

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

CWP-20480-2019

Date of Decision: January 21, 2020

Dapinder Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE,
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. A.K. Walia, Advocate, for the petitioner.

Ravi Shanker Jha, Chief Justice (Oral)

This petition has been filed by the petitioner praying for quashing Rule 4(iii) of the Punjab Recruitment of Ex-servicemen Rules, 1982 and identical condition no. (iii) in Para 15.3.6 of Advertisement dated 09.03.2019 (Annexure P/2) as far as it relates to the recruitment on the posts of Head Master / Head Mistress in the Scheduled Castes Ex-servicemen / Lineal Descendent of Ex-servicemen category issued by the Punjab Public Service Commission.

Learned counsel appearing for the petitioner submits that the petitioner is a daughter of an ex-serviceman and is already working on the post of Hindi Mistress. It is submitted that the petitioner has applied for the post of Head Mistress pursuant to the advertisement dated 09.03.2019, but her candidature has been rejected on the ground that she is already in service and

has availed the benefit of this category previously, by relying upon Rule 4(iii) of the Punjab Recruitment of Ex-servicemen Rules, 1982 and condition No. 15.3.6 (iii) of the Advertisement dated 09.03.2019. Learned counsel for the petitioner submits that the Rules as well as the condition incorporated in the advertisement are constitutionally invalid as on the one hand reservation has been provided for the Ex-servicemen category and Lineal Descendent of Ex-servicemen category, whereas, on the other hand by inserting the impugned conditions, persons like the petitioner have been deprived of or denied the benefit of reservation, thus, defeating the claim of the petitioner. It is submitted that it is discriminatory, arbitrary and violative of the fundamental right of the petitioner.

We have heard learned counsel for the petitioner at length.

From a perusal of the petition, it is evident that the ground raised therein on the basis of which the constitutional validity of the Rules and the condition of the advertisement have been challenged is that the petitioner is being denied to seek appointment on the post of Head Mistress under the category of Lineal Descendent Ex-servicemen. Apparently, there is nothing in the petition to indicate that any factual foundation has been laid down to establish that the petitioner has any fundamental right or other rights to seek appointment under the Lineal Descendent of Ex-servicemen category. It is settled law that the person who alleges discrimination or violation of the fundamental right to equal opportunity has to properly lay down the factual foundation in the petition for claiming the same. Mere assertion of discrimination and arbitrariness for the purposes of challenging the constitutional validity of any Act, Rules, etc. is not sufficient.

Quite apart from the above, it is evident that there is no violation of the petitioner's right to compete in the selection process. It is only when a person claims special benefit of engagement and appointment as a Lineal Descendent of Ex-serviceman, in case sufficient number of ex-servicemen candidates are not available, then a claim of lineal descendent can be considered and that too subject to fulfillment of the criteria prescribed in Rule 4, namely: (i) he or she possesses the prescribed qualifications and is within the prescribed age limits; (ii) he or she is not already in service; and (iii) he or she will be eligible to avail the benefit only once in life. The said conditions have specifically been laid down for purposes of considering the claim of the candidates who claim benefit as Lineal Descendent of Ex-servicemen under Rule 4, that too, in a case where sufficient number of ex-servicemen candidates are not available. It is well settled that the employer has a right to lay down the conditions of recruitment and appointment. It is also well settled that the said conditions can be assailed only when they are demonstrated, on the basis of factual matrix laid down in the petition, to be violating Articles 14 and 16 of the Constitution. In the instant case, no such factual foundation has been laid down in the petition. Quite apart from the above, nothing is placed before this Court to indicate that the conditions mentioned in the Rules violate any fundamental right conferred upon the petitioner by the Constitution, nor is there any averment or assertion to the effect that the persons similarly placed as the petitioner, are treated differently and have been given certain special benefits which have been denied to the petitioner by the impugned Rules or conditions of the advertisement.

In the circumstances, we do not find any merit in the petition,
which is accordingly, dismissed.

(Ravi Shanker Jha)
Chief Justice

January 21, 2020
vkd

(Arun Palli)
Judge

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