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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: August 03, 2022

1. CWP-19572-2016 (O&M)

Rajesh Malik

...Petitioner

Versus

State of Haryana and others

....Respondents

2. CWP-21502-2017 (O&M)

Pardeep Deswal and others

...Petitioners

Versus

State of Haryana and others

....Respondents

3. CWP-24698-2017 (O&M)

Manoj Kumar

...Petitioner

Versus

State of Haryana and others

....Respondents

4. CWP-20446-2016 (O&M)

Bhupender Singh Malik

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate,
Mr. Aayush Goyal, Advocate for
Mr. Vishal Aggarwal, Advocate for the petitioner(s).

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Aditya Yadav, Advocate for respondent No.3
in CWP-21502-2017.

Mr. Surender Pal, Advocate for respondent No.3
in CWP-19572-2016 and CWP-20446-2016.

Mr. Charanji Lal, Advocate for
Mr. Rajesh Kumar Bagga, Advocate
for respondents No.4 to 11 in CWP-21502-2017.

Mr. Kanwal Goyal, Advocate,
Mr. Govind Tanwar, Advocate,
Ms. Karpriya Khaneka, Advocate for the respondent-HPSC.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, bunch of above-mentioned four writ petitions is being disposed of, since not only the facts are similar but the law points and the issue raised therein are also common. For brevity, recitals are taken from CWP-19572-2016.

2. Succinct factual background first. Vide an advertisement No.8/2013, published on 20.02.2014, respondent-Haryana Public Service Commission invited applications from the eligible candidates for 55 posts of the Haryana Civil Services (Executive Branch) and other Allied Services Exams-2009. Petitioner being an Ex-Serviceman (Ex. Flight Lieutenant from Indian Air Force, having served from 08.01.2001 to 07.01.2007) applied for one post reserved under the Ex-Serviceman category. He successfully cleared the preliminary examination and then participated in the second stage of the selection, i.e., Mains examination. Four candidates, including the petitioner, were declared successful for the third stage of selection process, i.e., viva-voce/ interview. Petitioner asserts that entire process of written examination followed by interviews was conducted in a very secret manner without disclosing the names of the candidates. Final result dated 02.09.2016

(Annexure P-3) was declared and petitioner then came to know that respondent No.3-Anil Kumar Yadav was selected in the Ex-Serviceman category. At the time of interview, respondent No.3 had introduced himself to the petitioner as Sub Inspector, Economic Offence Wing, Haryana Police, after rendering service in Indian Air Force, basis which, he availed benefit of being an Ex-Serviceman qua the post of S.I. in the Haryana Police. Grievance of the petitioner is that, once respondent No.3 had availed the benefit of Ex-Serviceman for appointment on one civil post, he is *per se* disentitled to the same/similar benefit all over again, for any fresh appointment.

3. I have heard competing contentions of learned counsel for the parties and perused the record.

4. Aforesaid bunch of petitions, assailing the selection in the category of ex-servicemen, are all on the substantial ground that whether the State Government/ HPSC could have given benefit of belonging to Ex-Serviceman to those candidates who had once earlier taken the benefit of employment and thereby negating the right of the petitioners who were the first time applicants to seek job under the Ex-Servicemen category?

5. Fact that the petitioners though are less meritorious, but having remained unsuccessful, they have challenged the result on the ground, as already noted above, are not disputed.

6. In fact, controversy involved herein along with succinct facts noted therein has been summed up in order dated 21.09.2016 passed by my learned Brother Tejinder Singh Dhindsa, J. (seized of the matter at the relevant time) in following words:

“Advertisement No.8/2013 was published on 20.02.2014 by the Haryana Public Service Commission inviting applications from eligible candidates for recruitment to 55 posts of Haryana Civil Services (Executive Branch) and other Allied Services. One post of HCS (Executive Branch) was reserved for the ESM Category.

The selection process has culminated in declaration of result by the Commission on 02.09.2016. Respondent No.3, namely, Anil Kumar Yadav has been recommended for appointment to HCS (Executive Branch) against the solitary vacancy reserved for ESM Category.

The petitioner herein who had also subjected himself to the process of selection and against the ESM Category assails the selection and recommendation of the HPSC and respondent No.3 on the ground that respondent No.3 had already availed of the reservation provided for Ex-servicemen at the stage of his recruitment and appointment to the post of ASI in the Haryana Police and was promoted and presently working as Sub Inspector. Counsel would argue that it would not be open for respondent No.3 to avail of such reservation twice over and in response to the advertisement dated 20.02.2014.

Hearing in the instant petition is deferred to 28.09.2016 to enable the counsel to complete instructions and to address submissions as to whether such question and issue is covered by any provision under the HCS (Executive Branch) and Allied Service Rules 2008 as amended from time to time.”

7. Reliance was/is placed on Government of India instructions dated 14.08.2014 (Annexure P-5) by the petitioners saying that same are equally applicable to the State of Haryana, inasmuch as, benefit of belonging to Ex-Serviceman was confined only once in a lifetime to seek Government job. It was in this background, Rajiv Narain Raina, J. (as he then was in this Court) subsequently passed an order dated 24.04.2018 followed by an order dated 30.10.2018 passed by my learned Sister Ritu Bahri, J. in following terms:

Order dated 24.04.2018

“Written statements on behalf of HPSC in CWP Nos.21502 of 2017 and 24698 of 2017 as well as Short reply on behalf of respondent No.3 have been filed in Court today. Same are taken on record. Copies thereof have been supplied to the counsel opposite.

*Learned counsel for HPSC while placing reliance upon the judgment **Harbhajan Singh vs. The State of Punjab and another (5 Judges) 1978 AIR (Punjab) 33** contends that ex-servicemen can be benefitted of reservation more than once.*

Learned counsel for the petitioner(s) pray/s for time to go through the case law aforesaid.

Meanwhile, State would also disclose their stand and produce the policy instructions on the subject issued from time to time on the next date of hearing as well as to produce the order of the Government of Haryana regarding adopting Government of India office OM dated 14.8.2014.

Adjourned to 25.5.2018.

A photocopy of this order be placed in the files of connected cases.”

Order dated 30.10.2018

“Short question for consideration in this petition is, 'whether notification dated 14.08.2014 (Annexure P-5) and 10.08.1994 had been adopted by the State of Haryana in giving the benefit of reservation to Ex-servicemen. A perusal of (Annexure P-5) shows that this notification was issued by the Government of India, Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training in respect of Group 'C' and 'D' posts only.

In the written statement filed, respondent-Commission has not clarified its stand with respect to the notification (Annexure P-5).

Adjourned to 18.12.2018 to enable the respondent-State to file a short reply clarifying its stand with regard to the notifications (Annexure P-5 and P-6).

Copy of this order be placed on the files of connected petitions.”

8. *Apropos above, short reply affidavit dated 27.08.2020 has been filed by Shri Nitin Yadav, Secretary to Government of Haryana, Personnel Department deposing as below:*

“6. That the State Government have not adopted the notification dated 10.08.1994 and 14.08.2014 (Annexure P-5) issued by the Govt. of India. As per the State Govt. letter No.1/26/2011-4GS-II, dated 03.11.2011 addressed to the Secretary, Rajya Sainik Board, Haryana the ESM candidates can subsequently avail the benefit of ESM in re-employment. A true copy of letter dated 03.11.2011 is annexed as Annexure R-2.”

9. I have also perused the letter/ instructions dated 03.11.2011 issued by the office of Chief Secretary, referred to as Annexure R-2 *supra*. Same leaves no manner of doubt that, no irregularity was committed by any of the State functionaries and/ or HPSC in according the benefit of reservation second time to the respondent No.3 for belonging to the Ex-Servicemen category. Since, not only the notification of Government of India relied upon by the petitioners has not been adopted by the State Government, but even otherwise instructions (R/2) have been issued specifically, to the contrary, as below:

“2. It is advised that in Haryana State Ex-Servicemen can avail the benefit of Ex-Servicemen for subsequent appointment. In this regard a copy of the proceeding of meeting of Rules Committee held on 11.2.2000 and a copy of the letter dated 17.2.2000 is sent herewith vide which Defence Branch was informed earlier.”

10. In the above background what thus, emerges is that since the Government of India's notification relied upon by the petitioners was not adopted by the State Government and the instructions dated 03.11.2011 (Annexure R-2) issued by the Chief Secretary have never been challenged and were applicable at the time of selection of private-respondents, I see no ground to interfere, as the respondents were bound to comply with the administrative instructions applicable at the relevant time.

11. Writ petitions are dismissed. In the parting, learned Senior counsel for the petitioners would submit that instructions dated 03.11.2011 (Annexure R-2) were not to the knowledge of the petitioners, and were it so, they would have taken steps to challenge the same and such a liberty be granted now. It appears to be highly belated, at this stage, to challenge the

said instructions, especially once they had knowledge thereof, most certainly upon filing of return by HPSC, if not before. However, subject to limitation and otherwise making out case on merits, petitioners are at limited liberty to challenge the same, if so advised. Selection already made is upheld.

(ARUN MONGA)
JUDGE

August 03, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No