

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

CWP No.22983 of 2014
Date of decision: 20.09.2017

Sunita Devi

... Petitioner

versus

State of Haryana & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.K.Malik, Sr. Advocate with
Mr. Bhupinder Malik, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana.

Amol Rattan Singh, J.(Oral)

The petitioner in this petition seeks appointment as a Staff Nurse in the respondent-State pursuant to the selection process initiated vide an advertisement issued by the respondent Haryana Staff Selection Commission, bearing advertisement No.2/2011 dated 06.12.2011, whereby 388 posts of the said cadre were advertised. The petitioner applied for the same under the General category and pursuant to the selection process having been completed, she was placed at serial No.2 of the waiting list of that category.

Learned senior counsel appearing for the petitioner submits that within the General category, the horizontal reservation of 26 vacancies in the ESM category were also advertised, to be filled in by the same selection process but only 9 suitable candidates from that category were appointed thereby leaving 17 advertised posts vacant.

The contention, therefore, is that in terms of the instructions of the Government of Haryana dated 02.07.2010 and 04.04.2014 (copies annexed as Annexures P-5 & P-6 respectively), the unfilled posts as were advertised in the category of Ex-Servicemen are to be filled in by those on the waiting list of the principal category in which the horizontal reservation for Ex-Servicemen have been made. Thus, the petitioner being at serial No.2 of the waiting list of the General category, and 17 posts in that very category as were reserved for the Ex-Servicemen/DESM category not having been filled in, she and 16 others on the waiting list should have been appointed to the said posts.

The stand of the respondent-State and the Commission on the other hand is that as per the instructions dated 02.07.2010, the unfilled posts of the ESM category (horizontal reservation), are to be filled in from the vertical reservation category in which the horizontal reservation has been made, only after such unfilled vacancies have been re-advertised.

The subsequent instructions dated 04.04.2014 having been issued after in fact even the result in the selection process was declared on 21.01.2014, the said instructions would not apply.

The petitioner has also referred to the instructions of the respondent-government dated 07.10.2008 (Annexure P-4), by which unfilled advertised vacancies in the category of outstanding sports persons have been directed to be filled, in the same selection process, from the waiting list of the vertical reservation category/general category, as the case may be, without any further re-advertisement.

Though obviously the stand of the State is to the effect that the horizontal reservation categories are different, and therefore what applies to the category of outstanding sports persons cannot apply to the category of Ex-Servicemen/DESM, this Court has already taken a view in its judgment dated 18.09.2017, passed in ***CWP No.24437 of 2013 titled as Kulwinder Singh & ors. vs. State of Haryana & ors.***, holding therein, in effect, that there would be no rationale for making a discrimination between two categories of horizontal reservation, especially when even in the second category, i.e. ESM/DESM, the instructions have been amended to stipulate that the unfilled vacancies in a particular selection process would be filled in from the waiting list of the vertically reserved category, without further re-advertisement.

Therefore, even though the instructions dated 04.04.2014 (Annexure P-6) were issued after the declaration of the result on 21.01.2014, the validity of the waiting list continued till at least 21.01.2015, i.e. for one year, and consequently in the opinion of this Court, the petitioner and others on the waiting list should have been appointed to the unfilled vacancies in the ESM category.

The reasoning of the respondent-State as regards the date on which the instructions dated 04.04.2014 became effective, would not hold, in view of what has already been expressed hereinabove, to the effect that once the government itself has done away with the condition of re-advertising the unfilled posts, there would be no reason to not apply the said rationale to the selection processes where the validity of the waiting list is

still continuing.

As observed in the judgment in *Kulwinder Singhs' case(supra)*, in any case once the instructions dated 04.04.2014 had come into effect, the respondents would not re-advertise the vacancies of Ex-servicemen as remained unfilled even in previous selections.

In the present case, learned senior counsel has also submitted that the same view has been taken by a coordinate Bench of this Court, in its judgment dated 06.08.2012 passed in ***CWP No.13384 of 2011***, titled as ***Garima Jindal vs. Haryana Vidyut Parsaran Nigam Ltd. & anr.*** (a copy of which has been annexed as Annexure P-7). It is contended that the view of the Single Bench has also been upheld by the Division Bench in its judgment dated 09.11.2012 passed in ***LPA No.1775 of 2012*** titled as ***Haryana Vidyut Parsaran Nigam Ltd. vs. Garima Jindal*** (Annexure P-8) and further upheld by the Supreme Court, by dismissal of SLP No.1493/2013 on 23.09.2013 (Annexure P-9). Though those judgments have not been gone into in detail, this Court already having taken a view in *Kulwinder Singhs' case(supra)*, I see no reason to change that view.

Consequently, this present petition is allowed and the petitioner is directed to be offered appointment as a Staff Nurse w.e.f. 04.05.2014, i.e. one month after 04.04.2014, with all consequential benefits except arrears of pay, she actually not having worked on the post.

20.09.2017
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(Amol Rattan Singh)
Judge