

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

**C.W.P.No.30633 of 2019(O&M)
and other connected cases
Date of decision: 27.04.2021**

Ramesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. R.K.Malik, Sr. Advocate, with
Mr. Samrat Malik, Advocate,
for the petitioners.**

Ms. Kirti Singh, DAG, Haryana.

ANIL KSHETARPAL, J.

This order shall dispose of Civil Writ Petition No.30633, 30498, 30519, 30540 and 30640 of 2019 as the identical issue of law and facts arise for adjudication. Learned counsel for the parties are also ad-idem that these writ petitions can conveniently be disposed of by a common judgment.

The facts are not in dispute.

Pursuant to a recruitment notice for 750 posts of Canal Guards, approximately 25000 applications were received. The petitioners, in all the aforesaid petitions, on being selected under general category were appointed on 01.01.2009. The selection was embroiled in the litigation as the authorities committed irregularities. In Civil Writ Petition No.18416 of 2009 (Satyawan vs State of Haryana and others), the Court vide order dated 08.09.2010 gave permission to the authorities to take appropriate steps for removal of illegalities/irregularities. The aforesaid writ petition came to be

disposed of on 13.02.2014 after noting that the remedial steps have been or are being taken. When the officials were about to complete the aforesaid exercise, Ram Bhagat, a candidate filed Civil Writ Petition No.11929 of 2015, contending that the candidates, who had applied under BCA category and had secured higher marks were liable to be considered for selection under the general category in view of the government instructions. The aforesaid writ petition was allowed on 02.12.2016. In view of the aforesaid directions issued on 02.12.2016 in the subsequent writ petition, the petitioners were served with show cause notice on 08.03.2019 and after granting personal hearing the services of the petitioners were dispensed with vide order dated 16.11.2019. On 22.10.2019, the Court granted interim protection to the petitioners and thus the petitioners have continued in the service. It is significant to note that out of total 750 posts of Canal Guards, 70 posts were selected for being appointed in the office of Superintending Engineer, Loharu Water Service Circle, Bhiwani. The petitioners were selected against the aforesaid 70 posts. It is important to note that the respondents have taken a stand that vide decision dated 21.06.2018, the cadre of Canal Guards has been declared diminishing cadre and on 21.06.2019 the posts of Canal Guards have been converted to Beldar. The petitioners are occupying Grade-D posts. The petitioners have made positive assertion that 20 posts of Canal Guards in a general category are lying vacant in Loharu Circle which has not been controverted while filing written reply.

This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel representing the petitioners does not dispute the correctness of the decision taken by the Government to accommodate the

candidates who although applied under reserve category but secured higher marks and therefore entitled to adjusted against the vacancies of the general category. However, he submits that the respondents have overlooked the human problem. He submits that the petitioners are not at fault and now after a period of more than a decade, it would not be appropriate to dispense with the services of the petitioners, particularly when the posts are lying vacant. He in support of his argument relies upon various judgments passed by the courts from time to time including Civil Writ Petition No.7062 of 2003, decided by the Division Bench on 01.07.2004. He invokes the doctrine of equitable estoppel and submits that the decision of the respondents in dispensing with the services of the petitioners is not sustainable.

Per contra, learned counsel appearing for the State while defending the decision contends that as a consequence of the exercise undertaken by the government pursuant to the directions of the courts, the services of the petitioners have rightly been dispensed with. She contends that since the cadre of the Canal Guards is a diminishing cadre therefore, the courts should not order the adjustments of the petitioners.

Keeping in view the aforesaid facts, the question which arises for consideration is whether it would be appropriate to permit the State to dispense with the services of the petitioners after a period of more than a decade, particularly when they are not at fault. The irregularity in the selection was on the part of the authorities/officials. The petitioners are holding Group-D posts. These writ petitions have been filed by 5 individuals, out of which late Sh. Ramesh Kumar has recently died. Thus, now only 4 writ petitioners are left. The respondents have not disputed that 20 posts of Canal Guards/Beldar are lying vacant in the office of

Superintending Engineer, Loharu. Still further, the government has taken a decision on 21.06.2019 to convert the cadre of Canal Guards to that of Beldar. The services of the Beldar can be utilised at more than one places. Most of the petitioners have now become over age.

Hon'ble Division Bench in Ramesh Kumar (supra) after noticing various precedents on the issue, found that doctrine of equitable estoppel saves the services of such employees. The courts after recognizing the consequences resulting from uprooting the petitioners have declared that after such a long passage of time, it would not be appropriate to throw them out of service.

Keeping in view the aforesaid facts, while respectfully following the judgment passed by the Division Bench, the writ petitions are allowed. It is declared that the 4 writ petitioners, namely, Sh. Kuldeep Singh son of Sh. Kartar Singh, Sh. Kuldeep Singh son of Sh. Jai Hind, |Sh. Ravinder Singh son of Sh. Sarjeet Singh, Sh. Raj Kumar son of Sh. Man Singh shall be permitted to continue in service. However, it is left to the government to adjust them by creating supernumerary post or otherwise. Late Sh. Ramesh Kumar son of Sh. Amar Singh has already died. His claim shall be settled as if he died while in the service.

With these observations, the writ petitions are allowed.

27th April, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No