

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

CWP-10485-2016

Date of decision:22.03.2022

AASHISH

...Petitioner

V/S

STATE OF HARYANA AND ORS

...Respondents

CWP-8847-2018

MONU SHARMA & ANR

...Petitioners

V/S

STATE OF HARYANA & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. U.K.Agnihotri, Advocate,
Mr. Parmod Kumar Chauhan, Advocate,
for the petitioner(s).

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Naresh Daryal, Advocate,
for respondent No.5.

Mr. Atul Kaushik, Advocate,
for respondent No.6.

ARUN MONGA, J. (ORAL)

Petitioners herein, *inter alia*, seek issuance of a writ in the nature of mandamus directing the respondents to appoint them on the post of Regular Mechanical Establishment Group 'D' in the office of respondent No.3 with all consequential benefits.

2. Vide this common order, I intend to dispose of the aforementioned two writ petitions, as common issues and facts are involved therein. For brevity, facts are being taken from CWP No.10485 of 2016.

3. Respondent No.3 advertised total 41 posts of Mechanical Engineering Staff (Group-D) in different categories vide advertisement Annexure P-3. Petitioner appeared in interview before the Selection

Committee and he also took the field test. Merit list was prepared in which

name of the petitioner was placed at Sr. No.21, whereas name of respondent No.5 was placed at Sr. No.6. The respondent No.5 was granted 7 marks for experience, whereas petitioner was granted zero against his work experience. Respondent No.5 produced his experience certificate that he has been working as Fitter Helper with respondent No.6 from June 2006 to March 2013. Allegation of petitioner is that up to April 2010, respondent No.5 was studying in school w.e.f. 2006 to 2010 in District Karnal. As such, up to April 2010 respondent No.5 could not have been employed at all. Therefore, experience certificate Annexure P-10 is false and fake certificate.

4. Thereafter, petitioner submitted a representation and respondent No.3 wrote to respondent No.6 for verification of experience certificate. Respondent No.6 replied that experience certificate is a fake document. He submits that appointment of respondent No.5 on the post of patrolman is based on a fake and fabricated experience certificate and, therefore, his appointment is liable to be quashed and the petitioner being eligible and qualified deserves to be appointed. Hence, the instant petition.

5. Learned State counsel strenuously opposes the writ petition and submits that official respondent conducted an enquiry in order to verify the genuineness of the experience certificate of respondent No.5. He further submits that instant writ petition is liable to be dismissed as it is barred by the principles of res judicata as provided under Section 11 of the Code of Civil Procedure, 1908. Even otherwise, admittedly, the petitioner being the second in the merit of waiting list has no locus to challenge the appointment of one of the selected candidate as in case, the selection is held to be bad, the benefit will go to the first candidate in the waiting list. He submits that waiting list is deemed to be exhausted after one year of selection.

6. I have heard learned counsel for the parties and perused the paper

7. There are disputed question of facts as is borne out from the perusal of the pleadings and the same cannot be gone into on the basis of affidavits. Petitioners are accordingly, at liberty to seek their appropriate alternative civil remedy as may be available in law and if so advised. Though petitioner has given a bald assertion in para 19 of the writ petition stating that earlier he had preferred a civil suit seeking declaration etc. seeking the same relief as before this Court but the same was withdrawn with liberty to file the writ petition. However, neither any order passed by the trial Court was produced at the time of hearing nor appended with the writ petition. It is not clear as to what was the nature of suit filed and whether or not any liberty as aforesaid was given. In any case, as already noted, there are disputed question of facts and cannot be decided under writ jurisdiction. No grounds are made out to interfere.

8. Petitions stand disposed of.

9. Pending application, if any, shall also stand disposed of.

10. A photocopy of this order be placed on the connected case file.

22.03.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No