

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

CWP No.21457 of 2019 (O&M)

Date of Decision.13.08.2019

Anil Kumar and others

...Petitioners

Vs

State of Haryana and others

...Respondents

Present: Mr. Anil Kumar and Mr. Samir,
petitioners No.1 and 3 in person.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J. (ORAL)

Petitioners No.1 and 3, appeared in person, sought indulgence of this Court for quashing of result of written examination dated 13.06.019 (Annexure P-5) qua ESM Category of the post of 'A' Class Naib Tehsildar (Apprentices) Gazetted Class II (Group B) in Revenue and Disaster Management Department, Haryana.

As per contention of petitioners, father of petitioners served in the Armed Forces and while combating with the enemy expired on duty.

Haryana Public Service Commission caused an advertisement No.1 dated 23.07.2015 for recruitment of 70 temporary posts of A Class Naib Tehsildar (Apprentices) Gazetted Class II (Group B) in Revenue Department, out of which four posts were reserved for Ex-Servicemen Category. Reservation in respect of civil posts for Ex-Servicemen was to be utilized as under:-

“i. Disabled Ex-servicemen with disability between 20% to 50%.

ii. Upto two dependents of service personnel killed/disabled beyond 50%.

iii. Other Ex-Servicemen.”

Since father of petitioners were killed in action, therefore, would fall in category No.(ii). Petitioners being eligible for aforementioned posts applied under Ex-Servicemen Category. Petitioners No.1 and 2 applied in BCB DESM category whereas petitioner No.3 in General DESM category and were issued following roll numbers:-

- | | |
|--|------------------------|
| <i>“1. Petitioner No.1 (Anil Kumar)</i> | <i>Roll No.253835</i> |
| <i>2. Petitioner No.2 (Sunil Kumar)</i> | <i>Roll No.254326</i> |
| <i>3. Petitioner No.3 (Samir)</i> | <i>Roll No.149723”</i> |

On 26.05.2019, written examination was held but when result was declared on 13.06.2019, their names were not in merit list prepared by respondents. Petitioners also appeared in HCS (Executive Branch) examination for which result was declared on 21.05.2019 and in that also they were not considered according to the reservation as provided for Ex-Servicemen. In this regard submitted representations (Annexure P-6 collectively).

Emphasis was laid to instructions dated 06.03.1972 issued by the Haryana Government giving priority to the wards of service personnel killed in action and then other Ex-Servicemen but no action has been taken. During the course of hearing, copy of decision dated 11.07.2019 passed by the Secretary, Haryana Staff Selection Commission rejecting their request for application of Instructions was also passed on to this Court. It was contended that Haryana Staff Selection Commission has come out with the advertisement like Annexure P-11 for the post of Assistant Professor clearly specifying that reservation will be as per Instructions of 1972. Reliance was also laid to judgment Annexure P-12.

I have heard petitioners No.1 and 3 present in person, appraised

paper book and of the view that there is no force and merit. It would be apt to reproduce clause fixing academic qualification as well as instructions:-

“The reservation for ESM will be utilized in the order given below:- (as per instructions No.945-GS-II-72/6451 dated 06.03.1972)

(i) Disabled ex-servicemen with disability between 20% to 50%

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

(iii) other ex-servicemen”

Instructions dated 06.03.1972.

(a) Reservation

The existing reservation in respect of civil posts for ex-servicemen should be utilized in the under given below:-

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

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

(iii) other ex-servicemen.

xxxx

xxxx

xxxx

(c) Procedure for appointment

(i) Class III and IV posts

xxxx

xxxx

xxxx

Class I and II posts

(ii) For Class I and Class II posts of which recruitment is not made through competitive examination, the appointing

authority while forwarding the requisition to the Haryana Public Service Commission will also forward a copy to the Director, Employment, Haryana (Special cell for Employment of Ex-servicemen). If the names of disabled ex-servicemen (disability between 20% to 50%) and dependents of those killed/disabled beyond 50% in action are available with the Employment Exchange, then these names will be sent by them to the Haryana Public Service Commission within 10 days. On the receipt of the names from the Director of Employment, the Haryana Public Service Commission will first interview those persons and if any among them is found suitable he will be appointed to the post. In case no name is sent by the Director Employment out of the above two categories, or if out of the names sent by the Director Employment no one is found suitable by the Commission then other ex-servicemen will be considered for the post.

(The procedure for recruitment of other ex-servicemen will continue to remain as at present).”

It is axiomatic that Instructions would apply only to the recruitment which is not made through competitive examination. However, in the instant case as notice above it is otherwise.

On other ground with regard to application of reservation in respect of civil posts, I am not in agreement with submissions of petitioners as this Court in judgment dated 01.08.2019 passed in CWP No.16637 of 2019 titled as ‘Maj Deepak Vaishnav Vs. Haryana Public Service

Commission' rejected the aforementioned contention by giving finding as under:-

“On a plain and simple language of instructions reproduced supra, it is axiomatic that recruitment, which is not made through competitive examination, the appointing authority will forward requisition to Haryana Public Service Commission providing reservation to ESM. It is a matter of record that test undertaken by petitioners is only “Preliminary”. Petitioners have not been able to make cut-off marks. Reservation as sought to be applied in submission of Mr. Sachin Jain by relying upon judgment supra would not apply, as it pertains to final selection process and not to preliminary examination. It is matter of record that marks obtained in preliminary examination are not to be taken into consideration qua marks obtained in main examination. It is only process to shortlist candidates for main written examination. Though point raised in judgment rendered by Division Bench, relied upon by Mr. Goyal, pertains to a controversy where reserved candidates who secured higher merits, in the process of selection for appointment sought to be considered for appointment against general vacancies, despite the fact that they applied under reserved categories and slot vacated by them was to be given to next candidate in reserved category, would apply at the time of making appointment on completion of selection process and not at the stage of qualifying examination/shortlisting/screening test.

The language of instructions reveals that reservation to be applied for recruitment not to be made through competitive examination. Preliminary examination is not competitive examination, thus, argument of Mr. Sachin Jain highlighting alleged violation of non-application of reservation at the time of preliminary examination must fail.”

Even from result placed on record (Annexure P-5), it is not decipherable that selection has been given to candidates only falling in first category and not the one to which petitioners belong to.

In view of such circumstances, I do not find any merit in the writ petition and accordingly dismissed.

(AMIT RAWAL)
JUDGE

August 13, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No