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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3167-2021 (O&M)
Date of Decision: 06.07.2023

Rakesh Kumar and another
..... Petitioner

Vs.

State of Punjab and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Kulbhushan Raheja, Advocate
 for the petitioners.

Mr. R.K. Kapoor, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner by way of present Writ Petition has assailed Clause 9 of the recruitment notice (P-9) whereby the procedure of preparing merit list results in discrimination with the ex-servicemen (self) category persons.
2. It is stated that amongst ex-servicemen, preferences required to be given to the ex-servicemen who were the dependents of the ex-servicemen candidates. However, in the method of examination as laid down in the recruitment notice, the merit prepared of the first phase examination consisting of 10 times the number of vacancies does not discriminate between ex-servicemen (self) and ex-servicemen (dependent). Resultantly, ex-servicemen (self) are ousted from the 10 times merit list even though they may have secured the minimum

qualification marks in the first phase, and would therefore be ousted from the selection process itself.

3. This Court had directed the respondents to file their affidavits in this regard vide order dated 30.01.2023. In compliance of the order, the respondents have filed an affidavit and it is stated as under:

“4. That it is submitted that the first stage written examination was held on 08.08.2021. The total 709 candidates could obtain minimum 40% marks i.e. 48 marks out of total 120 marks including the candidates belonging to all the categories of Ex-Servicemen (Self) and Ex-Servicemen (Dependents). Therefore, all the candidates of the above mentioned category who had obtained minimum 40% marks i.e. 48 marks out of total 120 marks, were called for second stage written examination held on 05.09.2021. The petitioner no.1 obtained 31 marks out of total 120 marks and the petitioner no.2 obtained 26.5 marks out of total 120 marks which are less than minimum 40% marks as per the selection criteria and were not found eligible for the second stage written examination. As per the Notification dated 02.02.1982 issued by the Department of Personnel and Administrative Reforms, the provisions to fill the vacancies is mentioned under section 4, where “Reservation of Vacancies”, a proviso is given as under:

“4. Provided that where an Ex-Servicemen is not available for recruitment against the reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependent child of an Ex-Servicemen, who has neither been recruited against a reserved vacancies under these rules.”

4. Learned counsel for the respondents submits that the issue has become academic in the present case as both the petitioners who appeared in the first phase examination could not secure 40% marks, and therefore they cannot raise the contention to be placed in a separate merit list for ex-servicemen (self) independent of ex-servicemen (dependent).
5. I have considered the submissions.
6. Learned counsel for the petitioners insisted that the issued should be decided as the petitioners have filed the Writ Petition even before appearing in the examination and the condition is under challenge before this Court.

7. Since the petitioners voluntarily decided to participate in the selection process although they had filed a Writ Petition before this Court, and both the petitioners have failed to make 40% grade in the first phase examination, they cannot be included in a merit list even if the same is prepared separately for ex-servicemen (self). Hence, so far as petitioners' case is concerned, the result of Writ Petition cannot go in their favour. As regards the issue raised, the same is left free to be taken up in an appropriate case.
8. With the said observation, Writ Petition is rendered as infructuous having become academic on account of the petitioners having been unsuccessful in the first phase examination.
9. Writ Petition is dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

July 06, 2023

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |