

Mr. Jitender Pal Singh, Advocate
Ms. Neeru Thakur, Advocate and
Mr. Bharat Bhushan, Advocate
for the petitioner(s). (CWP-568-2014)

Ms. Alka Chatrath, Advocate
for the petitioner(s). (CWP-21387-2013)

Ms. Shruti Jain Goyal, AAG, Haryana and
Mr. Ravi Partap Singh, AAG, Haryana.

Mr. R.K. Malik, Senior Advocate
with Mr. Bhupinder, Advocate
for respondents Nos. 5 to 7, 9, 13, 15 in CWP No. 21387-
2013.

Mr. Vikas Lochab, Advocate
for respondent No. 14 in CWP-21387-2013.

Mr. Rajbir Sehrawat, Advocate
for respondents No. 12, 14, 19, 22, 23 to 28, 30 in CWP-
19036-2013.

Mr. Ravinder Malik, Advocate
for respondent No. 12 in CWP-21387-2013

AJAY TEWARI, J.

By these petitions the petitioners have challenged the appointments of the private respondents and have claimed appointments against the private respondents.

Petitioners are Ex-servicemen who applied for the posts of JBT teachers against the advertisement of year 2006. They claimed that the qualification which they had obtained during their service were equivalent to the qualifications mentioned in the advertisement. The respondent-State however rejected their candidature. They challenged the rejection of their candidature on this ground by way of filing of different civil writ petitions.

During the pendency of those civil writ petitions the respondents went ahead and appointed persons who were dependents of Ex-servicemen. Obviously, in law all such appointments were to the subject to the civil writ petitions even if no specific order was passed by the Writ Court. It is not disputed that even after this exercise 11 posts remained vacant.

Those writ petitions were decided and Writ Court held that qualification obtained by the petitioners during their services in the Armed Forces was equivalent to the qualification prescribed under the advertisement. A different Bench however took a different view and dismissed those civil writ petitions and LPAs were filed by the State and also by those Ex-servicemen whose petitions had been dismissed, the leading case of which was LPA No.1647-2010. At this stage, it would be fruitful to quote Para Nos.11 and 12 of the decision in LAP No. 1647-2010 and other connected LPA's:-

11. As a result, all the appeals filed by the State of Haryana against the impugned judgment fails and are hereby dismissed. As a consequence, those respondents, who were given the appointments, their appointments cannot be terminated on this ground and they would be allowed to continue to work. Further, those who are awaiting appointment letters shall be issued appointment letters within a period of one month from today. It is made clear that those who have not been given appointments pursuant to the selection made in the year 2006, their seniority shall be reckoned from the date others were given appointments and that period shall be counted for all other purposes except that they will not be given any salary/wages for that period.

12. However, the Letters Patent Appeals No. 548 of 2011, 1322 of 2011 and 1351 of 2011 preferred by those candidates, whose writ

petitions were dismissed by the learned Single Judge vide impugned orders dated 25.05.2009, 18.11.2010 and 20.10.2009, stand allowed and these three appellants shall also be entitled to appointment letters as we have been informed that large number of posts reserved for Ex-Servicemen still exists.

In some cases where the petitions had been allowed no appeal was filed and those judgments became final. The decision in the LPAs also became final. On that happening the first thing which was incumbent upon the State was to fill up the 11 vacant posts as per the merit list from amongst the candidates who were otherwise wrongly declared ineligible. The second necessary step which the State had to take to accommodate all the other Ex-servicemen who had been illegally held to be ineligible was to terminate the services of such number of dependents of Ex-servicemen who had been appointed on the wrong premise that Ex-servicemen were not eligible in view of the law laid down by the Supreme Court in the matter of **Dilwan Singh vs. State of Haryana 1996(2)SCT 637.** Neither of these actions were done which resulted in this second round of litigation in which they have claimed appointment against those posts. On 08.09.2015, the following order was passed:-

"The Haryana Staff Selection Commission through advertisement dated 20.07.2006 invited applications for filling up the posts of JBT teachers, out of which, 89 posts were to be filled up from Ex-servicemen (General Category).

Before proceeding further in the matter, the State is directed to file an affidavit showing therein the number of vacancies that remain unfilled in the Ex-servicemen (General Category) in the selection conducted in pursuance to the

above referred advertisement along with the merit list of the Ex-servicemen candidates who were eligible but not appointed.

Adjourned to 28.09.2015.

A photocopy of this order be placed on the files of other connected cases."

In response thereto affidavit dated 28.09.2015 was filed in which it was admitted that 11 posts remained vacant. However for some inexplicable and mysterious reasons appointments were issued only to 7 Ex-servicemen and the remaining were kept in a waiting list. Why ? No body knows.

Mr. Rajbir Sehrawat, Advocate for the private respondents has argued that the dependents of Ex-servicemen cannot be held to have been wrongly considered for the job because as per the advertisement and the instructions on which it was based it was specified that dependents of Ex-servicemen 'would be considered on merit for the post reserved for ESM to the extent of non-availability of suitable ESM candidates'. He asserts that this means that even if an eligible ESM candidate is available and is considered to be not suitable for the post, dependents of Ex-servicemen can be considered. It is his argument that the judgment of the Supreme Court in Dilwan Singh's case the word 'suitable' was not brought to the notice of the Hon'ble Judges and consequently that judgment would be per incuriam. In my opinion, this argument is neither here nor there. In Dilwan Singh's case the Supreme Court first noticed that the object of reservation for Ex-servicemen is to rehabilitate them after their discharge from the defence services and then went on to hold as follows:-

"....The object thereby would be that the Selection Board should first consider the claim of the ex-servicemen and have their eligibility considered independently in the first instance before the claims of the dependent children of the ex-servicemen are considered. If they are found eligible and selected, for the balance unfilled posts, the selection should be done from among the dependent children of the ex-servicemen."

It has also been argued that those dependents of Ex-servicemen who had been wrongly appointed were not party in the earlier petitions. This is not a complete argument. Admittedly these candidates are party before me and it is only in this petition that their appointments have been challenged. The fact that they were not a party in the earlier petitions will not render this petition not maintainable.

Learned Senior Counsel appearing on behalf of the some of the dependents of Ex-servicemen who were wrongly appointed has urged that in this appointment no malfeasance can be attached to them. They have now been working for almost 10 years and some of them have become overage for being considered for Government employment. It is their prayer that even if all the Ex-servicemen candidates are accommodated, the State should be directed to first try and accommodate these DESM candidates against existing vacancies instead of resorting to the expedient of terminating their services. In this regard the fact remains that even if no malfeasance is attached to the private respondents, yet it cannot also be denied that their appointments were clearly illegal on the ground that their cases could not have been considered till the cases of the Ex-servicemen were considered. Once they were illegally considered the Court cannot

CWP-13755-2013

direct the State to accommodate them. However, in case the State feels that they can be accommodated in accordance with law, this judgment could not be taken to be a bar for that exercise.

With these observations the present petitions are allowed and the respondents are directed to consider the claim of the petitioners after considering them to be eligible for the same. It is made clear that in the event of appointment the petitioners would be entitled to all consequential benefits from the date when the posts were first filled up except salary for the period they had not worked. The necessary exercise of considering the claim of the petitioners and to appoint those candidates who are found suitable be conducted within 03 months from the date of receipt of a certified copy of this order.

(**AJAY TEWARI**)
JUDGE

25.05.2017
anuradha

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No