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

CWP-24976-2018 (O&M)

Date of decision: October 25, 2021

Shiv Kishore Bishnoi and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sanjeev Sharma, Senior Advocate with
Mr. Sandeep Kumar, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Kanwal Goyal, Advocate for the respondent-Commission.

ARUN MONGA, J

Aggrieved by the refusal of the respondents to conduct their interview and the rejection of their candidature for selection to the posts of Veterinary Surgeon (HVS II) in the Department of Animal Husbandry & Dairying, petitioners are before this court. They, *inter alia*, also seek direction against the respondents to conduct their interview and consider them for selection/appointment against the posts reserved for ex-servicemen and their dependents.

2. Respondent No. 2 published advertisement Annexure P-2 on 02.05.2017 inviting applications for 246 posts of Veterinary Surgeons, including 15 posts reserved for Ex-Servicemen (ESM) of Haryana and specifying that if suitable ESM category candidates are not available, then the dependent sons/daughters of ESM will be considered against the posts reserved for ESM. Relevant part

of the advertisement relating to reservation for the ESM and dependent of ESM candidates (DESM) is reproduced below:

- “6. **RESERVATION.** *The reservation in different categories is to be covered in accordance with the orders/instructions issued by the Haryana Government from time to time.*
- (a) *It is made clear that the **dependent of ESM candidates** will be considered as **General Category** candidates for all intents and purpose. However, in case of non-availability of suitable ex-servicemen, their dependent sons and daughters who fulfil all the conditions of qualifications, age etc prescribed for posts in question will also be considered on merit against the reserved posts of ESM and this entitlement would be available to one dependent child only.*

*Candidates claiming dependent sons/daughters of Ex-servicemen must send the latest eligibility certificate issued by the Zila Sainik Board Haryana (specifically indicating the name of post for which the candidate is applying) in support of their claim. None of the persons mentioned below shall fall within the definition of words “**Dependent of Ex-servicemen**” in terms of Haryana Govt. letter No. 12/37/39-GSII dated 21.11.1980.*

- (i) *a person may be working on an ad-hoc basis against the post advertised or somewhere else.*
- (ii) *a person may be unemployed at the time of making the application but he may have other source of income viz. from agriculture, trade, property, bank balance etc.*
- (iii) *a person who is a member of the Joint Hindu family and remains dependent upon the Karta till there is partition in the family or he ceases to be a member of the Joint Hindu family and is obliged to pass on all his income to Karta and draws money for his subsistence from the pool of the Joint Hindu family with the consent of the Karta.*
- (iv) *a candidate who is a member of the Joint Hindu family is employed on ad-hoc basis but he is otherwise dependent on his father.*

Income Limit for DESM:-

According to the instructions issued by the Chief Secretary to Govt. Haryana vide letter No. 12/08/03-4GSII dated 01.12.2003, the person who have income from agriculture, trade, property, bank balance etc upto Rs. 6000/- per month will be considered dependent of ESM.

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xxxxxx”

3. Petitioners possessed the requisite academic qualifications and applied for the posts reserved under the category Dependent of Ex-servicemen (DESM).

After passing written examination and they were called for interview on

26.09.2018. However, later they were told, without assigning any reason, that their interview had been cancelled. Petitioner No. 1 moved application Annexure P-9 on 26.09.2018 itself before respondent No. 2 in this behalf, but it did not fetch any response. Hence the writ petition.

4. In its return, respondent No. 2 states that it was found during scrutiny of documents that petitioners were employed, though on contractual basis, in the Animal Husbandry Department and but regardless, they did not come under the category of DESM as per relevant instructions. Therefore, the candidature of the petitioners was rightly cancelled. They were duly informed of the reasons for rejection of their candidature. Be that as it may, in compliance of this Court's order dated 27.09.2018, they were provisionally interviewed.

5. Petitioners filed replication re-iterating their version in the petition and asserting that the employment on contractual basis did not negate their eligibility. They also assert that three other candidates, namely, Manoj Kumar Dangi, Ankush Sihag and Parveen Kumar, who at the relevant time were employed on contractual basis in the Animal Husbandry Department and were similarly placed, were actually selected and appointed, while the petitioners were discriminated against.

6. Having heard the rival contentions I shall now proceed to record the same and outcome thereof.

7. Learned counsel for the petitioners argued that the petitioners were/are dependents of ex-servicemen and eligible for consideration against the post reserved for the ESM and dependent of ESM candidates. Their employment on contractual basis did not disentitle them from the said benefit. He relied upon **K. Anbazhagan & Anr. V. The Registrar General, High Court of**

Madras and Anr. CA No. 8216-17/2018 decided on 13.08.2018. It is also submitted that when similarly placed other persons employed on contractual basis had been actually selected/appointed against the posts reserved for the same category of candidates, the rejection of the petitioners candidature amounted to hostile discrimination.

8. Learned counsel for the respondents argued that the petitioners' candidature was rightly rejected as they were not dependents of ex-servicemen and they were not eligible to be considered against the posts reserved for the ESM and dependent of ESM candidates. It was also submitted that they are not entitled to consideration/selection/appointment against the posts reserved for the said category of candidates. As such, their petition deserves dismissal.

9. As already noted above, in compliance of this Court's order dated 27.09.2018, the petitioners were provisionally interviewed. Their result was kept in sealed cover. Order dated 18.11.2020 shows that the sealed cover was produced and opened in Court. It revealed that both the petitioners had successfully qualified by securing 55.42 marks (Shiv Kishore Bishnoi) and 51.84 marks (Sandeep Srot) as against requisite cut off marks for the category of Dependent of Ex-servicemen. This being the position, at this stage, no further order is required to be passed by the court on the petitioners' prayer for direction to the respondents to conduct their interview.

10. However, it seems appropriate to notice a few relevant facts in this connection. Per advertisement Annexure P-2, it was specifically required that the candidates, claiming to be dependent sons/daughters of Ex-servicemen, must send the latest eligibility certificate issued by the Zila

Sainik Board Haryana (specifically indicating the name of post for which the candidate is applying) in support of their claim. It is not even the case set up by the petitioners if they had submitted/produced either with their applications for the post submitted to respondent No. 2 or at the time of scrutiny of documents on 26.09.2018 any such eligibility certificate. No such certificate has been produced in this Court too. It is obvious, therefore, that the petitioners did not/do not possess any such eligibility certificate issued by the Zila Sainik Board Haryana.

11. Knowing fully well of this requirement in the advertisement, the petitioners themselves failed to submit/produce either with their applications for the post submitted to respondent No. 2 or at the time of scrutiny of documents on 26.09.2018 the required eligibility certificate. Even in this Court, they have not shown if at all they possess any such eligibility certificate issued by the Zila Sainik Board Haryana. It cannot, therefore, be said that respondent No. 2 alone was to be blamed for his initial refusal to conduct the interview of the petitioners. The fact is that the petitioners themselves had failed to submit/produce either with their applications for the post submitted to respondent No. 2 or at the time of scrutiny of documents on 26.09.2018 any eligibility certificate issued by the Zila Sainik Board Haryana for the petitioners' consideration against the post reserved for Dependents of Ex-servicemen and thus had not fulfilled the requirement in the advertisement.

12. Let us now examine whether the petitioners were actually eligible to be considered against the posts reserved for dependents of the Ex-servicemen,

irrespective of their not having the required eligibility certificate from the Zila Sainik Board Haryana and its non-production as per the advertisement.

13. At this juncture, it would be pertinent to reproduce the relevant parts of Haryana Govt. letters dated 21.11.1980 and 01.12.2003 Annexure R-2/1.

Haryana Govt. letter No. 12/37/39-GSII dated 21.11.1980:

“I am directed to invite your attention to the Haryana Government circular letter No. 12/37/79-GSII dated 1st July, 1980 on the subject noted above and to say that according to the instructions contained in Haryana Govt. circular letter No.12/37/79-GSII dated 21st May, 1979, the dependent sons and daughters of ex-servicemen who fulfil all the conditions of qualifications, age etc. prescribed for various posts are also to be considered on merit for the posts reserved for ex-servicemen to the extent of non-availability of suitable ex-servicemen and this entitlement would be available to one dependent child only. A question has arisen whether the candidates of the following types can be considered as eligible dependents for the purpose of the aforesaid instructions.

- (i) a person may be working on an ad-hoc basis against the post advertised or somewhere else;*
- (ii) a person may be unemployed at the time of making the application but he may have other source of income viz. from agriculture, trade, property, bank balance etc. (emphasis supplied);*
- (iii) an unemployed person who is a member of the Joint Hindu family may also contribute to the pool of the family income by lending help;*
- (iv) a person who has already done his graduation and is doing post-graduation and is getting merit scholarship for the studies;*
- (v) a person who is a member of the joint Hindu Family remains dependent upon the Karta till there is partition in the family or he ceases to be a member of the Joint Hindu family and is obliged to pass on all his income to Karta and draws money for his subsistence from the pool of the Joint Hindu family with the consent of the Karta.*
- (vi) a candidate who is a member of the Joint Hindu family is employed on ad-hoc basis but he is otherwise dependent on his father.*

3. On consideration of this matter, the State Govt. has decided that the position as stated above in regard to the term dependent should be kept in view while considering the dependent sons and daughters of ex-servicemen for appointment against the pos of ex-servicemen.”

Haryana Govt. letter No. 12/08/03-4GSII dated 01.12.2003:

“I am directed to refer to instructions contained in Haryana Government letter No.12/37/39-GSHII dated 21.11.80, on the subject noted above wherein it has been mentioned that the persons who have income from agriculture, trade, property, bank balance etc. are not to be included in the definition of dependent of ex-servicemen.

2. The Hon’ble Punjab & Haryana High Court in CWP No. 5269 of 2003- Vijay Kumar versus State of Haryana has directed that it is to be clarified whether a person who possesses a small piece of agricultural land, can be considered as having enough income from such land so as to dis-entitle him from being called a dependent of ex-servicemen.

3. The matter has been further examined/reviewed and it has been decided that the persons who have income from agriculture, trade, property and bank balance etc upto Rs. 6000/- per month may also be considered dependent of ex-servicemen for employment.

(emphasis supplied)”

14. From a conjoint reading of these two letters, it seems that the real test is that the candidate’s own independent income is upto the prescribed ceiling of Rs. 6,000/- per month, for eligibility to be considered as dependent of ex-serviceman for employment, irrespective of the source of his own independent income. It further appears that the sources fetching the candidate’s own independent income as enumerated from (i) to (vi) in Government letter dated 21.11.1980 reproduced above and those mentioned in letter dated 01.12.2003 viz., agriculture, trade, property and bank balance etc. are just illustrative and not exhaustive. It seems that the real determinant for eligibility in the category of dependent of the ex-servicemen is the own independent income of the candidate including income from his contractual employment. Merely because income from contractual employment has not been mentioned in sources of income enumerated from (i) to (vi) in Government letters dated 21.11.1980 reproduced and dated 01.12.2003, it

cannot be said that income from contractual employment is not to be taken into consideration for determining the eligibility of the candidates in the category of dependent of the ex-servicemen. I, therefore, find no merit in the contention of the learned counsel for the petitioners that the petitioners' income from contractual employment was/is not to be taken into consideration for determining their eligibility in the said category.

15. Admittedly, at the time of submitting their applications for the advertised posts, the petitioners were already employed as Veterinary Surgeons on contractual basis in the Animal Husbandry Department, Haryana Government. It is not disputed that their remuneration from this contractual employment was above Rs. 6,000/- per month. In such situation, I am of the considered opinion that the petitioners' own independent income even though from contractual employment which exceeded the prescribed ceiling of Rs. 6000/-per month at the relevant time had pushed them above and out of the category of dependents of ex-servicemen. It follows that they were not actually eligible to be considered against the posts reserved for dependents of the Ex-servicemen.

16. In **K. Anbazhagan & Anr. V. The Registrar General, High Court of Madras and Anr. CA No. 8216-17/2018** decided on 13.08.2018^{supra}, the appellants' case was that they had been appointed by direct recruitment from the Bar on *ad-hoc* basis and claimed pension, gratuity and leave encashment etc. Relevant part of judgment *ibid* is extracted as below :-

“10. Learned senior counsel for the appellants contends that High Court committed error in rejecting he claim of the appellants for pension, gratuity and leave encashment on wrong premise that appellants were contract appointees and they are not borne on pensionable establishment. He submits that appointment of the appellants by direct recruitment from Bar was on ad hoc basis,

which is clear from the advertisement inviting applications for filling the post. He submits that appellants are not contract employees and on that ground denial of retiral benefits is unsustainable. He further submits that Fast Track Court Judges were in the same establishment as the regular Additional District Judges. They being not in a separate or independent establishment, they were clearly borne on pensionable establishment. It is further submitted that ad hoc appointments of Fast Track Courts were made by both the sources i.e. by promotion of judges from lower division as well as from the bar. There cannot be any dispute that cadre of Additional District Judges is borne on pensionable establishment, hence there cannot be any differentiation with regard to establishment in which both ad hoc appointees were borne. All the appellants have completed qualifying service of ten years under the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as "1978 Rules") and were clearly entitled for pension and gratuity. It is further submitted that before High Court both the claim of gratuity and leave encashment were also raised by the appellants but the High Court did not advert to the claim of gratuity or leave encashment. The appellant K. Anbazhagan was relieved on 31.05.2011 after attaining the age of sixty years, hence, he was clearly entitled for superannuation benefit under the 1978 Rules....."

It is borne out from above that the respondents therein had asserted that the appellants had been appointed on contractual basis and were not entitled to any such benefits. For determination of this controversy, the Apex Court had drawn distinction between the appointment on ad-hoc basis and appointment on contractual basis and held that the appellants had been appointed on ad-hoc basis and were entitled to pension, gratuity and leave encashment as per relevant Rules. There is no such question involved in the instant case, the judgment *ibid* has no application here and does not help the petitioners.

17. In my opinion no vested rights of eligibility accrued to the petitioners for selection against the posts reserved for dependents of ex-servicemen, merely because, as pleaded by them and contended on their behalf, other candidates who were also in employment on contractual basis as Veterinary Surgeons at the relevant time and were similarly placed with the petitioners,

had been selected and appointed against the reserved posts in the same category.

18. It has thus held that the petitioners were/are not actually eligible to be considered against the posts reserved for dependents of the Ex-servicemen. Other similarly placed candidates stated to have been selected and appointed against the reserved posts in the same category are not parties to the *lis*. Their selection/appointment is not under challenge. At their back, it would be unfair to comment upon the correctness or otherwise of their selection/appointment and pass any adverse order against them. The petitioners were not actually eligible to be considered against the posts reserved for dependents of the Ex-servicemen. Assuming, without holding so, at this stage, that the other candidates named by them were wrongly selected and appointed against the same category reserved posts, that by itself would not justify or legitimize the petitioners' claim and entitle them to consideration/selection under the said category on the ground of so-called hostile discrimination. The petitioners had/have no legal right of their own for consideration against the posts reserved for dependents of the Ex-servicemen as they were/are not eligible for the same. Two wrongs do not make a right.

19. Be that as it may, in the interest of justice, the respondents are directed to look into the petitioners' allegations that Manoj Kumar Dangi, Ankush Sihag and Parveen Kumar were also employed as Veterinary Surgeons on contractual basis in the Animal Husbandry Department, Haryana Government at the relevant time, but had been selected and appointed against reserved posts under the same category. If it is found that they or any of them were/was wrongly selected and appointed, the respondents shall take

appropriate corrective action to undo the wrong and also for plugging the loopholes, if any, to prevent such situations in future.

20. With these observations/directions, the writ petition is dismissed.

21. Pending applications, if any, stand disposed of.

(ARUN MONGA)
JUDGE

October 25, 2021

vandana/mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No