

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16904-2012(O&M)
Date of decision: 16.01.2020

Suresh Kumar

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

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

Mr. Harish Nain, AAG, Haryana.

Mr. H.N.Mehtani, Advocate
for respondent No.2.

RITU BAHRI, J. (Oral).

By this petition, the petitioner is seeking quashing of selection (Annexure P-9) of respondent No.4 who is dependent of Ex. Serviceman, though eligible Ex. Servicemen are available.

A perusal of the application form at page 84 of the paperbook shows that respondent No. 4 had stated that he was working as Lecturer (History) in G.S.S.S. Jandwala Bagar. Further learned counsel for respondent No. 2 has produced a file containing average sheet and has also produced instructions dated 11.10.2001. As per clause (h) of the instructions dated 11.10.2001 '**the dependent who is employed on the day of application for a post is not eligible**'. Whereas respondent No. 4 was working on the day of application form. Moreover, the petitioner has also placed on record information received under Right to Information Act, 2005

whereby the Principal of Govt. Senior Secondary School, Jandwala, Bagar had given information that respondent No. 4 was given salary from July 2009 to April 2012 (Annexure P-16). He was relieved on 09.11.2012 (Annexure P-17). It is further submitted that when writ petition was filed, notice was served upon respondent No. 4 vide order dated 31.08.2012. However he had chosen not to file any written statement and none had put in appearance on his behalf.

The candidature of the petitioner had been rejected on the ground that he did not get aggregate 40 marks in the selection process. As per the file produced in Court, the petitioner had been granted 25 marks in the personal achievement and 14 marks in the interview. The total marks are 39 whereas he had to get aggregate 40 marks to be eligible. Since the petitioner had not secured 40 marks, his case for selection is not made out. As per average sheet, respondent No. 4 had been granted 25 marks in personal achievement and 33 marks in interview. Total marks are 58.

Hence, writ petition is dismissed with respect to selection of the petitioner.

As per the instructions dated 01.10.1981 (Annexure P-13), very often the posts/vacancies reserved for Scheduled Castes, Backward Classes and Ex-servicemen are not filled up on account of non-suitable candidates. As a part of recruitment process, the selecting authority has to first see whether the candidates are eligible for the posts and thereafter they have to see the suitability. While reporting about non-availability of candidates for reserved post vacancies it should invariably be indicated whether eligible candidates are available or not and whether they were suitable or not for the post/vacancies. In the facts of the present case, no report was sent with

respect to non-availability of suitable candidates under the ESM category. As per the general instructions contained in the advertisement (Annexure P-1) the dependent of ESM would be considered for the post reserved for ESM category to the extent of non-availability of suitable ESM. As per the application form (Annexure P-15) the date of birth of respondent No. 4 is 01.10.1973 and on the closing date he was about 36 years of age. In the application form, he had stated that he was working as Lecturer in History in G.S.S.S. Jandwala Bagar. As per information (Annexure P-16), the respondent No.4-Randhir Singh remained present in the school G.S.S.S. Jandwala Bagar from July 2009 to April 2012 and he was given following salary:-

“Monthly salary received from July 2009 to July 2010
=Rs.13500/-

Monthly salary received from October 2010 to December
2011=Rs.16200/-

Monthly salary received from January 2012 to April
2012=Rs.19440/-”

As per information (Annexure P-17), respondent No.4-Randhir Singh was appointed as Lecturer (History) on regular basis in Govt. Senior Secondary School, Chuli Bagarian (Hissar) and he was relieved on 09.11.2012. Respondent No. 4 cannot be taken to be dependent of ESM as his total income has been shown as Rs.2,48,445/- which is part of his application. Out of 9 candidates called for interview only 5 candidates were found to be suitable and the 6th post was given to respondent No. 4 being dependent of ESM. Respondent No. 4 did not fulfill the criteria of being dependent of ESM as he was already employed as Lecturer in History on the date of application for a post, is against the instructions dated 11.10.2001 which was part of file produced by learned counsel for

respondent No. 2 during hearing and information received under RTI despite the fact that he had secured 58 marks. Hence appointment of respondent No. 4 is quashed and the final result dated 01.06.2012 (Annexure P-9) with respect to respondent No. 4 is set aside. Respondent No. 2 is allowed to make selection as per average sheet/selection list under the ESM category.

Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

16.01.2020
Divyanshi

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