

CWP-1145-2019(O&M)

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

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**CWP-1145-2019(O&M)
Date of Decision: 07.11.2023**

Shuchi Goel

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with Mr. Sandeep Dhull,
Advocate for the petitioner

Mr. Ravi Pratap Singh, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed seeking a writ of *mandamus* directing the Haryana Staff Selection Commission to consider claim of the petitioner, who belongs to Dependent of Freedom Fighter (hereinafter referred to as 'DFF') general category, for selection and appointment against five posts of Post Graduate Teacher/PGT Commerce (Rest of Haryana cadre) meant for Ex-servicemen (hereinafter referred to as 'ESM') category which remained vacant due to non-availability of candidates.

2. During pendency of the petition, vide interim order dated 15.05.2019, the Commission was directed to provisionally interview the petitioner and keep her result in a sealed cover, which has been produced before the Court during the course of arguments. It shows she has secured 76

marks in written examination and 12 marks in *viva voce*, total whereof comes to 88, out of 200 marks; whereas, marks of the last selected candidate for ESM category were 56, as submitted by learned State counsel.

3. Facts in brief, relevant to decide the case are, the respondent/Commission advertised 337 posts of PGT Commerce (Rest of Haryana cadre) vide advertisement no.4 of 2015 on 28.06.2015, out of which seventeen posts were earmarked for ESM category; last date for submission of online applications was 21.09.2015.

3.1. The petitioner belongs to DFF General category, and has been issued a certificate, dated 09.08.2012, Annexure P-2, to that effect by Sub-Divisional Magistrate, Sonipat. Accordingly, she applied for the advertised post under DFF general category, as she fulfilled the requisite qualifications. She was called for scrutiny of documents on 01.03.2017. Her documents as well as DFF category certificate were found in order, and was duly considered eligible under the category.

3.2. By notice dated 18.12.2018, Annexure P-2/A, the Commission called seventeen candidates belonging to ESM category for interviews, to be held on 25.12.2018. There was no separate notice for candidates belonging to DFF general category for the interview, nor any intimation to that effect was received by the petitioner, and she was not interviewed.

3.3. The result of selection was declared by the Commission on 07.01.2019, vide Annexure P-4, wherein it was notified that five posts of ESM category remained vacant due to non-availability of eligible candidates.

3.4. The Haryana Government has issued instructions, dated 15.07.2014, Annexure P-5, to the effect that two per cent reservation will be provided to freedom fighters and their children/grandchildren only if quota reserved for ESM category remains unfilled due to non-availability of ESM or their dependents. The relevant part of the instructions reads as under:

Sr. No	Category	Quantum of reservation
xxxx	xxxx	xxxx
(h)	Freedom fighters and their children/grand children	2% This reservation will be available only if quota reserved for Ex-servicemen or Backward Classes remains unfilled to that extent due to non-availability of suitable Ex-servicemen or their dependents or non-availability of suitable candidates from Backward Classes. Over all reservation either from the unfilled vacancies of Ex-servicemen or from the Backward Classes for Freedom Fighters/their children/ grand children will remain limited to 2 % only. This benefit will be available to all grand children i.e. sons and daughters of sons and daughters (paternal as well as maternal) of the Freedom Fighters.

3.5. Despite the posts of ESM category remaining vacant, the petitioner’s candidature was not considered by the respondents, leading to filing of the instant petition by her.

4. Learned senior counsel for the petitioner has contended that the petitioner has a right to be considered and appointed against ESM general category post(s) which admittedly remained vacant due to non-availability of eligible candidates, since as per government instructions the vacant posts of ESM category have to be provided to candidates belonging to DFF category, to which she belongs.

5. Learned State counsel, on the contrary, contends that the petitioner has no right to be appointed because she never appeared for interview for the post held on 25.12.2018. Final result of selection has already been declared on 07.01.2019, and the petitioner cannot be considered for appointment now as the process of selection is over. He, however, does not dispute the facts on record, including the vacant ESM posts as well as the applicability of instructions dated 15.07.2014.

6. Heard.

7. As per the undisputed facts on record, the petitioner was an applicant for the advertised post of PGT Commerce (Rest of Haryana cadre) under DFF category. As per government instructions, dated 15.07.2014, in the event of posts reserved for ESM category remaining vacant due to non-availability of suitable candidates, the same have to be made available to DFF category candidates. Still, the respondents failed to do that, and did not consider the petitioner for appointment against the vacant posts on the ground that she failed to appear for interview held on 25.12.2018. The reason is unfounded, since the result of selection notifying that five post of ESM category remained vacant due to non-availability of eligible candidates, was declared on 07.01.2019, which was subsequent to the date of interview. Therefore, the petitioner could have been considered for appointment only after 07.01.2019, and not on 25.12.2018 when interviews were held for ESM category posts. Besides, it is also not in dispute that the petitioner was neither called for interview on 25.12.2018, nor after declaration of final result on 07.01.2019. This leads to inescapable conclusion that she was not considered for appointment against the vacant posts of ESM category in violation of

8. Further, the petitioner was provisionally interviewed during pendency of the petition, pursuant to an interim order passed by this Court on 15.05.2019. And as per the result, she has scored more marks than those of the last selected candidate under the category. Accordingly, she has right to be appointed on the vacant post.

9. In view of the above discussion, the writ petition is allowed. The respondents are directed to appoint the petitioner on the ESM category post of PGT Commerce (Rest of Haryana cadre) in the order of merit of the appointees pursuant to advertisement no.4 of 2015, and give all consequential benefits including seniority. The benefits will be given notionally from the date of appointment and actually from the date of joining the service. These directions are to be carried out within a period of four weeks from receiving a certified copy of the order.

10. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

07.11.2023
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>