

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

(222)

CWP-4115-2019

DATE OF DECISION:- 27.02.2023

PARMOD KUMAR LAMBORIA**...PETITIONER****VERSUS****STATE OF HARYANA AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Vijay Kumar Kajla, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.
for respondents No.1 to 4.

Mr. Raman Chawla, Advocate for respondent No. 5.

SUVIR SEHGAL, J. (ORAL)

Petitioner has approached this Court *inter-alia* seeking issuance of a writ in the nature of certiorari for quashing selection and appointment of respondent No.5 to the post of Clerk in ESM (General) Category vide selection list dated 14.03.2018, Annexure P-6. Another prayer has been made for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioner to the said post.

Vide advertisement No.10/2015 dated 24.11.2015, Annexure P-1, posts of Clerks were advertised for various Departments, Boards and Corporation. By a corrigendum, the numbers of posts were increased to

6134. Petitioner applied for the post in the category of Dependent of Ex-Servicemen (DESM) and appeared in the written examination, held in December, 2016. When the petitioner did not find his roll number in the result of the written examination, he approached this Court by filing CWP-24770-2017 claiming that he had scored higher marks in the ESM (General) category than the cut off marks. After notice, vide order dated 22.01.2018, Annexure P-5, writ petition was dismissed on the statement made by the counsel representing the Haryana Staff Selection Commission (HSSC) that rights of DESM candidates are subservient to ESM candidates and as the petitioner has scored 134 marks in the written examination, post will be offered to him only if a vacancy remains after filling the vacancies of all the meritorious and eligible ESM candidates. It was further stated that till the time the position is not clear, petitioner's case has to be treated in the general category where the last candidate has scored 152 marks. Final result was declared by HSSC on 14.03.2018, Annexure P-6. Claiming that respondent No.5 had scored lesser marks than him, petitioner has approached this Court once again. Upon notice, writ petition has been contested by respondents No.2 and 3 by filing a short reply.

Counsel for the petitioner has argued that despite the fact that score of respondent No.5, who is also an applicant under the DESM (General) category, is below that of the petitioner, he has been appointed as a Clerk by the Director General Health Services, Haryana, vide order dated 16.03.2018, Annexure P-7. It is his submission that the last selected candidate in the ESM (General) category has scored 118 marks out of 225 marks, including marks for interview, whereas the petitioner, who

has scored more marks, has been denied appointment. Counsel representing the respondents has referred to the short reply and contested the claim of the petitioner.

I have heard counsel for the parties and examined the paper-book with their able assistance.

Advertisement, Annexure P-1, provides for reservation for ESM/DESM and its relevant extract is as under:-

“The reservation for ESM will be utilized in the order given below:-

- (i) Disabled ex-servicemen with disability between 20% to 50%.*
- (ii) Upto two dependents of Service personnel killed/disabled beyond 50%.*
- (iii) Other exservicemen.*

Note:-1. Disabled ex-servicemen will mean ex-servicemen who, while serving in the Armed Forces of the Union were disabled in operations against the enemy or in disturbed areas.

Noe:-2. The dependents will include besides wife/widow, dependent sons/daughters.

The dependents of ESM who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates.

ESM/DESM candidates of Haryana claiming benefit must have valid eligibility certificate on last date of submission of online application form and will have to produce the valid Eligibility Certificate from the concerned Zila Sainik Board at the time of interview. Mere dependent certificate will not be entertained. ESM candidates should also produce attested photo copy of Identity Card issued by concerned Zila Sainik Board & Discharge Book wherever required.”

It is therefore evident from the above that the rights of DESM candidates for appointment accrue only if there are any vacant or unfilled seats earmarked for ESM candidates. In the absence of any vacant slot, DESM candidates cannot stake their claim for appointment to the posts in the ESM category. The mere fact that the petitioner had scored more marks than the last selected candidate in the ESM (General) category, is not enough and the petitioner’s claim for a appointment to the post in this category is unfounded.

Coming to the other submission of the counsel for the petitioner, a perusal of the short reply filed by respondents No.2 and 3 shows that on an objection raised by the petitioner, recommendation of respondent No. 5 has been withdrawn by HSSC, vide letter No. HSSC/Confid./Misc./2022/3311 dated 30.06.2022, Annexure R-2/1 as he has been selected inadvertently. A specific stand has been taken that no DESM candidate has been selected for the post in question and no candidate has been recommended in place of respondent No.5 as the validity of the wait list was one year, which has expired.

In view of the above discussion, the petition being meritless, is hereby dismissed.

27.02.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No