

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

CWP No.28663 of 2013 (O&M)

Date of decision: 13.01.2016

Phool Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ivneet Singh Pabla, Advocate,
for the petitioner.

Mr. Samarvir Singh, DAG, Haryana,
for respondent No.1.

Mr. P.S. Poonia, Advocate,
for respondent Nos.2 and 3.

RITU BAHRI, J.

Petitioner is seeking a writ of mandamus directing the respondents to consider him for the post of Assistant Lineman (ALM) under BC-A category in view of order dated 03.12.2008 (Annexure P-2) passed by this Court.

Respondent-Electricity Board vide advertisement No.CRA 143 (Annexure P-1) invited applications for the post of Assistant Lineman and Shift Attendant from eligible persons. The petitioner being eligible was called for interview for the post of Assistant Lineman and allotted Roll No.279. The result was announced by the respondent-Board on **22.09.1997**. The said result was challenged before this Court by way of CWP No.15558 of 1997, titled as 'Devi Chand and others Vs. Haryana State Electricity Board', CWP No.16278 of 1997, titled as 'Sumer Chand and others Vs. Haryana State Electricity Board' and CWP No.17812 of 1997, titled as

'Scheduled Caste/Scheduled Tribe and Backward Classes Employee Association Vs. Haryana State Electricity Board and others, on the ground that merit list of the general category and reserved category was required to be reframed as candidates of reserve category, who were higher in merit, should have been adjusted against the post meant for general category. These petitions were disposed of on 03.12.2008 (Annexure P-2) with the following observations:-

“In the circumstances, I direct the respondent-Board to consider for appointments at least 336 reserved category candidates for the posts of Assistant Lineman and 75 reserved category candidates for the posts of Shift Attendants from amongst the candidates of reserved category who may have been ousted as a result of wrongly appointed in reserve category, even those reserved category candidates who were entitled for appointment on the basis of their merit even in the general category, and offer appointments to reserved candidates, as per the merit list prepared at that time, out of the posts, which are admittedly lying vacant even today. 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 compliance with the order dated 03.12.2008 (Annexure P-2), respondent-Electricity Board again called the candidates belonging to reserve category to fill 336 posts of Assistant Lineman and 75 posts of Shift Attendants under the reserve category against vacant posts after exercising and deleting the names of the candidates who were entitled for appointment on the basis of their merit even in the general category. Name of the petitioner did not figure in the fresh list of reserve category candidates.

Thereafter, the petitioner got an information under the Right to Information

Act, 2005 (Annexure P-3) to the effect that still some posts were lying vacant under BC-A reserve category in some of the circles, as after fresh appointments of reserve category candidates in compliance of the order dated 03.12.2008 (Annexure P-2), some of the candidates did not join for the post of Assistant Lineman in different circles in the State of Haryana. Hence, the petitioner claims that he was entitled to be appointed for the post of Assistant Lineman under BC-A category, which is still lying vacant.

On notice, written statement on behalf of respondent No. 3 has been filed, wherein it has been stated that pursuant to the decision given by this Court on 03.12.2008 (Annexure P-2), respondent-Board had offered 75 appointments for the post of Shift Attendants in HVPNL and 336 appointments for the post of Assistant Lineman in UHBVNL & DHBVNL to the candidates belonging to reserved category. Cut off marks upto the post of Shift Attendants and Assistant Lineman have been described as under:-

	SC-A	SC-B	BC-A	BC-B
SA	85	85	87	84
ALM	64	69	70	68

It was further stated that the petitioner had obtained 70 marks under the BC-A category, but he was not offered appointment as his date of birth was 02.01.1969. There were three candidates having obtained 70 marks, who were senior to him in age, therefore, they have been offered appointment. The said offer has been made as per instructions dated 05.04.1971 (Annexure R-3/1), whereby seniority has to be fixed on the basis of age. As per this policy, where marks/merits of two candidates are same, their seniority is to be fixed as per date of birth. However, it has been clarified that the recruitment process pursuant to Advt. No.CRA-133 and Advt. No.CRA-143 was completed in the year 1997. Thereafter, pursuant to

the judgment dated 03.12.2008 (Annexure P-2), a final merit list of 336 Assistant Linemen and 75 Shift Attendants of reserved category was prepared. The merit list was displaced on respondent-Nigam's website and was also published in various newspapers vide publication dated 29.05.2009. Thereafter, offer of appointment was given. However, no waiting list was prepared as validity of the same would have been over by 1998.

This question came up for consideration before a Co-ordinate Bench of this Court in CWP No.14137 of 2010, titled as Hoshier Singh Vs. Haryana Vidhut Parsaran Nigam Ltd., decided on 23.08.2011, wherein reference has been made to a judgment passed by the Hon'ble Supreme Court in S.S. Balu and another Vs. State of Kerala and others, 2009 (2) SCC 479.

In this case a selection process had been initiated pursuant to an advertisement, but appointments were not made on the ground that no vacancy was available. Some successful candidates filed writ petition, which was allowed by a Single Bench holding that rank list was prepared on the basis of vacancies which were already in existence, therefore, the same should be filled up by appointing the petitioners. State filed an appeal before the Division Bench, which was dismissed. S.S. Balu and another who were appellants before the Hon'ble Supreme Court got themselves impleaded in the writ appeal. The Division Bench, on the basis of concession extended by State, granted limited relief for 18 candidates, who had filed the original writ petition to give appointment out of the earlier rank list, but no direction was given regarding appointment to the appellants-S.S. Balu and another. They challenged the said order of the Division Bench before the Hon'ble Supreme Court on the ground that they and other appellants were senior in rank list to some of the 18 candidates, who had filed writ petition and were granted

appointment. However, their appeal was dismissed on the ground that they were not party to the writ petition, which had been disposed of by the Single Judge. Since Hoshiar Singh (petitioner in CWP No.14137 of 2010) was not even party to the writ petition (Annexure P-2), therefore, he had no right to claim appointment to the post of Shift Attendant (SA) on account of non joining of some candidates, who had been appointed pursuant to order dated 03.12.2008 (Annexure P-2) passed by this Court.

The decision given in Hoshiar Singh's case (supra) is fully applicable to the facts of the present case. In the absence of any waiting list and the petitioner being not a party to the writ petitions i.e. CWP No.15558 of 1997, CWP No.16278 of 1997 and CWP No.17812 of 1997, is not entitled to any relief as prayed for.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

13.01.2016
ajp