

**CWP No. 18044 of 2014 and
CWP No. 25564 of 2014**

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 18044 of 2014
Date of decision : May 19, 2016

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Sunil Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CWP No. 25564 of 2014

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Rambir Singh and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Arvind Singh, Advocate for the petitioners
in CWP No. 18044 of 2014.

Mr. Vijay Pal, Advocate for the petitioners
in CWP No. 25564 of 2014

Mr. Ravi Partap Singh, AAG, Haryana.

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- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the digest?*

RITU BAHRI, J

By way of this common judgment, two petitions bearing CWP Nos., 18044 and 25564 of 2014 shall be decided as an identical issue is involved in both the petitions.

However, for the sake of convenience, facts have been extracted from CWP No. 18044 of 2014.

The petitioners are seeking quashing of the order dated 11.7.2014 (Annexure P-8), whereby respondent no. 2 rejected the claim of the petitioners seeking appointment as conductors.

The dispute in the present case is identical with a case bearing '**CWP No. 13384 of 2011' (Garima Jindal Vs. HVPNL and another)** decided on **6.8.2012**, where the controversy was the same. The decision of the said petition was challenged by the respondent by way of filing **LPA No. 1775 of 2012 (HVPNL Vs. Garima Jindal and another)** which was dismissed vide order dated 9.11.2012. Thereafter against the judgment passed in LPA, the respondent filed SLP before Hon'ble the Apex Court which was also dismissed.

The Haryana Staff Selection Commission advertised 3837 posts of conductors. In pursuance of the said advertisement all the petitioners applied for the said posts and they were selected in the waiting list. As per the information received by the petitioners under RTI Act from the respective quarters, although when the result was declared 1094 candidates of General category were recommended and 109 candidates were shown in the waiting list. Out of these only 1032 candidates appeared for counselling and 62 candidates did not

chose to appear for counseling and resultantly 62 posts remained vacant. Even out of 1032, 5 candidates again did not turn up for duty and in this manner out of 1094 posts meant for general category, 67 candidates did not join their duties. Petitioners served final demand notice and requested that all post of conductors which remained vacant due to non-joining of the candidates and posts remained vacant due to non-availability of 174 candidates of Ex-servicemen general category be filled up from the petitioners who are in the waiting list. The petitioners filed CWP No.1049 of 2013 to consider the claim for appointment being in the waiting list of General Category against the posts which remained vacant due to non-joining of the candidates and the posts which remained vacant due to non-availability of the candidates from Ex.-Servicemen of General Category. The said writ petition was disposed of by this Court vide judgment dated 20.2.2013 (Annexure P-7) with a direction to respondent no.2 i.e Director General, Transport Department, State of Haryana to consider the claim of the petitioners and to take final decision on the legal notice dated 23.12.2012 served by the petitioners strictly in accordance with law.

In compliance of the directions of this Court dated 20.2.2013 (Annexure P-7), the claim of the petitioners was considered by the Director General State Transport Haryana, Chandigarh. In his order, reference was made to the letter of the Government dated 4.4.2014 in another case for the post of Drivers, whereby, it was advised that the General Administration Department

has decided in principle to amend the Instructions dated 2.7.2010 to the extent that in case no suitable candidate is found for appointment against the vacancies reserved for ESM (SC/BC/General) there is no need to re advertise the vacancy and the same will be filled up from the main category i.e SC, BC or General Category respectively. In that case, after the decision of Hon'ble the Apex Court in **Garima Jindal's case (supra)**, the Chief Secretary vide letter dated 8.5.2014 extended the validity of the selection list of Haryana Staff Selection Commission issued vide letter dated 13.1.2012 for one month for giving the appointment to the candidates of waiting list against the post of Driver in the Transport Department. After receipt of the advice of the Chief Secretary, Haryana, directions were given to give appointment on the 48 vacant posts of Drivers from the waiting list of General category against the vacant posts meant for ex-servicemen, general category strictly in accordance with the merit prepared by Haryana Staff Selection Commission. As regards the claim of the petitioners to the post of Conductors in the present case, there were 109 candidates in the waiting list of General Category. The Haryana Staff Selection Commission recommended 93 candidates of ESM, General Category against the total posts of 267 meant for ESM General Category. As per the information received from the fields offices, 644 Conductors are in excess than the required strength as per the norms. While rejecting the case of the petitioner vide order dated 11.7.2014 (Annexure P-8), it was observed that recruiting more Conductors will not be in public interest as it will increase

avoidable burden on the Public Exchequer and the employees would be without any work. In view of the aforesaid reasons, it was ordered not to offer appointment to other persons in the waiting lists of General/ESM, BCA/ESM and BCB/ESM categories as well.

In the written statement, the respondents have referred to an opinion given by the Chief Secretary Haryana vide letter dated 23.6.2015 (Annexure R-1) in an identical matter. As per the opinion given, a waiting list cannot be used as a source of recruitment and that it cannot be used for a vacancy unless it is advertised and a selection held for it. In the present case, the selection list was issued on 16.1.2014 along with the waiting list depicting the name of certain candidates. One year validity period of main list as well as waiting list has been prescribed in the aforesaid Govt. Instructions for the operation of main list as well as waiting list and aforesaid instructions do not have any provision of relaxation for extension of period etc. It is therefore in view of above and the proposition of law laid by Hon'ble the Supreme Court as stated above the relaxation/permission in Instructions cannot be granted to appoint the number of 15 drivers from waiting list.

In the present case, the Instructions dated 23.6.2015 (Annexure R-1) would not be relevant for the simple reason that as per the judgment passed in Garima Jindal's case (Supra) which has been upheld and implemented by the Department, the benefit of appointment has been given to all candidates of waiting list on the seats which fell vacant on account of non-availability of candidates

belonging to the ESM Category (General, SC/BCA). The Chief Secretary has taken a conscious decision to extend the validity of selection list of Haryana Staff Selection Commission issued on 13.1.2012 for one month to give appointment to the candidates of the waiting list. Once the decision had been taken to extend the validity of the list, the Chief Secretary cannot take a stand as per Annexure R-1 that the validity of the selection list was to expire on 16.1.2015 and thereafter no relaxation can be given for appointment to the Drivers on the waiting list. Once the Chief Secretary has extended the validity of waiting list on 8.5.2014, the candidates who were on the waiting list had a right to be considered for appointment as per their merit and if appointment has not been given then they have a right to be appointed as per the waiting list. In the present case, the petitioners are in the waiting list of General Category for the post of Conductors. Their names have been rejected on the ground that 644 posts of conductors in excess than the required strength as per the norms. Out of these 644 Conductors who have been appointed they will have to make way for the present petitioners against the candidates whose appointment is on contract basis. The petitioners will be adjusted on the vacant posts which were not filled up from the Ex-servicemen candidates in view of the judgment passed in ***Garima Jindal's case (supra)***.

The writ petition is allowed. Order dated 11.7.2014 (Annexure P-8) is set aside and a direction is given to the respondent no.2 to appoint the petitioners as Conductors as per their merit in

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the waiting list after replacing the conductors who were appointed on
contract basis on the principle of '*last come first go*'.

May 19, 2016 (**RITU BAHRI**)
ritu **JUDGE**