24915, 21962, 17706, 13659 and
5151 of 2015 of 2015).

Mr. K.S. Malik, Advocate,
for respondent Nos.3 and 4 (in CWP Nos.17706,

21962 of 2013, 22897 and 22946 of 2015).

Mr. S.S. Momi, Advocate,
for respondent No.3 (in CWP No.11569 of 2015).

Ritu Bahri, J.

This judgment will dispose of CWP Nos.17706, 21962 of 2013, 11569, 13656, 13763, 16178, 24915, 18731, 17389, 17442, 5151, 22897 and 22946 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.17706 of 2013.

The petitioners are seeking direction to the respondents to appoint them against the posts, which were left unfilled in the quota of Ex-serviceman belonging to their respective categories i.e. Scheduled Castes, Backward Classes or General Category.

The petitioners are diploma holder electricians from the Department of Industrial Training and Vocational Education, Haryana. An advertisement No.1/2011 was issued on 19.03.2011 for filling up 1000 posts of Assistant Lineman in Uttar Haryana Bijli Vitran Nigam (for short 'UHBVN'). Subsequently, respondent No.2 issued a corrigendum dated 01.07.2011 (Annexure P-3, Collectively) increasing the vacancies upto 4131. 150 posts of Assistant Lineman from Scheduled Caste category, 137 posts of Backward Class 'A' category, 182 posts of Backward Class 'B' category and 354 posts of General category were to be filled up as a backlog since 2007. As per above corrigendum, 150 posts from Ex-serviceman Scheduled Caste category, 137 posts of Backward Class 'A' category, 182 posts of Backward Class 'B' category and 354 posts of General Category were to be filled from Ex-serviceman category as a backlog. All the

petitioners had been shown successful after competing in the written test and viva-voce. The result was declared on 04.10.2012 (Annexure P-4). In the selection process, again more than 100 vacancies in each category of Ex-serviceman were not filled up because of non availability of Ex-servicemen. For example, in ESM-SC=149 posts were still lying vacant because only one Ex-serviceman applied in the said category and got selected. Due to this reason, so many posts in each category of ESM go unfilled because of their non-availability e.g. ESM-SC=149, ESM-BCA=124, ESM-BCB=142 and ESM-GEN=221. As per instructions dated 26.07.2001 (Annexure P-5), reservation ratio of 10% was enhanced to 15% in direct recruitments to Class-III and IV posts as horizontal reservation for ESM. Thereafter, vide instructions dated 07.10.2008 (Annexure P-6) a further clarification was given that in case of suitable candidates of 'Outstanding Sports Persons' are not available in particular category, then the vacancy will filled up from amongst the candidates of the same category. For example, if suitable candidate belonging to General Category of Outstanding Sports Person category is not available, then the post would be filled up from amongst the candidates of General Category only and the same would be done in other categories as well. Thereafter, vide instructions dated 02.07.2010 (Annexure P-7), all the departments of State of Haryana were instructed to provide 14% horizontal reservation for ESM category in direct recruitment in Group 'C' and 'D' categories from all the categories. It was further specified that as the horizontal reservation is a smaller compartment within the bigger compartment of vertical reservation, thus, in case no candidate is found suitable for appointment even on re-advertisement, the vacancies reserved for ESM of a particular category would be filled from amongst the same category candidates. It was further explained that if suitable candidate

belonging to Scheduled Caste of ESM category is not available, then the post can be filled up from amongst the candidates of Scheduled Caste category.

The grievance of the petitioners is that despite the aforesaid instructions dated 02.07.2010 (Annexure P-7), the vacant posts which remained unfilled in ESM category belonging to General, Scheduled Castes, Backward Class 'A' and Backward Class 'B' categories are not filled from the waiting list of respective categories.

Upon notice, reply has been filed on behalf of Haryana Staff Selection Commission-respondent No.2, wherein it has been stated that as per instructions dated 02.07.2010 (Annexure P-7) in case, no candidate was found to be suitable for appointment even on re-advertisement, the vacancy reserved for ESM of a particular category will be filled up from amongst the same category candidates. As per above said instructions, the posts which remained vacant would be re-advertised and then the left out posts of ESM of a particular category would be filled from the candidates of the same category. As per Government instructions dated 07.10.1998 (Annexure R-3/1), appointment from the waiting list can be made only if, a candidate from the original list does not assume charge of his assignment or any vacancy from this list remains unfilled for any other reason.

In support of their claim, the petitioners have placed on record a number of judgments passed by this Court. Reference can be made to a judgment passed by this Court in **Garima Jindal Vs. Haryana Vidyut Parsaran Nigam Ltd. & another**, CWP No.13384 of 2011 (decided on 06.08.2012). Garima Jindal was belonging to general category. She participated in the selection process for the post of Junior Accountant. Out

Category and others were reserved for different categories, which included 3 posts in Ex-serviceman category on the basis of horizontal reservation. She was placed at serial No.1 in the waiting list of General Category. As per the relevant instructions, when reservation was horizontal and candidates were not available, then the vacant post would go to the same main category. Ultimately, the petition filed by Garima Jindal was allowed by observing that the vacant posts of ESM-General Category should have been given to the General Category candidate and a direction was given to the respondents to consider the claim of the petitioner or appointment as Junior Accountant. The aforesaid judgment passed in **Garima** Jindal's case (supra) has been affirmed by a Division Bench of this Court in LPA No.1775 of 2012 (Annexure P-11). Subsequently, this judgment has been followed in **Anil Kumar Vs. UHBVN Ltd. and others**, CWP No.1226 of 2013 (Annexure P-12).

Reference can now be made to a judgment passed by this Court in **Braham Dutt Vs. State of Haryana and others**, CWP No.21732 of 2010, decided on 27.09.2013 (Annexure P-9). In that case, Haryana Staff Selection Commission had invited applications for filling up 398 posts of Taxation Inspectors in the Excise and Taxation Department, out of which, 4 posts were reserved for Backward Class 'A' and one post was reserved for ESM (BC-A) category. The petitioner had applied under ESM (BC-A) category. In the selection process, the selected candidate of ESM (BC-A) (horizontal + vertical reservation) category had obtained 315 marks. Braham Dutt-petitioner was shown in the waiting list of ESM (BC-A) category. However, he claimed that the selected candidate in this category was having even higher marks than the last candidate of BC-A category (vertical reservation). The writ petition was allowed by giving direction to the

respondents to amend the merit list prepared by the Commission. It was further directed that respondent No.4 would be fitted in BC-A category and thereafter, the vacated post of ESM (BC-A) category was to be offered to the petitioner. By following the judgments passed in **Indra Sawhney Vs. Union of India**, AIR 1997 SC 597 and **R.K. Sabharwal Vs. State of Punjab**, 1995 (2) SCC 745, it was held that if a reserved category candidate gets higher marks, he is to be treated in the general open category and thereafter, the benefit of reservation is to be extended to a candidate with lower marks in the reserved category.

The plea of the respondents is that a period of more than one year has expired, therefore, the benefit of appointment cannot be extended to the petitioners. Another argument of learned counsel for the respondents is that as per the clarification, only after re-advertisement, the vacancies reserved for ESM of a particular category will be filled up from amongst the same category candidates.

This argument of the respondents is liable to be rejected as plain reading of clarification dated 02.07.2010 (Annexure P-7) shows that the intention of the department was to fill up unfilled posts only on re-advertisement. The instructions dated 02.07.2010 read as under:-

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The matter has been reconsidered by the Government. The horizontal reservation is a smaller compartment within the bigger compartment of vertical reservation. It has, therefore, been decided that in case no candidate is found suitable for appointment even on -re-advertisement, the vacancies reserved for ESM of a particular category will be filled up from amongst the same category candidates. For example, if suitable candidate belonging to Scheduled Caste of ESM category is not available, then the post can be filled up from amongst the candidates of Scheduled Caste. The same position shall be followed in other categories.”

The above instructions had clarified by giving an example that if,

suitable candidate of Scheduled Caste ESM category is not found, then the post could be filled up from amongst the candidates of Scheduled Caste. The same position was to be followed in other categories.

After hearing learned counsel for the parties, this Court is of the view that the ratio of the judgment passed in **Garima Jindal's** case (supra), which has been followed by this Court in **Anil Kumar's** case (supra) (Annexure P-12), is directly applicable to the facts of the present case.

Resultantly, in view of the clarification dated 02.07.2010 (Annexure P-7) and the law laid down in the aforesaid judgments, all these writ petitions are allowed and a direction is given to the respondents to fill up the vacant posts reserved for Ex-servicemen (ESM) of a particular category from the waiting list of same category candidates. The respondents are further directed to consider the claim of the petitioners for respective posts with effect from the date their other batchmates were appointed. However, it is made clear that if, the petitioners' case is accepted, they will not be entitled to any remuneration from that date when their batchmates were appointed. The remuneration will be made from the date when they are offered employment. Such deemed date shall be reckoned for all service benefits such as seniority etc. Needful be done within two months from the date of receipt of certified copy of this order.

18.05.2016
ajp

(RITU BAHRI)
JUDGE