

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

**LPA No.160 of 2022 (O&M)
Date of Decision: 24.02.2022**

Shiv Kishore Bishnoi and another

.....Appellants

Versus

State of Haryana and others

.....Respondents

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

Present : Mr. Sandeep Kumar, Advocate for the appellants.
Mr. Deepak Balyan, Addl.A.G. Haryana.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court).

ARUN PALLI, J.

This is an *intra Court* appeal, under Clause X of the Letters Patent, against an order and judgment dated 25.10.2021, vide which the writ petition preferred by the appellants, praying for a direction to the respondents to conduct their interview and consider them for selection/appointment to the post of Veterinary Surgeon (HVS II), has since been dismissed.

Facts that are required to be noticed are limited.

Vide advertisement dated 02.05.2017 (Annexure P-2), issued by the Haryana Public Service Commission (for short 'the Commission'), applications were invited for recruitment to 246 posts of Veterinary Surgeons, in the Department of Animal Husbandry and Dairying,

Haryana. Of the total posts, that were advertised, 15 posts were reserved for Ex-servicemen (ESM) of Haryana. However, it was specified that if suitable ESM Category candidates are not available then the dependent sons/daughters of ESM shall be considered against the reserved posts. Appellants competed for selection in the reserved category of Dependents of Ex-servicemen (DESM). They qualified the written examination and were called for interview. However, subsequently, their interview was cancelled which impelled them to approach this Court, vide a writ petition, referred to above.

In brief, the stand set out by the Commission was that upon scrutiny of documents it was found that appellants were already employed with the department on contractual basis and, therefore, in terms of the Government instructions issued on 21.11.1980 and 01.12.2003, they were not entitled/eligible to compete in the category of DESM.

Upon consideration of the matter in issue, the learned Single Judge concluded that in terms of the advertisement (*ibid*), the candidates claiming to be the dependent sons/daughters of the ex-servicemen were required to submit the latest eligibility certificate issued by the Zila Sainik Board, Haryana (for short 'the Board'). But, the appellants failed to furnish any such certificate. Further, in reference to the Government instructions dated 21.11.1980 and 01.12.2003 (*ibid*), it was concluded that for a candidate to be eligible to seek employment being a Dependent of Ex-Servicemen his/her individual or independent income, irrespective of the source, should not be above the prescribed ceiling of Rs.6,000/- per month. But, since the appellants were already employed, though on

contractual basis, as Veterinary Surgeon and were drawing more than Rs.6,000/- per month, they were ineligible to seek employment as dependents of an ex-servicemen. Accordingly, the petition was dismissed.

Thus, this appeal.

We have heard learned counsel for the appellants, who has merely reiterated the arguments that were advanced before the learned Single Judge: that apparently the learned Single Judge misconstrued and stretched the two Government instructions dated 21.11.1980 and 01.12.2003 (*ibid*) to even include income from all other sources which defeats the very purpose of reservation for dependent of ex-servicemen. Further, the nature of employment of the appellants being contractual, they could not be termed ineligible, in terms of **clause (i)** of the instructions dated **21.11.1980** (*ibid*), which postulates disqualification only for those who were employed as *ad hoc*. In reference to the instructions dated 01.12.2003, it is urged that income cap of Rs.6,000/-per month has to be read with **clause (ii)** of the instructions dated **21.11.1980**: “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.”, and thus, has to be considered as income from other sources and not salary. Further, he submits that the eligibility certificates, issued by the Board, were duly furnished by the appellants during scrutiny of documents, and this was not even the case of the respondents that no such certificate was submitted. Therefore, the finding recorded by the learned Single Judge that appellants failed to furnish the eligibility certificate is erroneous.

Though, the two Government instructions dated 21.11.1980 and 01.12.2003 (*ibid*) have been duly set out in the impugned judgment, but for facility of reference and examining the limited issue that arises for consideration, we consider it expedient, to reiterate those:-

“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.”

Ex facie, and as recorded even by the learned Single Judge, upon construction and interpretation of the instructions (*ibid*), for a candidate to be eligible to compete or seek employment as dependent of an ex-serviceman, his/her independent/individual income, irrespective of the source, has to be within the prescribed ceiling of Rs.6,000/- per month. Further, to determine if a candidate is, indeed, a dependent of an ex-serviceman, a reference to different sources of income set out in the two

instructions (*ibid*), as observed by the learned Single Judge, are apparently illustrative and not exhaustive. Merely because, in addition to clause (i) to (vi) (*ibid*), income from contractual employment has not been mentioned as another illustration, in the government instructions, it would not imply as exclusion of an income derived from the said source to determine the eligibility of a candidate as dependent of an ex-serviceman. Thus, for the appellants were earning more than Rs.6,000/- per month, as contractual Veterinary Surgeon, since 08.03.2017 (appellant-1) and 28.02.2017 (appellant-2), with the Animal Husbandry & Dairying Department of Haryana, they stood disqualified as '**Dependents**'. It would be apposite, at this stage, to even refer to the observations recorded by the Supreme Court in paragraph 7 of its decision in **Haryana Public Service Commission Versus Harinder Singh, 1998(5) SCC 452**: "*The whole idea of the reservation is that those who are dependent for their survival on men who have lost their lives or became disabled in the service of the nation should not suffer. The public purpose of such reservation would be totally lost if it were to be made available to those who are gainfully employed....*" Further, it was held that irrespective of the eligibility certificate, issued by the Zila Sainik Board, the fact that the respondent (before the Supreme Court) was working on temporary post in a private company made him not "dependent" on any one. Thus, even if it is assumed that the eligibility/dependent certificates, issued by the Board, were duly submitted by the appellants, to the Commission, still it would not advance their cause. For, at the relevant time, i.e. on 1.6.2017, (last date of submission of online application), the appellants were gainfully

employed with Animal Husbandry and Dairying Department of Haryana.

As regards their grievances that three other candidates, who were also employed with the respondent-department, on contractual basis, and were identically placed as appellants, but were still selected and granted appointment, would not further their case either. For, the learned Single Judge observed that even if that was so, the appellants would still be ineligible. That would not, by itself, entitle them to seek employment in the category of dependent of ex-servicemen. The appellants cannot claim negative equality, as observed by the Supreme Court in **R. Muthukumar and others Versus The Chairman and Managing Director Tangedco and others**, (Civil Appeal No. 1144 of 2022, decided on 07.02.2022): (paragraph 24) ***“A principle, axiomatic in this country’s constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality”*** And, at any rate, the respondent-department was directed to examine the allegations made by the appellants and it was observed that if any of the three candidates are found to be wrongly selected, corrective measures to undo the wrong be initiated.

Upon being pointedly asked, learned counsel for the appellants failed to show if the conclusion arrived at by the learned Single Judge was either contrary to the record or suffered from any material illegality.

Thus, in the wake of the position, as sketched out above, we

are dissuaded to interfere with the impugned order and judgment, rendered by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

24.02.2022
Manoj Bhutani

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