

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

**CWP No.2830 of 2011 (O&M)
Decided on :20.01.2016**

Renu Kanwar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Manish Dadwal, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia , J. (Oral)

CM-13429-CWP-2015

Application to list the present petition for an actual date
is allowed.

On consent of the counsels, the petition, which is
already on Regular Board at Sr. No.1396 is taken up for hearing
today itself.

Main Case

The petitioner seeks the quashing of the action of the
respondent, whereby she has been put in the General Category,
despite her application for consideration in the Ex-servicemen
Category for consideration and appointment to the post of an
English Lecturer as per the advertisement dated 23.09.2009
(Annexure P-10). The petitioner, accordingly, seeks a writ of
mandamus that her case should be considered in the said

category, since she is having 54.6576 marks and the last candidate in the said category is having 54.64 marks, therefore, she is entitled for the appointment.

The last date of submission of application in pursuance of the said advertisement was 09.10.2009 and as per Clause-7 which pertained to the Ex-servicemen Category, the reservation was available only for the residents of Punjab. The relevant Clause reads as under:-

“The reservation under the category of Ex-servicemen is available only for the residents of Punjab. If the Ex-servicemen is not the candidate himself, only then this reservation is applicable for the dependents. Such Ex-servicemen/dependents, at the time of counselling will produce the original certificate issued by the competent officer appointed by the Government, issued before the last date of application given in the advertisement.”

In pursuance of the said advertisement, the petitioner applied in the said category on the strength of her certificate dated 15.05.2003 (Annexure P-4). The said certificate was issued by the Sainik Welfare, District Una (H.P). The relevant part of the certificate reads as under:-

“CERTIFICATE OF EX. SERVICEMAN

It is certified that JC-186850-A Rank- Sub. Major Dev Raj is a resident of Village Daulatpur Chowk Post Office Daulatpur Chowk, Tehsil AMB, District Una (H.P.), who is a father of Renu Kanwar. His date of recruitment in the Army of Regiment/Kor IS 25.04.1968 and date of retirement is 31.12.1999.”

It is, thus, apparent that the petitioner is not a resident of State of Punjab and, therefore, cannot turn around and contend that she is eligible for consideration in the said category as per the terms of the advertisement.

In the additional affidavit filed dated 15.05.2013, a specific plea has been taken by the State of Punjab that the reservation was meant only for the category of Ex-servicemen for the residents of the State of Punjab. Reference is also made to the subsequent certificate dated 14.07.2010 (Annexure P-5), which is also to the same effect. Accordingly, the State has contended that as per the terms of the advertisement itself, the petitioner was not entitled for consideration in the said category. She had been duly considered in the general category, but had not made the cut, as the last candidate had 61.4 merit.

Counsel for the petitioner has vehemently relied upon the Full Bench Judgment of this Court passed in '**Abhishek Rishi Vs. State of Punjab and others' 2013 (2) PLR 409** to contend that there could not be 100% reservation in favour of the residents of the State of Punjab and the action of the State is not justified.

The argument cannot be accepted. Firstly, Clause-7 is not the subject matter of challenge before this Court and, therefore, the State cannot as such be taken by surprise without raising a challenge. Secondly, it is settled principle that a person

who applies in terms of the conditions specified and submits himself to the process of selection cannot at a subsequent stage challenge the same terms of the selection which have been prescribed, after being unsuccessful in the race. Reliance can be placed upon the judgment of the Apex Court in '**Madan Lal Vs. State of Jammu & Kashmir**' 1995 (3) SCC 486 and '**Om Parkash Shukla Vs. Akhilesh Kumar Shukla & others**' 1986 **Supplementary SCC 285.**

Accordingly, keeping in view the above facts the argument raised that the petitioner is higher in merit in the ex-servicemen category and, therefore, has been wrongly ignored cannot be accepted.

Accordingly, there is no merit in the present writ petition and the same is dismissed.

JANUARY 20, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE