

S.No.104

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

Date of Decision:28.01.2021

1. CWP No.2081 of 2020

**Manpreet KaurPetitioner
Vs.
State of Punjab and othersRespondents**

2. CWP No.4311 of 2020 (O&M)

**Inderpreet Kaur and othersPetitioners
Vs.
Subordinate Service Selection Board, Punjab
and othersRespondents**

3. CWP No.7203 of 2020

**Amandeep KaurPetitioner
Vs.
Subordinate Service Selection Board, Punjab
and othersRespondents**

4. CWP No.15305 of 2020

**Sheenam KathpalPetitioner
Vs.
State of Punjab and othersRespondents**

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IN VIRTUAL COURT
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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present:- Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate for the petitioners in
CWP Nos.2081 and 4311 of 2020.**

**Mr. N.S. Sidhu, Advocate for the petitioner in
CWP No.7203 of 2020.**

**Mr. Pardhuman Garg, Advocate for the petitioner in
CWP No.15305 of 2020.**

Mr. Vikas Mohan Gupta, Addl. AG, Punjab.

Rajbir Sehrawat, J.(Oral)

This order shall dispose of four writ petitions, i.e. CWP No.2081 of 2020, CWP No.15305 of 2020, CWP No.4311 of 2020 and CWP No.7203 of 2020.

The prayers made in all these writ petitions are for de-reservation of the posts of Sports Category advertised vide advertisement dated 06.10.2016 qua the post of Ayurvedic Medical Officers and posts of Clerks in sports persons category and ex-serviceman category advertised vide advertisement No.04 of 2016 dated 01/27.09.2016 and to fill up the said de-reserved post from the candidates belonging to the General Category in accordance with their merits.

The brief facts, as are involved in these writ petitions are that the respondent No.3 in CWP No.2081 of 2020 issued an advertisement dated 06.10.2016 inviting application for direct recruitment to 118 posts of Ayurvedic Medical Officers. In the said advertisement, 56 posts were advertised for General Category and 8 posts were reserved for Sports Persons, Punjab Category. After the selection, the merit list was published by selecting agency and the petitioner was placed at Sr. No.56 in General Category candidates. However, since certain persons belonging to the other categories had secured more marks than the petitioner, and thus they were shifted to the General Category, therefore, the petitioner could not come up to the last cut-off merit. Same is the situation claimed by the petitioners in CWP No.15305 of 2020. In case of CWP No.4311 of 2020 and CWP

No.7203 of 2020, the respondent No.1 had advertised 1883 posts of Clerks on 27.09.2016. In the said advertisement, 766 posts were advertised for General Category, 79 posts were advertised for Sports Person, Punjab Category and 377 posts were advertised for ex-serviceman category. The result of the said selection was declared on 27.05.2019. In that selection also, 20 posts belonging to the Sports Persons Category and 183 posts from ESM Category remained unfilled. The petitioners in these two writ petitions claimed to have qualified the written exam but could not make the grade upto the last cut-off marks in General Category.

The common and only claim of the petitioners in these writ petitions, and which are argued by the counsels for the petitioners are that the State of Punjab had framed rules called Punjab Recruitment of Sports Person Rules, 1988 (for short, 'the 1988 Rules') and the rules called Punjab Recruitment of Ex-Servicemen Rules, 1982 (for short, 'the 1982 Rules'). Those rules prescribe that if the vacancies for the category of sports persons and ex-servicemen have been advertised twice, then the said post shall be de-reserved and transferred to the General Category. In the present cases, since no sports person has been selected and posts meant for ESM Category had remained unfilled during the previous recruitments, therefore, the post should have been de-reserved in the present recruitment and the petitioners should have been offered the appointment as per their merit determined by the selecting agency.

The State has filed written statements in these cases.

In cases of CWP No.2081 of 2020 and CWP No.15305 of 2020, the State has not disputed the fact that the post of Ayurvedic Medical

Officers meant for the sports persons were earlier earlier advertised twice and no selections were made in this category in selections made in two years pursuant to those two advertisements. In the other two writ petitions, namely, CWP No.4311 of 2020 and CWP No.7203 of 2020, the State has contested the claim of the petitioners and has asserted that these posts were not even advertised twice earlier, before the current advertisement. Hence, it is submitted that qua the posts of Clerks, the posts meant for ex-servicemen and the sports persons are not to be de-reserved under the 1982 Rules.

For ready reference, it is pertinent to have the rule regarding reservation as provided under both the above-said Rules, which are reproduced as under:-

“The 1988 Rules (AMO)

Rule 3. Reservation of vacancies:-

(1) Subject to the provisions of sub-rule (2) of rule 1, three percent of the vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of Punjab State, shall be reserved for being filled in by, recruitment of Sportsmen.

Provided that the total number of reserved vacancies including those reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes, Ex-Servicemen, Physically handicapped persons and children/ grand children of freedom fighters shall not exceed fifty percent of the posts to be filled in a particular

year.

(2) Where a reserved vacancy remains unfilled for non-availability of sportsman eligible for recruitment under these rules, such vacancy may be filled in temporarily from any other sources in accordance with the rules regulating the recruitment, and the conditions of service of persons appointed to such posts as if the vacancy was not reserved;

Provided that the reserved vacancy so filled in shall be carried forward for the subsequent occasions arising during atleast two years in each of which such occasion arises for recruitment, whereafter the vacancy in question shall be treated as unreserved.”

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The 1982 Rules (Clerks)

Rule 4. Reservation of Vacancies. (1) Subject to the provision of rule 3, 13% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen;

(Note: As per Pb. Govt. Letter No.15/25/2001-4DW/1591 dated 21.05.2002, an Ex-serviceman is allowed the benefit of Reservation for the second time and even thereafter in subsequent recruitment in accordance with the provisions of these Rules).

Provided that where an Ex-serviceman is not available for

recruitment against a reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependent child of an Ex-serviceman, who has neither been recruitment against a reserved vacancy under these rules;

Provided further that the wife or the dependent child of the ex-serviceman shall be recruited against the reserved vacancy subject to the conditions that:-

- (i) he or she possesses the prescribed qualifications and is within the prescribed age limits;
- (ii) he or she is not already in service;
- (iii) he or she will be eligible to avail the benefit only once in life.”

”Provided further that one grand Child of the Gallantry Award Winner shall be recruited against the reserved vacancy, in case the benefit or reservation has not been availed of by any of the children or dependents such winner or by the winner himself subject to the conditions specified in the second proviso;

Explanation: For the purpose of this proviso, Gallantry Award Winner includes the winner of the Paramvir Chakra, the Mahavir Chakra, the Vir Chakra, the Sena or Nao Sena or Vayu Sena Medal and Mention-in-Despatches.”

\$”Provided further that the total number of reserved vacancies including those reserved for the candidates belonging to the SCs, STs and BCs shall not exceed fifty of the posts to be filled in a particular year.”

(2) Where a reserved vacancy remains unfilled for non availability of a person eligible for recruitment under these rules such vacancy may be filled in, temporarily from any other source in accordance with the rules regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved;

Provided that the reserved vacancies filled in shall be carried forward for the subsequent occasions arising during at least 2 years in each of which such occasion arises for recruitment; where after the vacancy in question shall be treated as un-reserved.

In case of CWP No.2081 of 2020 and CWP No.15305 of 2020, since the State has not even disputed that the posts in the current advertisement for the Sports Person Category were the same posts which were advertised earlier twice and which could not be filled up during a period of two years, therefore, the State cannot have any escape but to throw open the said post for the persons belonging to General Category as per proviso to Rule 3(2) of the above-said Rules of 1988. Hence, this Court finds substance in the arguments and claim of the petitioners that the said post deserve to be de-reserved and the petitioners deserve to be considered against such de-reserved post in accordance with their merit.

However, so far as the claim in CWP No.4311 of 2020 and CWP No.7203 of 2020 qua the posts of Clerks are concerned, the petitioners have not been able to establish that the posts which were advertised in the current advertisement were already advertised twice and were not filled up

earlier during recruitments within 2 years. On the contrary, it is the positive stand of the State that the said posts have not even been advertised twice earlier. Hence, it is obvious that the petitioners in these two writ petitions cannot claim the benefit of the proviso to Rule 4(2) of Rules of 1982 mentioned hereinabove. Hence, their claims, qua both the categories of sports persons and of ex-servicemen are liable to be rejected.

Learned counsel for the petitioner appearing in CWP No.4311 of 2020 has submitted that subsequently the Rules were amended by the State of Punjab on 14.10.2019 and 21.10.2019, and it was provided in the amended Rules, that even in the same recruitment process, the vacancies could be de-reserved in case of unavailability of persons belonging to the category of sports persons and the ex-servicemen. However, learned State Counsel has submitted that this amendment is not applicable qua the current selection because the notification came even after the declaration of the result of the current selection. This Court finds substance in the argument of the counsel for the State. It is obvious that even the result of the selection had been finalised well before the amendment of the Rules. Process of selection already stood completed according to the existing rules well before the amendment of the Rule pleaded by counsel for the petitioners. Hence, the petitioners cannot claim the benefit of the amendment to the Rules, which comes several months after the final declaration of the result of the current selection.

In view of the above, CWP No.4311 of 2020 and CWP No.7203 of 2020 are dismissed.

CWP No.2081 of 2020 and CWP No.15305 of 2020 are

allowed. It is further ordered that the respondents shall consider the claim of the petitioners in these two petitions qua the posts which are now to be de-reserved by them in compliance of the rules, in accordance with their merit; and shall offer the appointment to the petitioners within a period of two months from the date of receipt of the certified copy of the order, subject to the fulfilment of other conditions of eligibility and antecedents verification qua the petitioners.

January 28, 2021
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No