

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

CWP No.23645 of 2013

Date of Decision:19.01.2017

Mukesh Rani

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. R.K. Malik, Sr. Advocate with
Ms. Rimple Kadyan, Advocate for the petitioner.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

P.B. BAJANTHRI J.

The petitioner has questioned the rejection of her claim for selection and appointment to the post of Warder against one of the post reserved for SC category.

The respondents have advertised for the post of Warder for about 1091 posts in which 13 posts have been reserved for female SC. The petitioner's claim was not considered on the score that she did not fulfill the qualification of five years experience in the State Police Force which is one of the qualification prescribed for the post of Warder on the score that the petitioner remained absented for 253 days and it was leave without pay during the period from 5.9.1995 to 8.8.2001.

The advertisement was notified in the year 2012. The petitioner fulfills the prescribed qualification for the post of Warder. The respondents while considering the petitioner's candidature have taken note of the fact that the petitioner remained absented for 253 days which period is treated as leave without pay. Thus she did not fulfill the prescribed qualification of five years experience. Rules of recruitment does not explain five years of

experience is required to be taken into consideration in what manner. In other words, whether absent period is required to be excluded for the purpose of experience or not? When the rules of recruitment in prescribing the experience qualification is silent, the respondents cannot interpret experience qualification that absent period is required to be excluded for the purpose of experience. Therefore, selecting authority/appointing authority have erred in not selecting the petitioner on the sole ground that she did not fulfill the experience qualification.

Learned counsel for the petitioner pointed out that 13 vacancies have been notified for SC female and only five vacancies have been filled up and the remaining vacancies are available to accommodate petitioner. Learned counsel for the petitioner relied upon the division bench decision of this Court passed in **Risal Khan v. State of Haryana and another**; 1995 (4) RSJ 54 in which this Court has held that the period of total service including leave period has to be computed. Relevant extract reads as under:

“The instructions Annexure P-2 to the extent it provided that the instructions shall not be applicable to those employees who were working against the posts which were within the purview of the Board was held to be bad. It was further held that these instructions would be applicable to all employees who had put in two years' service as ad hoc employees as on 1.11.1986 and was thus entitled to be regularised w.e.f. 1.11.1986. Counsel for the respondent argued that the period of period of two years as the petitioner had not worked for this period and had been granted leave of the kind due while he was in service on 20.3.1985. We do not find any substance in this submission. The Division Bench of this Court in Saroj Bala versus The State of Haryana and others, CWP No.645 of 1988, decided on August 9, 1989, held that the employee who has been granted leave of the kind due he/she will be deemed to continue in

service and therefore, entitled to regularisation of service according to the policy. It was observed therein as under:

“After hearing the learned counsel for the parties, we find that it is wrong to say that the period from July 6, 1985 to July 23, 1985 for which period the leave of the kind due was granted to the petitioner should not be counted for counting two years' service. While she was granted leave of the kind due, she will be deemed to continue in service and therefore, she was entitled to regularisation according to the policy letter Annexure P-4. Consequently this petition succeeds and it is directed that the case of the petitioner be considered for regularisation in view of the policy letter Annexure P-4 within two months.”

Thus, the period for which the petitioner was granted leave of the kind due has to be counted while computing the period of total service of the petitioner.”

In view of the above facts and circumstances, the case of the petitioner is required to be re-considered by the selecting and appointing authority. The respondents are directed to re-consider the case of the petitioner for appointment to the post of Warder and issue necessary appointment order from the date when other five candidates were appointed as Warder under SC female quota. Since the petitioner has not discharged the duties of the post of Warder during the intervening period, she is not entitled for arrears of salary. However, notional fixation of pay shall be done by the respondents. The above exercise shall be completed by the respondents within a period of three months from today.

The petition stands allowed.

19.01.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No