

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 7884 of 2019
Date of decision :25.03.2019

Poonam Kumari

...Petitioner(s)

versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Parminder Singh, Advocate for the petitioner.

RITU BAHRI, J. (Oral)

The petitioner is participating for the post of Female Constable under the ESM (General) category being a dependent of Ex-Serviceman. Her grievance is that the last selected candidate under the ESM category has secured total 28 marks as per the result dated 03.03.2019 (Annexure P-6) and she has secured total 46 marks which are higher than the last selected candidate under the ESM category.

Mr. Kiran Pal Singh, Assistant Advocate General, Haryana has argued that this aspect has been considered in *CWP-1774-2011 Shiv Charan V/s. State of Haryana and others 2012(3) RSJ 467* whereby it has been held that when a candidate under ESM category is available, dependent of ESM category could not be shortlisted for selection and the petitioner cannot get benefit over and above the suitable ESM category candidates are available. In para 7 of the said judgment, it has been observed as under:-

“It is by now well settled in the light of the Division Bench judgment of this Court in Rajesh Kumar Tahlán’s case (supra) that the claim of the ESM Category is to be considered in the first instance by having their eligibility considered independently before claims of DESM Category are to be considered. If the ESM are found ineligible and are not selected

then against the balance unfilled posts, the selection was required to be made from amongst the DESM Category. This dicta flows from the judgment of the Supreme Court in **Dilwan Singh and others vs. State of Haryana and others**, 1996 (2) RSJ 514, wherein the Supreme Court has held that the object of reservation of the ex-servicemen is to rehabilitate them after their discharge from the defence services. As per the instructions issued by the State Government, in the absence of availability of the ex-servicemen instead of keeping those posts unfilled, the dependents of ex-servicemen would also be considered. The object thereby would be that the Selection Board should consider the case of ESM category candidates independently in the first instance before the claims of the dependent children of the exservicemen are considered and if they are found eligible and selected leaving some posts unfilled, these posts can be filled up by selection from the dependents of ex-servicemen category. Same as is the law laid down by this Court in Dr. (Major) Harsh Vivek Singh's case (supra)."

Further a perusal of result dated 03.03.2019 (Annexure P-6) shows that under the ESM general category, 80 candidates have been selected and the last selected candidate has secured 28 marks. It does not reflect that any dependent of Ex-serviceman has been selected. Hence, she cannot claim parity with the ESM, who has secured 28 marks.

This petition is dismissed. However the petitioner is given liberty to approach this Court again if any dependent of Ex-serviceman has been selected having lower marks than her.

25.03.2019
Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No