

112

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

CWP-21685-2020 (O&M)
Date of decision: 16.12.2020

Manoj Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.K. Gupta, Advocate for the petitioner.

Mr. Samarth Sagar, Addl. A.G. Haryana.

ANIL KSHETARPAL, J. (ORAL)

The petitioner has filed this writ petition under Article 226/227 of the Constitution of India praying for following substantive reliefs:-

- “i. A writ in the nature of certiorari may kindly be issued for quashing the order dated 18.09.2020 (Annexure P-13) being totally arbitrary and discriminatory;*
- ii A writ in the nature of mandamus may also be issued directing the respondents to convert the unfilled posts of ESM Category into General Category in terms of the instructions Annexure P-6, P-7 and P-8 coupled with the judgments of this Hon'ble Court attached as Annexure P-9 and P-10 which has already been complied with by the respondents.”*

The petitioner is alleged to have applied pursuant to a recruitment notice inviting application for appointment of Post Graduate Teachers (Physics). The result of the recruitment examination was declared on 31.10.2018. The petitioner could secure only 114 marks whereas cut off for the candidates belonging to the general category was 115.

The petitioner now claims that certain posts reserved for Ex-Servicemen Category could not be filled up and, therefore, these posts should be converted and given to the candidates belonging to the general category. The petitioner filed CWP-33106-2019 which was disposed of on 16.11.2019 with the following order:-

“1. At the very outset, learned counsel for the petitioners states that the petitioners have submitted representation Annexure P/7 dated 12.03.2019 in respect of the grievance which is the subject matter of the writ petition but the same has not been decided till date and that in the circumstances the petitioners would be satisfied if at this stage the writ petition is disposed of by directing respondent No.2 to consider and decide the claim as made in representation Annexure P/7 dated 12.03.2019, in a time bound manner.

2. In view of the innocuous nature of the prayer made by learned counsel for the petitioners, the writ petition is disposed of by directing respondent No.2 to consider and decide the claim as made in the representation Annexure P/7 dated 12.03.2019, as expeditiously as possible preferably within three months from the date of receipt of certified copy of this order”

Pursuant to the aforesaid direction, a speaking order has been passed by the Secretary, Haryana Staff Selection Commission, Panchkula.

The operative part thereof reads as under:-

“That the petitioners in their representation as well as in the writ petition has claimed to convert the 26 vacant posts of ESM category into General Category keeping in view the instructions issued by the Chief Secretary of State, vide memo No.22/10/2013 IGS III, dated 30.04.2018. In this regard, it is submitted that Commission issued the advertisement dated 28.06.2015 for the post in question as per the requisition received from the concerned Department wherein no bifurcation was mentioned with respect to the ESM Category posts that could be classified amongst its parental categories such as General, SC, BC A & BC B as done in Group C and D employees. Post of PGT Physics is a Group B post.

Further, as per Chief Secretary, Haryana instructions dated 30.04.2018, 5% reservation have been given to ESM in Class I & II and no sub category is provided for the Ex-Servicemen Category in the advertisement. It is not clear from which parental category the unfilled post are to be filled. Therefore, in the final result dated 31.10.2018 vacant post of ESM Category were not filled from any parental category. It is hereby pertinent to mention that the Commission sought clarification from the office of the Chief Secretary, Haryana vide letter No. HSSC/Confid./Misc./2019/786, dated 22.11.2019 which is still awaited and Commission will take action accordingly after receipt of reply.

In compliance of Hon'ble High Court order dated 16.11.2019 passed in CWP No.33106 of 2019-Manju and

others Vs. State of Haryana and another, the Commission has decided the claim of the petitioner accordingly.”

Keeping in view the aforesaid facts, this Court does not find it appropriate to issue any writ at this stage. As and when the decision is taken by the Government, the petitioner shall be at liberty to seek redressal of his grievance. It is not in dispute that as of now, no candidate with marks fewer than the petitioner has been appointed.

In view of the above, the present writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the above-stated order.

16.12.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No