

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: 18.09.2017

1. CWP-24437-2013

Kulwinder Singh and others Petitioners

Versus

State of Haryana and others Respondents

2. CWP-21856-2013

Mukesh Kumar Yadav and others Petitioners

Versus

State of Haryana and others Respondents

3. CWP-5910-2017

Sandeep Singh and others Petitioners

Versus

State of Haryana and others Respondents

4. CWP-21332-2014

Sajid Petitioner

Versus

State of Haryana and others Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

bbPresent: Mr. R.K. Malik, Senior Advocate, with
Mr. Tejpal Singh Dhull, Advocate,
for the petitioners (in CWP-24437-2013).

Mr. Sat Narain Yadav, Advocte,
for the petitioners (in CWP-21856-2013, CWP-5910-2017 &
CWP-21332-2014)

Ms. Shruti Jain Goyal, AAG, Haryana.

AMOL RATTAN SINGH, J (ORAL)

In these petitions, the petitioners are seeking appointment as

Jail Warders, they having applied for the said post pursuant to the advertisement (Annexure P-1) dated 31.07.2012, with the last date for submitting application forms being 30.08.2012. All these 17 petitioners belonging to the general category.

It is not denied by the respondents that after the selection process, the 17 petitioners in this petition were placed on the waiting list at Sr. Nos. 38, 40, 45, 28, 43, 17, 18, 29, 5, 12, 15, 16, 39, 27, 19, 35 and 10 respectively.

Pursuant to a direction given by this Court, an affidavit of Dr. K.P. Singh, IPS, Director General of Prisons, Haryana, dated 18.08.2017, was filed, in which it is admitted that out of the 497 posts of the general category advertised, 497 candidates were selected, but only 481 joined the posts initially, upon being offered appointment.

However, thereafter, 5 candidates who had been offered appointment but had not joined their duties, represented that they be allowed to join and the Government vide its communication dated 30.01.2014, granted permission to them to join duty, with 2 of the said candidates being from the general category, one from the SC category, one from the BCA category and one from the BCB category.

Despite the aforesaid permission granted by the Government, only one candidate from the general category and one candidate from the BCB category actually joined duty, with the other 3 again not having joined.

Thus, from the general category, 15 posts of Jail Warders remained vacant.

It is also stated in the affidavit that out of the 10 posts reserved for sports persons in the general category, only one candidate was selected, with 9 posts having, therefore, remained vacant. Hence, eventually, in the

general category, 24 posts admittedly remained vacant.

Mr. Malik, learned Senior counsel appearing for the petitioners in CWP-24437-2013, has pointed to the instructions of the Haryana Government dated 07.10.2008, now also annexed with the affidavit dated 30.08.2017 of the Chief Secretary to the Government of Haryana (such affidavit also having been filed in response to a direction given by this Court), in which it is stated that in case suitable candidates from the outstanding sports persons' category are not available, then candidates from that particular category, (i.e. if the reservation for outstanding sports persons is made from the general category, then candidates from the general category itself), would fill in the unfilled posts that were reserved for the outstanding sports persons, but were not filled in due to lack of suitable candidates.

That being so, very obviously, there being a total of 24 posts that remained unfilled, combining the general category posts and the sports category posts, there would have been no reason for those in the waiting list in the general category, at least upto the extent of 24 posts, to have not been offered appointments to the post of Jail Warders.

However, the stand of the respondents, as reiterated by Ms. Shruti Jain Goyal, AAG, Haryana, is to the affect that the validity of the waiting list expired on 17.04.2014, recommendation for appointments having been made by the Selection Committee on 18.04.2013.

It has also been stated in the affidavit dated 18.08.2017, of the Director General of Prisons, that on account of general elections to the Lok Sabha having been notified, the model code of conduct came into force w.e.f. 05.03.2014, and continued till 05.05.2014, i.e. for a period of 2 months. It is further stated that in the meanwhile, the period of validity of

the waiting list expired on 17.04.2017, as already noticed.

Having considered the arguments, that contention of the respondents is not accepted, this Court already having taken a view in CWP No.18935 of 2015, titled as “ Varsha Rani vs. State of Haryana and another”, decided on 08.09.2017, that as regards the validity of the waiting list, the period that the model code of conduct was 'in force', has to be excluded from the period of validity of the waiting list and such validity accordingly extended.

That being so, it would be in the fitness of things that those candidates from the waiting list, who were offered appointment as is stated in the affidavit dated 24.07.2017 of the Additional Chief Secretary to Government of Haryana, Department of Homes and Jails, now be offered appointment in order of merit, and if any amongst those from the first 24 persons on the waiting list do not join within the stipulated period given in the offer of appointment, the offer of appointment would then be given to the next candidates to fill in the unfilled posts, again giving one months' time to such candidates to join the posts in question.

Mr. Malik, learned Senior counsel, has however, further raised an issue that the Chief Secretary, vide his instructions dated 23.05.2014, (Annexure R-3 with the Chief Secretary's affidavit), has also clarified that the same principle as applies to the unfilled vacancies in the outstanding sports persons category, would also apply vacancy in the category of ex-servicemen, that too being a horizontal reservation category within all categories of vertical reservations.

Ms. Shruti Jain Goyal, AAG, Haryana, however submits that the instructions dated 23.05.2014 having been issued on that date, they would not apply to the selection in question, the said selection process

having started in the year 2012, and therefore, it would be the instructions dated 02.07.2010 (Annexure R-2 with the Chief Secretary's affidavit), which would apply, in which it is stipulated that if any vacancies in the ESM category remained unfilled for want of suitable candidates, they would be filled in from the category of vertical reservation concerned, after re-advertisement. She submits that therefore those vacancies cannot be filled up simply on the first instance that they occurred, on account of non-availability of suitable candidates in any particular category.

(In fact, it is seen that even the Chief Secretary, in the last paragraph of his affidavit has stated to similar effect).

However, Mr. Malik submits that in fact that amounts to discrimination between categories of horizontal reservation, in as much as, as regards the unfilled vacancies in the category of outstanding sports persons, they are to be filled up within the vertical category in which such horizontal reservation has been made in the selection process in question itself, without any re-advertisement, but in the case of ex-servicemen, between 02.07.2010 and 23.05.2014, they are to be filled in only after re-advertisement, as per the Chief Secretary's affidavit.

Though learned State counsel submits that a conscious decision having been taken by the Government only on 23.05.2014, that a re-advertisement is not to be issued in case of unfilled vacancies of ex-serviceman as were reserved in each vertical category of reservation and therefore this Court would not interpret that to be in effect retrospectively, I do not agree with that contention, and it is therefore held that the Government having specifically taken a decision, as reflected in the instructions dated 23.05.2014, that even in the category of Ex-serviceman, unfilled vacancies in each category, on account of non-availability of

suitable candidates, shall be filled in from the vertically reserved category in which such horizontal reservation has been made, in the opinion of this Court, the said clarification would also deemed to date back to the date when the instructions dated 02.07.2010 were issued, there being no rationale for discrimination between two different categories of horizontal reservation, once a decision for equation of those categories has been taken.

This would be especially so because once the instructions of 2104 were issued, no 'fresh' re-advertisement would have been issued by the respondents even qua the unfilled vacancies of ex-servicemen, as were advertised before the 2014 instructions, as is the case presently.

Consequently, these petitions are allowed to the extent that the validity period of the waiting lists in question would be deemed to have been extended till 17.06.2014, i.e. for 2 months more than their original validity and, therefore, the letters issued to the candidates of the waiting list, in February 2014, as stated in the affidavit dated 24.07.2017 of the Additional Chief Secretary, would be re-issued now, (all these petitions having been instituted in the year 2013 itself), giving those candidates, as per merit, a time of one month to join the post of Jail Warders and if they do not join within the said period of one month, the next set of candidates as per the merit of the waiting list would be offered such appointment within another period of one month.

The petitioners, upon appointment, would be entitled to all consequential benefits from 17.07.2014, except actual arrears of pay, they not having actually worked on the posts in question.

(AMOL RATTAN SINGH)
JUDGE

18.09.2017
Dinesh

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No