

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

243

CWP No.1996 of 2020
Date of decision:07.02.2023

Bhawna Babal

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. G.S.Gopera, Advocate
for the petitioners.

Mr. R.K.S.Brar, Addl.A.G., Haryana.

SUVIR SEHGAL, J.

By way of instant petition filed under Articles 226/227 of the Constitution of India, petitioner has approached this Court for issuance of a writ in the nature of mandamus directing the respondents to consider the petitioner for appointment to the post of Junior Engineer (Horticulture) as she is more meritorious than the last selected candidate.

Facts leading to the filing of the petition are that pursuant to Advertisement No.10/2019 (Annexure P-4) published by the Haryana Staff Selection Commission-respondent No.3, petitioner applied for the post of Junior Engineer (Horticulture). She cleared the written examination and appeared for scrutiny of documents. Final result was declared on 15.01.2020 (Annexure P-7) but the name of the petitioner was kept in the waiting list.

Counsel for the petitioner submits that the last selected candidate as well as the petitioner have secured 64 marks but despite the

fact that the petitioner is a Gold Medalist and more meritorious, her name has been kept in waiting list, whereas, she should have been given preference.

Petition has been opposed by the State counsel by submitting that they have acted in accordance with the instructions of the Commission.

I have heard counsel for the parties.

A resolution has been passed by the Commission-respondent No.3 in a meeting held on 25.09.2015 (Annexure R-3/1), relevant extract of which is reproduced as under:-

“Subject: Regarding determining the inter-se-merit of candidate.

The Commission has decided to conduct written examination for various posts of different Departments/Boards/Corporations as per Govt. Notification No.C.S.R.11/Const./Art.309/2015, dated 18.6.2015, No.C.S.R12/Const./Art.309/2015, dated 23.7.2015 and Govt. Instruction No.42/204/2014-5GS-1, dated 13.07.2015 to make the recruitment. The selection will be made on the basis of marks secured by candidates in written examination + (experience as applicable) and interview/viva-voce. During the course of the meeting the issue of inter-se-merit was discussed and it was decided that in case, if, more than one candidate had secured equal/same marks in written examination and interview/viva voce combined, then the inter-se-merit will be determined with reference to the date of birth i.e the older in

age will get precedence over the younger one.

The orders of Hon'ble Supreme Court in case of Prem Singh Vs. Haryana State Electricity Board reported as 1996(4) SLR 661, wherein the appointments have been restricted to the extent of the advertised vacancies, should be followed meticulously. Thus, the selection of the last candidate in each category as per inter-se-merit, if in case there are more than one candidate having equal marks in written examination and interview/viva-voce combined, will be determined with reference to the date of birth i.e the older in age will get precedence over the younger one.

In case two or more candidates have the same aggregate score and same date of birth, the inter-se-merit shall be decided by the higher score achieved in the written examination.

The Commission unanimously decides that the above criteria for determining the inter-se-merit of candidates shall be followed.”

The resolution provides that a candidate, who is elder in age has to be given preference over a younger candidate.

It has been brought on the record by way of short reply filed by respondent No.3 that date of birth of the last selected candidate is 07.05.1994, who is elder to the petitioner whose date of birth is 10.04.1996. It is, therefore, clear that the last selected candidate has been given

preference because she is elder in age. Still further, reference deserves to be made to the instructions issued by the Govt. of Haryana on 20.01.1988 (Annexure R-3/2) and its relevant extract is reproduced as under:-

“Subject: Appointment of candidates out of the waiting list prepared by the subordinate Service Selection Board.

Reference your letter No.1222-3R-II-87/5940, dated 22.09.87 on the subject cited above.

2. *The matter of recommending candidates on the waiting list prepared by the Subordinate Services Selection Board and also the period of validity of the original recommendations and waiting list, has been engaging the attention of the Government. After careful consideration, Government has now decided that Board shall prepare the waiting list for the vacancies upto 25 at 25%, for vacancies between 25 to 50 at 15% and for vacancies above 50 at 10% subject to the minimum of two candidates.*

3. *It has further been decided that the main list as well, as the waiting list shall remain valid for a period of one year from the date of recommendations. The list of remaining candidates, if any, after one year would be scrapped and if any further demand is received by the Board, it would process the matter a-fresh and make further recommendations.*

4. *It has further been decided that the S.S.S.Board shall while making recommendations clearly indicate the main list*

and waiting list. The main list will contain the number of candidates equal to the number of demand made by the department/departments to the Board.

5. The instructions issued by Haryana Government vide No.2311-1GS-1-72-5727, dated 26.5.72, 5024-1GS-1-72/26877, dated 8.9.72 and 2637-5-GSI-76/12144, dated 17.5.76 are hereby deemed to have been modified to this extent, so far as these relate to the S.S.S.Board.”

Upon instructions from Mr. Jagdeep, L.A., State counsel has made a categoric statement that all the five advertised posts of Junior Engineer (Horticulture) have been filled and no post is vacant.

Counsel for the petitioner has not been able to make reference to any rule or instructions to fortify his stand that Gold Medalist has to be given preference.

In view of the above, no relief can be granted to the petitioner.

Petition is dismissed.

February 07, 2023
savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>