

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.3405 of 2019 (O&M)

Date of Decision.01.11.2019

Sunil Kumar ...Petitioner
Vs

State of Haryana and another ...Respondents

2. CWP No.3452 of 2019

Anil ...Petitioner
Vs

State of Haryana and another ...Respondents

3. CWP No.3456 of 2019

Arvind Kumar ...Petitioner
Vs

State of Haryana and another ...Respondents

Present: Mr. Sansar Kundu, Advocate
for the petitioner in CWP No.3405 & 3452 of 2019.

Mr. Nilesh Bhardwaj, Advocate
for the petitioner in CWP No.3456 of 2019.

Mr. S.K. Nehra, Advocate
for the applicants.

Mr. Anurag Goyal, Advocate
for the applicant in CWP No.3456 of 2019.

Mr. R.K. Doon, AAG, Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of three writ petitions. Writ petition bearing Nos.3405 of 2019 titled as 'Sunil Kumar Vs. State of Haryana and another' (hereinafter called the first writ petition) and 3452 of 2019 titled as 'Anil Vs. State of Haryana and others' (hereinafter called the

second writ petition) filed by both brothers Sunil Kumar and Anil, who being aspirant challenged the action of the Haryana Staff Selection Commission in rejecting their candidature for the post of Sub Inspector. Both the petitioners had applied under the category of being Dependents of Ex-serviceman.

In Civil Writ Petition No.3456 of 2019 titled as 'Arvind Kumar Vs. State of Haryana and another' (hereinafter called the third writ petition), represented by Mr. Nilesh Bhardwaj, petitioner has not been able to make in merit list in the written test conducted in pursuance to the procedure and the criteria mentioned in the advertisement, being also applicant under the Dependent of Ex-serviceman.

In pursuance to advertisement caused by the Haryana Staff Selection Commission on requisition of State of Haryana, many posts of Sub Inspector (Male) and Sub Inspector (Female) were sought to be filled. Posts relevant in the present case relates to Category No.4 wherein 400 posts of Sub-Inspector (Male) were advertised by reserving 184 for General Category, 72 SC, BCA 56, BCB 32, ESM-Gen 28, ESM SC 8, ESM BCA 8, ESM BCB 12. Conditions in the advertisement provided that procedure for availing benefit of reservation i.e. for Disabled ESM/Dependent of Killed/Disabled in action to be on the basis of Instructions dated 06.03.1972.

Advertisement also prescribed conditions for the candidates to bring the originals of documents submitted/uploaded along with online application, at the time of scrutiny of documents. All the petitioners submitted applications claiming benefit of reservation being Dependents of service personnel killed/disabled beyond 50% by clicking as 'YES'

Mr. Nilesh Bhardwaj, learned counsel appearing for petitioner in third writ petition submitted that petitioner was issued an admit card under the same very category. Respondents declared result on 31.01.2019, however, his name did not figure in the result. He approached this Court and vide order dated 08.02.2019, keeping in view the interim order and reasons noticed in the writ petition bearing No.3405 of 2019, a direction was issued to respondents permitting petitioner to provisionally participate in the Physical Screening Test. Similar order was passed in first and second writ petition endorsed by Mr. Kundu. Reliance has been laid to certificate (Annexure P-8) dated 22.03.2018 issued by Zila Sainik Board, Rewari certifying the petitioner to be eligible under the category of Dependents of Ex-Servicemen with disability beyond 50% and as well as Annexure P-9, pensionary award in favour of Krishan Kumar, father of petitioner Arvind Kumar, who retired as Naik on account of disability. In order to buttress argument, attention of this Court has been drawn to the Instructions dated 06.03.1972 i.e. providing preference to disabled Ex-servicemen with disability between 20 to 50% and as well as the procedure. The relevant portion of Instructions reads as under:-

“(i) disabled ex-serviceman with disability between 20% to 50%.

(ii) Up to two dependents of service personnel killed/disabled beyond 50%.

(iii) other ex-serviceman.”

On relying upon the procedure for Class III and IV, relevant in the instant case, it was submitted that names of disabled ex-servicemen with disability between 20% to 50% would be given preference and in the

absence of same, names of dependents of those killed/disabled beyond 50% in action should be recommended for that post. In case, names of above two categories were not available with the employment exchange and the appointing authority had no application of these categories pending with it, then the names of other ex-servicemen would be called to fill up posts.

During the course of hearing, Mr. Nilesh Bhardwaj passed on copy of certificate dated 22.08.2019 reflecting that petitioner's father Krishan Kumar, rank Ex Naik was discharged from the service with disability of Bilateral Sensory Neural Loss-389 attributable to military service and assessed @80% for life w.e.f. 01.11.1988. The same is taken on record, marked as Annexure A-1 and directed to be tagged at the end of paper book.

Mr. Kundu learned counsel appearing on behalf of petitioner in first and second writ petition submitted that the Respondent-Selection Commission adopted pick and choose policy in considering candidature of candidates while preparing merit list having lesser marks in the same very category by referring to Annexure P-11 and P-12 attached with misc. application bearing No.6520 of 2019 and issued appointment letters, exemplified name of one Ashwani Kumar. Respondent Commission did not declare result of three posts subject matter of writ petitions but later on 02.04.2019 declared the result necessitating petitioners to approach this Court for interim stay and as a consequence thereof, this Court stayed issuance of appointment letter. Ratio culled out in judgment **Major Deepak Vaishnav Vs. Haryana Public Service Commission** rendered in CWP No.16637 of 2019 decided on 01.08.2019 and other connected case, relied upon by Mr. Nehra representing successful applicants and State counsel at

the commencement of hearing would not be applicable as it pertains to appointment of Class 1 and II posts.

Mr. Kundu in support of aforementioned contention relied upon para 24 of judgment of Hon'ble Supreme Court passed in **K. Manjusree Vs. State of A.P. and another (2008 3 SCC 512)** to submit that criteria for interview once the procedure for selection has been initiated, cannot be denied. Reliance to the clarification in the Instructions dated 17.08.1972 was not disclosed to the petitioners and therefore, non-consideration of their candidature or holding them to be ineligible is wholly illegal and arbitrary.

This Court even vide order dated 09.05.2019 in CWP No.3452 of 2019 noticed marks of the petitioner as 46.4 whereas the last person under this category secured 34.40 marks. Certificates Annexure P-5 to P-7 i.e. disability certificate, battle casualty certificate and eligible certificate, leaves no manner of doubt that the petitioner fall under category of dependents of Ex-servicemen with disability. All the documents were uploaded with the application.

Per contra, learned State counsel representing the respondent Commission opposed case of petitioner by referring to modification of Instructions dated 06.03.1972, 17.08.1972 and 21.01.1974 where it was considered that for according priority to disabled Ex-servicemen with disability of 20% to 50% and upto two dependents of service personnel killed/disabled beyond 50% marks should be allowed to those servicemen who were not boarded out of service by the Defence Department on account of their disability but released in normal course after completion of their term. In all three writ petition as reflected in order dated 24.05.2019, information received from Haryana Staff Selection Commission and as well

as from Zila Sainik Board revealing that father of petitioners in First and Second writ petition Ex. Sub Amar Nath was not released from job on account of 50% disability but in normal course i.e. on completion of term of 30 years of service. As far as petitioner in Third Writ Petition, certificate issued from Zila Sainik Board, Rewari, petitioner could not have been given benefit of dependent of Ex-serviceman as his father Krishan Kumar has not boarded out on having 50% disability as Battle Casualty. The stage at which the grievance can be raised has not even arrived as it would only be after preparation of final merit list.

Similar is the argument of Mr. Anurag Goyal.

However, Mr. Sunil Kumar Nehra representing the applicants-private respondents submitted that none of the petitioners had uploaded eligibility certificate in tandem with terms and conditions of advertisement reflecting that their fathers actually relieved from service on account of disability and not, after, completion of regular service. Eligibility certificates relied upon even do not make out a case of bringing point of consideration in any of the conditions of reservation specified either in instructions or advertisement. Once documents were not uploaded, petitioners cannot turn around and claim reservation on the basis of documents entered, post, submission of application form. The selection process has to be conducted strictly in accordance with the selection procedure mentioned in the advertisement. In support of aforementioned contention, relied upon para 28 and 29 of the judgment rendered by Hon'ble Supreme Court in **Bedanga Talukdar Vs. Saifudaullah Khan and others** **2012 (4) SCT 406.**

Even if through intervention of this Court, petitioners have

been allowed to participate in Physical Screening Test, that would not give them right in the absence of possessing requisite certificate claiming benefit of reservation, thus, urges this Court for dismissal of the writ petitions.

I have heard learned counsel for the parties, appraised the paper book and of the view that writ petitions are devoid of merit nor there is any substance in the arguments of counsel representing petitioners. The reason is not one but many.

It would be in the fitness of things to extract conditions to be complied with by candidates, as reflected, in the advertisement.

“For disabled ESM/Dependent of Killed/Disabled in action
reservation will be as per Haryana Govt. Instructions contained in letter No.945-GS-II 72/6451, dated the 6th March, 1972.

The reservation for ESM will be utilized in the order given below:-

- i) Up to two dependents of Service Personnel killed/disabled beyond 50%*
- ii) Other ex-servicemen.*

Note:1 Disabled ex-servicemen will mean ex-servicemen who, while serving in the Armed Forces of the Union were disabled in operations against the enemy or in disturbed areas.

Note:2. The dependents will include besides wife/widow, dependent sons/daughters.

The dependents of ESM who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-

availability of suitable ESM candidates.

ESM/DESM candidates of Haryana claiming benefit must have valid eligibility certificate on last date of submission of online application form and will have to produce the valid eligibility certificate from the concerned Zila Sainik Board at the time of Documents Scrutiny. Mere dependent certificate will not be entertained. ESM candidates should also produce attested photo copy of Identity Card issued by concerned Zila Sainik Board & Discharge Book at the time of Documents Scrutiny.

Documents to be uploaded with application form

- i) Scanned copy of Essential Qualifications i.e. Matric showing Date of Birth and mark sheet of Diploma/Degree etc.*
- ii) Scanned copy of valid Eligibility Certificate in case of DESM candidates duly issued by the respective Zila Sainik Board.*
- iii) Scanned copy of BCA/BCB/SC Certificate issued by competent authority.*
- iv) Scanned copy of Haryana Domicile Certificate in case of BCA/BCB/SC/ESM/DESM/DFF issued by competent authority.*
- v) Scanned copy of Aadhar Card (desirable).*
- vi) Copy of e-challan in case of candidates who have applied earlier.*
- viii) Scanned signatures of the candidates.*

Documents to be brought at the time of document scrutiny

- i) Printed copy of online application form along with latest*

stamp size photograph duly attested by a gazetted officer and pasted on the application form.

ii) Original proof of earlier fee deposited i.e. Treasury Challan/Credit Certificate issued by concerned treasury etc.

iii) All original certificates/documents/testimonials of educational qualifications and other documents mentioned in the online applications and one set of self attested copies of all these certificates.”

On cumulative reading of terms and conditions of advertisement coupled with application form (Annexure P-2), it is discerned that though petitioners claimed benefit being Dependent of Ex-servicemen having disability more than 50% or killed but did not upload the same (eligibility certificate). Reliance on the eligibility certificate (Annexure P-8) do not disclose that they fall in category, specified, in the advertisement.

Argument of counsel in building up a case by causing explanation in not uploading documents for want of any provision, as the application form was to be replied in 'yes' or 'no', is liable to be rejected at threshold because condition in the advertisement provided to fulfill the aforementioned conditions. Certificate obtained after cut off date and attached along with present petition cannot be permitted to be considered for the purpose of eligibility. Though attempt has been made to rely upon certificate (A-1) during course of argument of Mr. Nilesh Bhardwaj would again be a disputed question of fact as to whether third petitioner's father retired on completion of service or before that. Certificate of service, qua pension, produced now was also not uploaded. They cannot turn around and claim benefit of reservation by placing on record for the first time in

writ petition without even being bringing to the notice of respondent-Commission. The eligibility has to be seen on the date of submission of the application and not subsequent thereto.

This view of mine is reiterated from ratio decidendi culled out in judgment rendered by this Court in CWP No.2683 of 2019 titled as '*Amit Kumar Vs. The State of Haryana and others*' decided on 18.07.2019.

Relevant portion thereof reads thus:-

“The position of law involving similar controversy came to be debated upon by the Hon'ble Supreme Court in Rakesh Kumar Sharma Versus Govt. of NCT of Delhi & Ors., 2013(11) SCC 58 (Paras 16 and 17). The same read thus:-

“16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court. 17. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms.

Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and terms of the advertisement. There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance. The appeal is devoid of any merit and does not present special features warranting any interference by this Court. The appeal is accordingly dismissed.”

On reading of the aforementioned ratio, it is held that the candidates, who may have considered themselves to be eligible, cannot be permitted through the intervention of the Court for considering them eligible once they were not eligible at the time of submission of the applications.

For the reasons mentioned above, I do not find any substance in the argument of the learned counsel for the petitioner. No ground for interference is made out. Resultantly, the writ petition is dismissed.”

As regards petitioners in First and Second writ petition, information provided during course of hearing on 31.10.2019 reveals that

Ex Sub Amar Nath was not boarded out on account of 50% disability as

Battle Casualty. The relevant portion of reply reads thus:-

“It is further intimated that in the end of para No.9 of the short reply, it has also been mentioned that:-

After filing of CWP the matter was referred to concerned Zila Sainik Board, Jind. Now Zila Sainik Board Jind vide letter No.ZSB/36/Emp/1028 dated 30.05.2019 has informed that Ex Sub Amar Nath is not covered for the benefits of priority since the Ex-Servicemen was not boarded out on having 50% disability as Battle Casualty and retained in service. He retired from defence service in the normal course on completion of terms of engagement of subedar rank i.e. 30 years service (Date of Enrollment-20 Oct 1987 and Date of Retirement – 31 Oct 2017). The copy of clarification dated 30.05.2019 as Annexure R-2/1.”

As regards point of discrimination about Ashwani Kumar, no sufficient material has been placed on record to establish that his application form contained document of eligibility claiming benefit of reservation or not. Though attempt is made to produce document but that would not suffice requirement as it is yet to be proved as to whether any such material was placed in respect of application submitted by Ashwani Kumar, which is a disputed question of fact and for vindication remedy lies elsewhere.

Cumulative reading of my finding leads to irresistible conclusion that writ petitions sans merit and accordingly are dismissed. Interim stay granted by this Court stands vacated.

(AMIT RAWAL)
JUDGE

November 01, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No