

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.01.2018****CWP No.2820 of 2014**

Vinod Kumar

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manoj Chahal, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner, who actually belongs to DESM category, says that he inadvertently applied for the post of Conductor pursuant to Advertisement No.3/2009 [Category 1] under ESM category instead of DESM category. As per selection criteria dated 21.01.2011 (Annex P-5), the candidate belonging to ESM category was required to obtain 40% marks i.e. minimum 80 marks out of 200 marks in the written examination, while DESM candidate was required to secure 50% marks i.e. minimum 100 marks out of 200 marks. Since petitioner applied under ESM category, he was short-listed for interview having secured 90 marks out of 200 marks. However, at the time of interview, the petitioner moved a representation to the effect that he inadvertently applied under ESM category, but he is actually a dependent of Ex-Servicemen (DESM) and requested to rectify his category in the application form. Such representation was accepted and the petitioner was allowed to rectify his category. Since the petitioner belongs

to DESM (General) category, he was required to secure 50% marks i.e. minimum 100 marks out of 200 marks, but he secured only 90 marks out of 200 marks and, therefore, was not eligible to be called for interview as per Public Employment Notice dated 21.01.2011.

2. Mr. Chahal submits that if Ex-Serviceman is not available, then the dependent of Ex-Serviceman has a right to be considered for appointing against the posts meant for ESM category. Counsel places strong reliance on a Division Bench judgment of the Rajasthan High Court (Jaipur Bench) in Rajasthan Public Service Commission Vs. Sangita Jain & another, 2008 (2) SCT 708.

3. Having gone through the judgment in *Sangita Jain*'s case, I find hardly anything therein, which would be of any assistance to the petitioner. Misreading of precedents often result when only the head-note made by the reporter is read and not the whole judgment. The ratio of the same may be quite different from the one sought to be projected. Mr. Chahal specifically points out Para.8, which reads as follows:

“8. Having tested the argument and counter arguments advanced by the counsel for the contesting parties in the appeal, it catches our attention that if the number of applicants among the women category were less in number than the 10 posts available which were 20% of the total which were advertised, then the appellant R.P.S.C. cannot have any reason to disqualify her for the post as it is obvious that a screening test is held only to weed out candidates by way of preliminary selection meaning thereby that if there are large number of applicants and the posts available are much less, some method of screening is adopted by the appointing authorities and in that event, a screening test is justified. But in the instant matter when the posts available for the lady candidates were only 10 in number and the lady applicants

were only eight, we fail to understand as to why the respondent was not summoned for the interview. In fact, the distinction drawn between the case of the respondent – Smt. Jain and Ms. Pragya Saxena who has been appointed, although she had not qualified in the interview is difficult to appreciate as the reason for appointing Ms. Pragya Saxena although she had not qualified in the interview, will apply to the case of the respondent Smt. Jain also in our view as she has also a claim within the 8 applicants who had applied for the post of Agricultural Engineers out of 10 posts which were earmarked for the women category.”

4. That was a case involving horizontal reservation of female category candidates and bears no semblance to horizontal reservation of ESM or DESM.

5. It is the contention of Mr. Chahal that where there is shortfall of candidates, a screening test could not be applied to weed out the candidates. In that situation, the Supreme Court thought fit to hold that every lady applicant should also have been summoned for interview. The case is distinguishable on facts.

6. Another important facet pointed out by Ms. Shruti Goyal that in 2006, the Commission had taken a decision under which minimum percentage of qualifying marks in the written examination in respect of categories i.e. General category, Scheduled Caste, Backward Class, ESM & DESM category have been prescribed. Therefore, it is within the jurisdiction of the Commission to impose a cut off.

7. In these circumstances, even if advertised vacancies exist and remain unfilled, a mandamus will not issue to the State to offer the petitioner appointment, when he is not a qualified candidate. These vacancies have to

be carried forward for the next recruitment. Accordingly, I find no merit in this petition and the same is ordered to stand dismissed.

15.01.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*