

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CWP-20058-2012
Decided on 13.01.2017

VARUN KOSLIA

....PETITIONER

VS

STATE OF HARYANA & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. S.N.Yadav, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

AJAY TEWARI, J.(Oral)

By this writ petition the petitioner has challenged various actions of the respondents.

The brief facts of the case are that in the year 2008 the Haryana Government advertised 5456 number of posts of Constable. These posts were divided District-wise and 682 posts were apportioned to Jhajjar District and the petitioner had applied from the same District. The advertisement further mentioned the break up of the posts which is quoted here in below:

					Ex-Servicemen			
Total	GC	SC	BC-A	BC-B	SC	BC-A	BC-B	GC
682	308	122	95	54	14	14	21	54

The petitioner belonged to the BC-B category and his father was an Ex-serviceman. As per the advertisement the application had to

be made in prescribed format and that format is annexed as **Annexure**

P-5. In that format also the break up was given as shown above. Suffice it to say that there was no column mentioned for dependents of Ex-serviceman (DESM). The petitioner did not know that there was any category of dependent of Ex-serviceman so he did not apply for the same. It is the conceded position that some other candidates similarly also had not applied in the DESM category but as per the State they had annexed their certificates of being dependent of Ex-servicemen and/or had mentioned against their father's names that those persons were Ex-servicemen. Later where the petitioner came to know that similarly situated candidates had been considered because they had appended their certificates or had mentioned their father's rank, the petitioner also placed on record certificate showing that he was the dependent of an Ex-serviceman.

Learned AAG has argued that the said certificates could not be considered because it had been issued in the year 2011 which is much after the last date of filing of application i.e. 26.09.2008.

The argument of learned counsel for the petitioner is that in the absence of any information that DESM could be considered in the category of SM the omission of the petitioner to apply in that category cannot be fatal to him. Moreover, as per the petitioner others who applied only in BC-B category could not have been considered in the category of Ex-serviceman only because they had annexed certificates showing them the dependent of Ex-serviceman or

had mentioned their father's rank against father's name. Developing this argument learned counsel for the petitioner has argued that had there been any category of DSM and the petitioner had not applied he could have been rightly ousted but in the absence thereof his case should have been considered since at that time and rather even till today some of the those posts of Jhajjar have not been filled up.

Learned AAG has sought to defend the exclusion of the petitioner by arguing that it is well known principle that in case adequate number of Ex-serviceman candidates do not come forward then dependent of Ex-serviceman are to be considered. However she has not denied that there was no such information in the form the question therefore is whether the petitioner can be ousted on the ground that he should have known that in the event of insufficient number of Ex-serviceman candidates their dependents would be considered, on the analogy that everybody is supposed to know the law. In my considered opinion, information regarding the working of the concept of horizontal reservation and vertical reservation cannot be reasonably accepted to be known by everybody. It is not disputed that other agencies of State of Haryana do have a specific box of dependents of Ex-serviceman in their forms as seen in Annexure P-4 which is a form issued by HSSC, Panchkula. In my opinion, argument of learned counsel for the petitioner has to prevail. If the argument of the State that everybody is supposed to know the law is accepted then there would be no requirement of even mentioning 'reservation' or number of posts of every category.

This very fact that the State has specified in such great detail the number of posts in each category shows that it wishes to inform the public about the exact position so that every applicant can weigh his chances and opt for the reservation category he may want. Consequently, I reject the argument of learned AAG that the petitioner should have known that in the absence of adequate number of Ex-serviceman their dependents would have been considered.

The second argument of learned AAG is that even after the petitioner came to know about all these facts he never moved an application himself and it was only his father who moved the application and consequently, the application moved by the father of the petitioner could not have been considered. No doubt looking at it from a pedantic point of view this argument is weighty but it has to be considered against the facts of the present case. If an application is moved by the father in favour of his son there is no bar in itself for its consideration. If at all the respondents desired they could have called upon the petitioner to ratify the same, moreso since at that time large number of posts of ESM category were vacant and the petitioner had qualified the requirement of the selection and had only to be considered in that category. Learned AAG points out that though those posts may have been vacant at that time yet she is not in a position to confirm or deny whether any vacancy out of those vacancies is still unfilled in the category of ESM.

In this view of matter, I deem it appropriate to allow the

petition and direct the respondents to consider the claim of the petitioner as dependent of Ex-serviceman against any post which may still be vacant since that time in the category of Ex-serviceman. Necessary action be completed within two months from the date of receipt of a certified copy of this order.

13.01.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No