

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

**Civil Writ Petition No. 6451 of 2017 (O&M)
Date of Decision: 27.07.2018**

Gundeep Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Karan Bhardwaj, Advocate
for the petitioner.

Mrs. Anu Chatrath Kapur, Additional Advocate General, Punjab
for respondent Nos. 1 to 4/State.

Mr. R.K. Malik, Senior Advocate, assisted by
Mr. Samrat Malik, Advocate
for respondent No. 6.

JASWANT SINGH, J.

1. Petitioner-Gundeep Singh, an aspirant for the post of Veterinary Officer in the Department of Animal Husbandry, Fisheries and Dairy Development, Punjab (for short 'the AHD'), is seeking quashing of letter dated 22.03.2017 (**Annexure P-5**), by which respondent No. 2-Punjab Public Service Commission (for short 'the Commission') has considered respondent No. 5 (Ramanjot Kaur) against vacancy for "Wards of Freedom Fighters, Punjab" and not under open general category even though she has secured higher merit than most of the candidates appointed in open General Category.

2. Pursuant to requisition sent by the AHD, the respondent-Commission issued an advertisement dated 31.08.2016 (**Annexure P-1**) for filling up 117 vacancies of Veterinary Officer in the pay scale of Rs. 15600-

Wards of Freedom Fighter, Punjab. The petitioner applied against the said vacancy and appeared in the written examination. The respondent-Commission released Combined Merit List as well as Category Wise List dated 16.02.2017 (**Annexure P-3 & P-4 respectively**). In the Combined Merit List name of respondent No. 5 (Ramanjot Kaur) appeared at Serial No. 22, however, in the Category Wise Merit List, her name was shown at Serial No. 1 under Category of Wards of Freedom Fighters, Punjab. The name of the petitioner was shown at Serial No. 152 in the Combined Merit List, and in the Category Wise List at Serial No. 2 under Category of Wards of Freedom Fighters, Punjab.

3. The petitioner was short listed for interview which was scheduled for 07.02.2017. The Director, AHD (respondent No. 4) issued a memo dated 22.03.2017 (**Annexure P-5 colly**) directing various Deputy Directors of different districts to conduct police verification of various candidates, however, name of the petitioner did not appear in the said letter and name of respondent No. 5 (Ramanjot Kaur) appeared at Serial No. 1 in the Category of Wards of Freedom Fighter, Punjab.

4. Learned counsel for the petitioner vehemently pleaded that name of respondent No. 5 (Ramanjot Kaur) has been wrongly shown at Serial No. 1 in the Category of Wards of Freedom Fighter, Punjab, because she had secured marks more than marks of last candidate shown in General Category entailing her name to appear at Serial No. 22 in the combined merit list, therefore, she should be considered in the General Category and petitioner should be considered at Serial No. 1 in the category of wards of freedom fighters. He placed reliance on judgment of Hon'ble Supreme

Court in the case of ***Rajesh Kumar Daria Versus Rajasthan Public Service Commission (2007) SCC 1995.***

5. Mrs. Anu Chattrath Kapoor, Additional Advocate General, Punjab and Mr. R.K. Malik, Senior Advocate, counsel for the respondent No. 6 contended that “Wards of Freedom Fighter” fall in the category of ‘horizontal reservation’ whereas argument of the petitioner is applicable *qua* vertical reservation i.e. reservation for SC, ST and BC. Both the counsel relied upon judgment of Hon’ble Supreme Court in the case of ***Anil Kumar Gupta and Ors. Versus State of Uttarakhand and Ors. (1995) SCC 173*** and judgment of Division Bench of this Court in the case of ***Ajit Singh Versus State of Haryana and Others 2012 (1) RSJ 433*** to assert that reserved vacancy would be deemed to be consumed upon appointment of respondent No. 5 either in General or Reserved Category.

6. Having scrutinized record of the case and hearing arguments of counsel for both the parties, this Court is of the considered opinion that present petition is bereft of merits and deserves to be dismissed.

7. The undisputed facts emerging from the pleadings and oral arguments are that the Punjab Public Service Commission advertised for 117 posts, which included one post for Wards of Freedom Fighters. The post meant for Wards of Freedom Fighter falls under Article 15(1) and 16(1) of the Constitution of India and does not fall under Article 16(4) i.e. vertical reservation for SC/ST and BC. Division Bench of this Court in ***Ajit Singh's case (supra)*** after considering judgment of Hon’ble Supreme Court in the case of ***Anil Kumar Gupta (supra), Rajesh Kumar Dariya (supra), S. Sathyapriya Versus A.P. (1996) 9 SCC 466*** has culled out following

principles:

- “ (i) *The reservations for Physically Handicapped, Ex-servicemen, dependants of freedom fighters and women etc. are the horizontal reservations.*
- (ii) *The candidates belonging to horizontal reservations will cut across the vertical reservations in the following manner:*
- (a) *Firstly, the seats for Open Category candidates will be filled up on the basis of merit;*
- (b) *Secondly, the seats meant for vertical reserved categories will be filled up on the basis of merit in their own quota;*
- (c) *Thirdly, the seats equal to the number of the candidates belonging to horizontal reserved category and also falling within vertical reserved category, shall stands consumed in the vertical reserved category. The candidate lower in vertical reserved category will make way for him;*
- (d) *Fourthly, if a candidate belonging to horizontal reserved category does not belong to any of categories of reservations, a candidate in the open category will make way for such reserved category so as to satisfy quota of the seats meant for the horizontal reserved category.*
- (e) *Lastly, in case of women candidates, who also fall within any one of special reservations or social reservations, such candidate shall be taken into consideration for determining the quota for both women and social reservations. ”*

(Emphasis Supplied)

8. Based upon above enunciation of law, respondent No. 5 (Ramanjot Kaur) should have been selected in the open merit category and she has been wrongly selected in the category of freedom fighters. The

petitioner as well respondent No. 5 fall under horizontal reservation and respondent No. 5 had been selected under special category even though she was supposed to be selected in the open general category. Now, question arises that if she is selected under open general category, what would be effect on post reserved for “Wards of Freedom Fighters”. The only answer in view of judgment of this Court as well as Hon’ble Supreme Court is that the petitioner cannot be considered against post for Wards of Freedom Fighters because this was special/horizontal reservation and one candidate has already been selected means object of appointment of Wards of Freedom Fighter has already been achieved. There is no question of swiping respondent No. 5 to General Category just for the sake of vacating post she occupied as Wards of Freedom Fighter. This Court finds that whether she is considered under Open General Category or as Wards of Freedom Fighters, the petitioner cannot be considered for the post in question because he had secured 204.68 marks and his name appears at Serial No. 152 in the Combined Merit List, whereas there were 46 posts for General Category. The petitioner admittedly is not claiming his selection in open category and he is only praying for shifting of respondent No. 5 to open general category list. Even if respondent No. 5 (Ramanjot Kaur) is shifted to open general category, it would not culminate into vacation of post meant for Wards of Freedom Fighters, as it would deemed to have been consumed/filled up. The petitioner in the reserved category is next in merit, i.e., waiting list, thus not entitled to any relief.

In view of aforesaid findings, this Court does not find any merit in the contention of the petitioner. Present petition deserves to be dismissed

and accordingly the same is '**dismissed**'.

No order as to costs.

Since the main case has been decided, therefore, pending miscellaneous application(s), if any, stand(s) disposed of.

July 27, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>