

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

CWP-23882-2017 (O&M)

Date of decision: November 23, 2021

Anil Kumar and others

.....Petitioners

Versus

Haryana Staff Selection Commission

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakesh Sobti, Advocate for the petitioners.

Ms. Shruti Jain Goyal, DAG Haryana.

ARUN MONGA, J.

Petitioners *inter alia* are aggrieved *qua* non-publication of selection result challenged in leading newspapers and for not showing the merit and marks of the individual candidates called for interview for selection to the posts of clerks. A direction is sought to publish the entire result; short-list and interview the petitioners and to appoint them, if they come within the zone of selection.

2. Succinct facts first. The respondent issued advertisement dated 24.11.2015, Annexure P-1. Applications for filling up 4,425 posts of clerks in various departments of Haryana Government were invited. Later on, 1,686 more vacancies were added in May 2016, taking the total to 6,125. Petitioners also applied for the posts under BCB-DESM (Dependent of ESM) category. They appeared in the written examination, which carried maximum 200 marks. Result sheet dated 09.10.2017, Annexure P-5 indicates the last candidate under BCB/ESM category short listed for

interview secured 66 marks. Petitioners claim that they duly matched their answers to the questions with the answer key later provided by the respondent. As per their answers, they were sure of securing between 116 to 164 marks (1-Anil Kumar 164, 2-Narinder Singh 142, 3-Naresh Kumar 116, 4-Pawan Kumar-100 and 5-Jai Parkash-142). These marks were much higher than 66 marks secured by the last shortlisted candidate in the ESM reserved category. Yet, the petitioners' roll numbers were not shown in the result sheet of candidates shortlisted for interview in the said category. Hence, the writ petition.

3. The respondent filed written statement stating that due to scratch/smudge in the OMR sheet against question No. 7 in the answer sheet of petitioner No. 1 Anil Kumar, his candidature had been rejected in terms of instruction No. 6 of important instructions on the admit card for examination, which had been duly signed by him. They also disclosed the marks in the written examination obtained by the petitioners (1-Anil Kumar 164, 2-Narinder Singh 142, 3-Naresh Kumar 116, 4-Pawan Kumar-100 and 5-Jai Parkash-142). It was asserted that since sufficient number of self ESM candidates had passed the written examination; were available and short-listed, therefore, as per settled legal position and Haryana Government instructions, those self ESM candidates were rightly considered and the Dependents of Ex-servicemen (DESM) candidates were not considered.

4. Order dated 17.07.2017 was passed by the learned Bench then seized of the case directing that the petitioners may be similarly interviewed provisionally as directed in the order passed by a co-ordinate bench of this court in CWP No.23749 of 20217 on 12.10.2017.

5. I have heard the learned counsel for the parties and have gone through the record.

6. Learned counsel for the petitioners would argue that the marks obtained by them were higher than 66 marks of the last candidate short-listed under the category of ESM. Therefore, the petitioners' roll numbers ought to have been shown in the result sheet of the short-listed ESM category candidates; they should have been called for interview and selected, if they would come within the selection zone.

7. Per contra, learned counsel for the respondent vehemently opposed the contentions. She argued that in terms of instruction No. 6 of important instructions on the admit card for examination duly signed by petitioner No. 1 Anil Kumar, his candidature had been rejected due to scratch/smudge in the OMR sheet against question No. 7. Further, it was submitted that since sufficient number of self ESM candidates had passed the written examination; were available and short-listed, therefore, as per settled legal position and Haryana Government instructions, only such self ESM candidates were considered and the Dependents of Ex-servicemen (DESM) candidates were not considered. The petitioners being not themselves ex-servicemen but only dependents of ex-servicemen were, therefore, also not considered for short listing, interview and selection.

8. Petitioners though filed replication, but it may be noted here that replication is conspicuously silent qua the stand in the written statement of the respondent to the effect firstly that the candidature of petitioner No. 1 Anil Kumar had been rejected due to scratch/smudge in his OMR sheet against question No. 7 and secondly that sufficient number of self ESM

candidates had passed the written examination; were available and short-listed and that as per settled legal position and Haryana Government instructions, only such self ESM candidates were considered and the Dependents of Ex-servicemen (DESM) candidates were not considered. This shows an implied admission of the aforesaid version of the respondent on both counts.

9. Instruction No. 6 of important instructions on the admit card for examination is as under:

“6. Candidates are warned not to fold, tear, destroy or make any stray marks on the OMR Answer Sheet. Use of eraser, nail, blade, while fluid/whitener etc. to smudge scratch or damage in any manner the OMR sheet during examination is strictly prohibited. Candidature/OMR sheet of candidates using eraser, blade, nail or white fluids/whiner to smudge, scratch or damage in any manner the answer sheets shall be cancelled.”

10. In Anshu and ors v. State of Haryana and anr LPA No. 92/2017 decided on 20.01.2017, a Division Bench of this Court observed/held as under:

“It is evident that the specific guidelines were provided to the candidates to adopt the manner in which answers were to be marked and similarly they were cautioned not to use fluid or scratch the OMR sheet, but in complete violation of the instructions, the answer books were found to be smudged with double marking and even erasing fluid was used as also tampering with the nail/blade. Having done so, the appellants cannot claim any prejudice if strict action has been taken by cancellation of their OMR sheets altogether. Such guidelines have to be issued as OMR sheets are to be evaluated by a computer which may not respond appropriately in view of abrasions and tampering. The learned Single Judge has rightly discarded the plea of the appellants in the impugned order and we, finding no infirmity therein, would also decline interference, particularly when it is expected of the candidates to be conscious of the guidelines and instructions issued by the examiner in the selection process which has to be thoroughly respected.”

11. Learned counsel for the petitioners did not urge anything to challenge the legality of the action of the respondent in rejecting the candidature/OMR sheet of petitioner No. 1. To my mind, the case of petitioner No. 1 herein is squarely covered by the judgment *ibid*. He is thus not entitled to any relief.

12. As already noted above, the petitioners' replication is also conspicuously silent on the plea in the written statement to the effect that sufficient number of self ESM candidates had passed the written examination; were available and short-listed and that as per settled legal position and Haryana Government instructions, only such self ESM candidates were considered and the Dependents of Ex-servicemen (DESM) candidates were not considered. This shows an implicit admission of the respondent's version that sufficient number of self ESM candidates had passed the written examination; were available and short-listed.

13. The respondent's stand is that self-ESM candidates are preferred over the Dependents of ESM candidates in view of the settled legal position and instructions dated 21.05.2009 Annexure R-1. Relevant part thereof is reproduced below:

"It has been observed that due to non-availability of suitable candidates for the reserved quota, the recruitment of ex-servicemen to the civil posts is not being made in the desired extent. In view of this, it has been decided that the dependent sons/and daughter of ex-servicemen who fulfil all conditions of qualifications age etc, prescribed for virus posts, should also be considered on merit for the posts reserved for the ex-servicemen. This entitlement would be available to one dependent child only.

14. In my opinion, as per instructions *supra*, the dependents of ex-servicemen are to be considered on merit for the posts reserved for ex-

servicemen only to the extent of non-availability of suitable ex-servicemen.

Since, in present case, sufficient number of self ESM candidates were available and short-listed, therefore, only such self ESM candidates were considered and rightly so. The dependents of Ex-servicemen (DESM) candidates were not entitled to be considered.

15. To my mind, the primary object of the Government's reservation policy for ex-servicemen is to rehabilitate them after their discharge from the defence services and so long as qualified and suitable ex-servicemen are available for filling up the vacancies reserved for them, the dependents of ex-servicemen cannot claim any right of consideration/selection against such reserved posts. In **Shiv Charan v. State of Haryana and ors. CWP No. 1774/2011** decided on 15.12.2012, this Court held as under:

“It is by now well settled in the light of the Division Bench judgment of this Court in Rajesh Kumar Tahlan’s case (supra) that the claim of the ESM category is to be considered in the first instance by having their eligibility considered independently before claims of FESM category are to be considered. If the ESM are found to be ineligible and are not selected, then against the balance unfilled posts, the selection was required to be made from amongst the DESM category. This dicta flows from the judgment of the Supreme Court in Dilwan Singh and others vs. State of Haryana and others 1996 (2) RSJ 514, wherein the Supreme Court has held that the object of reservation for the ex-servicemen is to be rehabilitate them after their discharge from the defence services. As per the instructions issued by the State Government, in the absence of availability of the ex-servicemen, instead of keeping those posts unfilled, the dependents of ex-servicemen would also be considered. The object thereby would be that the Selection Board should consider the case of ESM category candidates independently in the first instance before the claims of the dependent children of the ex-servicemen are considered and if they are found eligible and selected leaving some posts unfilled, these posts can be filled up by selection from the dependent of ex-servicemen category. Same is the law laid down by this Court in Dr. (Major) Harsh Vivek Singh’s case (supra).

In view of the above, the present writ petition deserves to be allowed and it is held that since the petitioner under the ESM category was available, dependent of ex-servicemen could not be

short listed for selection for consideration for appointment to the post of Lecturer in Hindi.”

16. Learned counsel for the petitioners did not urge anything to dispute the factual position that sufficient number of self ESM candidates were available and short-listed. The petitioners themselves are not ex-servicemen but are dependents of ex-servicemen. In this view of the matter, I am of the opinion, that they could/ cannot claim any right of consideration/selection, so long as sufficient number of self ESM candidates were available and short-listed.

17. To be also noted here, that in their replication, the petitioners have come out with a new stand to the effect that some other candidates who have been selected against the posts reserved for ESM/BCA, had already availed of the benefit of reservation. This is an entirely new case set up in the replication. It is without any basis, whatsoever, not even remotely pleaded in the petition and merits summary rejection. Moreover, there is no challenge herein to the selection of any other candidates, who have allegedly already availed of the benefit of reservation. Any such selected candidate, if so, is not even a party to the *lis*. It is, therefore, neither necessary nor fair and appropriate for the court to go into and express any opinion on this plea of the petitioners.

18. It is not even alleged by the petitioners that such selected candidates were the dependents of ex-servicemen like the petitioners, or were themselves ex-servicemen, as distinguished from the dependents of ex-servicemen. In the latter case, the petitioners cannot claim any parity with the candidates who themselves were ex-servicemen.

19. As a result of the above discussion, the petition is dismissed.
20. Pending applications, if any, stand disposed of.

(ARUN MONGA)
JUDGE

November 23, 2021
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No