

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1082-2021 (O&M)
Date of decision: 12.11.2021

Mandeep and others

... Appellants

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Rajesh Hooda, Advocate,
for the appellants.

Mr. Baldev Raj Mahajan, Advocate General, with
Mr. Deepak Balyan, Additional A.G., Haryana.
(The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE. (ORAL)

This is an intra-court appeal, under Clause X of the Letters Patent, against a judgment and order dated 12.10.2021, rendered by the learned Single Judge, vide which the writ petition preferred by the appellants has since been dismissed.

In brief, the facts of the case are that the appellants-petitioners had filed the writ petition challenging advertisement No.3/2016, dated 20.2.2016, vide which, under category No.1, 2426 posts of Shift Attendant were re-advertised, because the earlier advertisement issued in the year 2013 was withdrawn. The main ground on which the writ petition was filed was that the reservation provided in the advertisement for various categories was exceeding 50%, as a result of which, candidates of the General Category

were deprived. Further, the actual number of vacancies were 2694, whereas, the advertised posts were only 2426. Thus, 268 posts were excluded, as the same were to be filled up by the candidates from Special Backward Classes Category. However, the reservation for Special Backward Classes Category was withdrawn by the State w.e.f. 1.4.2016, and therefore, it was prayed that 268 posts that had not been included in the advertisement, be included in the selection process and all the 2694 posts be filled up.

Learned counsel for the appellants submits that in case 268 posts were not added to 2426 posts, the reservation in respect to the posts of Shift Attendant would exceed 50%, which is contrary to law laid down by the Supreme Court. He also points out that prayer in the petition was that 268 posts be converted into the General Category and included in the selection process.

The learned Single Judge, after perusal of the advertisement, has recorded that 268 posts which had not been included in the advertisement, have now been converted into the General Category and would be filled up by issuing a separate advertisement, for which requisition has already been sent to the Haryana Staff Selection Commission. The learned Single Judge, while taking note of the aforesaid fact, recorded a finding that when the percentage of the reservation is determined on the basis of cadre strength, addition of 268 posts to the General Category would not exceed 50% reservation. The learned Single Judge rejected the prayer of the petitioners/appellants for inclusion of 268 posts in 2426 advertised posts and observed that the State was already in the process of advertising the said posts, which are to be filled up from the General Category.

The learned Single Judge also took note of the fact that the

advertisement was not challenged at the threshold, rather the petitioners had challenged it only when they failed to get selected. It has also been observed that result of the selection process was declared way back on 8.3.2019 and the selected candidates have even joined their duties. Further, with regard to the prayer for declaration of the result of the examination on the website, the learned Single Judge has recorded a finding in the contempt petition (COCP-1526-2020), that respondents had filed a separate affidavit stating therein that result of the selection process for Shift Attendants against advertisement No.3/16, category No.1, has been uploaded on the website. Further, a copy of the notice informing the candidates of the same has also been placed on record. Therefore, the prayer did not survive.

Having heard learned counsel for the parties and perused the records, we are of the considered opinion that no fault can be found with the impugned order passed by the learned Single Judge.

It is well settled proposition of law that the authority cannot fill up more than the notified number of vacancies advertised, as the recruitment of candidates in excess of the notified vacancies, would be violative of Articles 14 and 16(I) of the Constitution. A reference in this regard can be made to the following judgments of the Supreme Court:-

- (i) Ashok Kumar and others Vs. Chairman, Banking Service Recruitment Board and others, (1996) 1 SCC 283**
- (ii) State of U.P. and others Vs. Rajkumar Sharma and others, (2006) 3 SCC 330**
- (iii) Mukul Saikia and others Vs. State of Assam and others, (2009) 1 SCC 386**
- (iv) Rakhi Ray and others Vs. High Court of Delhi and others, (2010) 2 SCC 637**
- (v) Gajanan Babulal Bansode and others Vs. State of Maharashtra and others, (2021) 4 SCC 494.**

In such a situation, it is crystal clear that the posts that have not been advertised, cannot be filled up. The learned Advocate General has made a statement that 268 posts were not included in advertisement No.3/2016, dated 20.2.2016, for initially those had been kept aside for the candidates of Special Backward Classes Category. But, post withdrawal of the said reservation by the State on 1.4.2016, those posts have been converted into the General Category. It is urged that in view of the 268 posts now being available for the General Category candidates, alleged breach in 50% reservation does not exist. It is also submitted that in view of the law laid down by the Supreme Court, the posts sought to be filled up, have to be advertised first. The State has already initiated the process and a requisition in this regard has already been sent to the Haryana Staff Selection Commission for issuance of advertisement.

In the wake of the above, we are dissuaded to interfere with the impugned judgment and order rendered by the learned Single Judge.

The appeal being bereft of merit is accordingly dismissed.

Since the main appeal itself has been dismissed, no orders are required to be passed in the application (CM-2505-2021).

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

November 12, 2021
AK Sharma

Whether speaking / reasoned:
Whether Reportable:

YES
NO