

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

***CWP No.7938 of 2012 (O&M)
Date of decision : 28.09.2016***

Pawan Kumar

... Petitioner

Vs.

State of Haryana & others

... Respondents

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

Present: Mr. Sandeep Kumar, Advocate for
Mr. Vikram Dhakla, Advocate for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

Mr. Kanwal Goyal, Advocate for respondent No.3-HPSC.

...

TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against Memo dated 30.03.2012 (Annexure P-4) issued by the respondent/Haryana Public Service Commission (hereinafter to be referred to as 'the Commission') and in terms of which the candidature of the petitioner for the post of Lecturer in school cadre under the Ex-servicemen category has been rejected.

Facts of the case are in a very narrow compass. The Commission issued an advertisement dated 01.06.2009 (Annexure P-1) inviting applications for recruitment of 1317 posts of Lecturers, School Cadre (HES-II), Group 'B' in the subject of English. There was a reservation to the extent of 10 posts in favour of Ex-servicemen (male) category. The last date for submission of application forms complete in all respects was 31.05.2010.

Petitioner who otherwise possessed the requisite qualifications is stated to have applied for the post in question in the reserved category of **ESM (male)**. Pleadings on record would indicate that the petitioner was

serving in the Indian Navy. It is the case of the petitioner himself that he was to retire on 31.08.2010 upon attaining the age of superannuation.

Learned counsel appearing for the petitioner would vehemently contend that rejection of the candidature of the petitioner at the hands of the Commission cannot sustain as the same is in violation of the provisions of Ex-servicemen (Re-employment in Central Civil Service and Posts) Amendment Rules, 1986 (hereinafter to be referred to as 'the 1986 Rules') issued vide Notification dated 27.10.1986 at Annexure P-6. Specific reliance is placed upon the explanation contained in Rule 2 of such Rules and as per which persons serving in the Armed Forces of the Union and who on retirement from service would come under the category of 'Ex-servicemen' may be permitted to apply for re-employment one year before the completion of the specified terms of engagement. Reliance is also placed upon a Government of India Communication dated 03.04.1991 at Annexure P-7 which is on a similar footing. It is argued that against the factual backdrop of the date of the retirement of the petitioner being 31.08.2010, the explanation to Rule 2 of the 1986 Rules would come to the rescue of the petitioner as it is within one year prior to completion of his engagement with the Indian Navy that he had submitted his application to the Commission for the post of Lecturer, School Cadre. It is argued that the impugned order of rejection of candidature of the petitioner is contrary to the benefit and concession envisaged under the 1986 Rules.

Per contra, learned counsel appearing for the Commission would justify the rejection of the candidature of the petitioner by stating that the impugned order has been passed strictly in terms of the conditions stipulated in the advertisement dated 01.06.2009 at Annexure P-1. It is

submitted that eligibility of a candidate had to be reckoned in relation to the last date for submission of application forms and which concededly, was 31.05.2010 and on such crucial date, the petitioner was still serving in the Indian Navy, his date of retirement being 31.08.2010. As such, he could not be considered as an Ex-serviceman on such date. Counsel appearing for the petitioner further apprised the Court that the selection process in pursuance to the advertisement at Annexure P-1 having been finalized, recommendations were furnished to the appropriate State Government Department on 12.06.2012 itself.

Mr. Ravi Pratap Singh, learned Assistant Advocate General, Haryana states that the recommendations were accepted and appointment letters were issued soon thereafter. Court has further been informed that all the 10 posts of Lecturer (English), School Cadre reserved for ESM (male) category have since been filled up.

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

To examine the validity of the impugned order dated 30.03.2012 at Annexure P-4 rejecting the candidature of the petitioner, it would be imperative to refer to advertisement dated 01.06.2009 issued by the Commission and in response to which the petitioner had submitted his application form. Even though, a complete copy of the advertisement has not been placed on record, Mr. Kanwal Goyal, Advocate appearing for the Commission has produced in Court today a complete Xerox copy of the advertisement for perusal of this Court and a copy thereof has also been supplied to the counsel for the petitioner. The clause contained in the advertisement which would have a direct bearing on the controversy raised

in the instant petition reads as follows:

“ESM/DESM candidates of Haryana claiming benefit will have to attach with their application fresh Eligibility Certificate from the concerned Zila Sainik Board. Mere dependent certificate will not be entertained. ESM candidates should attach attested photo copy of identity Card issued by the concerned Zila Sainik Board.”

Perusal of the afore-reproduced clause would make it apparent that each of the candidate desirous for applying for the post and to avail of reservation provided for ESM category was obligated to attach along with the application form an attested photocopy of the identity card issued by the concerned Zila Sainik Board. The last date for submission of application forms was 31.05.2010. During the course of arguments, it has gone uncontroverted that the Zila Sainik Board concerned would issue an identity card only to an Ex-serviceman upon discharge from service but the petitioner at the stage of submission of his application form had not attached a photocopy of such identity card and to be issued by the Zila Sainik Board for the simple reason that by the last date for submission of application form, he was still in service and was due to retire on three months hence i.e. on 31.08.2010. Such factual aspect has not been rebutted by counsel appearing for the petitioner.

It is by now well settled that the candidature of an applicant for a particular post would have to be regulated and bound by the conditions contained in the advertisement itself. Eligibility also has to be reckoned as per the last date for submission of application forms stipulated in the advertisement. The petitioner having not attached the identity card issued from the concerned Zila Sainik Board along with his application form has clearly not complied with the relevant conditions contained in the

advertisement and which would govern the candidature of an Ex-serviceman category candidate. Under such circumstances, the Commission was well within its rights in having rejected the candidature of the petitioner.

Insofar as the 1986 Rules issued vide Notification dated 27.10.1986 (Annexure P-6) and Government of India letter dated 03.04.1991 (Annexure P-7) are concerned, the same do vest certain rights with the officials/personnel of the Armed Forces of the Union and who would ultimately come under the category of ESM and who may be permitted to apply for re-employment one year prior to the completion of their engagement, yet such rules at Annexure P-6 as also Government of India letter at Annexure P-7 cannot be brought into play so as to hold the action of rejection of the candidature by the Commission to be bad. This view is being taken for the reason that the petitioner had applied for the post in question in response to an advertisement dated 01.06.2009 at Annexure P-1. It would be assumed that the petitioner had read each and every condition contained in the advertisement and had understood the same. One of the requirements under the advertisement was for the petitioner to have attached an identity card issued by the concerned Zila Sainik Board along with application form. The petitioner at the stage of issuance of advertisement itself and prior to submitting the application form was well aware that the Commission was insisting upon an identity card which could at best be issued to a defence personnel who has already been discharged from service. Under such circumstances, if any rights were to flow in favour of the petitioner under the 1986 Rules at Annexure P-6 as also Government of India letter dated 03.04.1991 at Annexure P-7, it was incumbent upon the

petitioner then to have agitated the issue at the very threshold. Petitioner chose not to do so. Rather he had applied in response to the advertisement dated 01.06.2009 at Annexure P-1 unconditionally. In such a situation, he would be bound by the conditions of the advertisement itself. The petitioner having applied in response to an advertisement issued by the Commission and having taken his chance cannot be permitted to turn around to challenge an order of rejection of his candidature and which is as per terms and conditions of the advertisement.

There is yet another aspect that has weighed with this Court to decline relief to the petitioner. The entire selection process that was initiated in the light of advertisement dated 01.06.2009 at Annexure P-1 culminated in the year 2012 itself and upon the Commission having forwarded its recommendations to the appropriate State Government on 12.06.2012. Such recommendations have since been acted upon and even appointment letters have been issued. All the 10 posts of Lecturer, School Cadre (English) against the reserved ESM (male) category have since been filled up. None of the selected and appointed candidates had been arrayed as a party respondent in the instant writ petition. The instant writ petition is even bad for non-joinder of necessary and appropriate parties.

For the reasons recorded above, the petition is found to be bereft of merit and is dismissed.

28.09.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

i) Whether speaking/reasoned? Yes

ii) Whether reportable? Yes