

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 14152 of 2013 (O&M)

Reserved On: 20.02.2023
Pronounced On: 03.07.2023

Rajneesh Bhanot

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Puneet Gupta and Mr. Anil Rana, Advocates
for the petitioner(s).

Mr. Vikas Arora, Assistant Advocate General,
Punjab, for the respondent No.1 to 3.

Mr. M.S.Saini, Advocate
for the respondent No. 4 to 7.

Mr. G.S.Sirphikhi, Advocate
for the respondent No.8.

Anil Kshetarpal, J.

1. The petitioner has invoked the writ jurisdiction of the Court to
seek the following substantive reliefs:-

*“b) a writ in the nature of Certiorari quashing the
merit/select list, Annexure P/4, of Ayurveda Medical
Officers prepared by respondent no. 2, whereby the
private respondents no. 4 to 8 who are already in service
and who have already availed the benefit of reservation
under the category of "Lineal Descendent of Ex-
Servicemen" (General) under Punjab Recruitment of Ex-*

Servicemen Rules, 1982, have been included in the merit/select list, despite the fact that under Rule 4(1) of the Rules ibid, a person who is already in service and has availed the benefit once in life time is not eligible to take the benefit of the said reservation for the second time;

It is further prayed that this Hon'ble Court may be pleased to issue a writ in the nature of Certiorari quashing the impugned letter dated 1.8.2011, Annexure P/9 issued by respondent no. 1 on the basis of which the private respondents no. 4 to 8 have been held to be eligible, which is absolutely ultra vires and contrary to the provisions of Rule 4(1) of the Rules, ibid. and contrary to well settled proposition of law that executive instructions cannot override the statutory rules.

It is further prayed that this Hon'ble Court may be pleased to issue a writ in the nature of Mandamus, directing the official respondents to reframe the final merit/select list after complying with the Rules, 1982 and excluding those persons who are ineligible as per the said Rules and carry out selection to the post of Ayurveda Medical Officer on the basis of the said revised merit/select list.

It is further prayed that this Hon'ble Court may be pleased to issue a writ in the prohibition, restraining the

respondents from appointing those candidates who are ineligible as per the Rules, 1982.”

2. In order to comprehend the issue which requires adjudication, the relevant facts, in brief, are required to be noticed.

3. A recruitment notice was issued to invite the applications from the eligible candidates for filling up 133 posts of the Ayurvedic Medical Officers (hereinafter referred to as “AMO”) under the Department of Ayurveda, Punjab, in the pay scale of ₹10,300-34800. As per the reservation policy of the State, the posts were further sub-divided into ten categories. In the writ petition, the correctness of selection of the respondents No. 4 to 9 in the year 2013 under the category of Ex-Servicemen (General Category) has been questioned. In exercise of the powers conferred by the proviso to Article 309 read with Articles 234 and 318 of the Constitution of India, the State of Punjab has notified the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter referred to as “the 1982 Rules”). Rule 4 of the 1982 Rules reads as under:-

*“4. **Reservation of Vacancies.** (1) Subject to the provision of rule 3, 13% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen;*

(Note : As per Pb Govt. Letter No. 15/25/2001-4DW/1591 dated 21.05.2002, an Ex-serviceman is allowed the benefit of Reservation for the second time and even thereafter in subsequent recruitments in accordance with the provisions of

these Rules).

"Provided that where an Ex-serviceman is not available for recruitment against a reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependent child of an Ex-serviceman, who has neither been recruitment against a reserved vacancy under these rules;

“Provided further that the wife or the dependent child of the ex-serviceman shall be recruited against the reserved vacancy subject to the conditions that:-

- (i) he or she possesses the prescribed qualifications and is within the prescribed age limits;*
- (ii) he or she is not already in service;*
- (iii) he or she will be eligible to avail the benefit only once in life:"*

"Provided further that one grand Child of the Gallantry Award Winner shall be recruited against the reserved vacancy, in case the benefit or reservation has not been availed of by any of the children or dependents such winner or by the winner himself subject to the conditions specified in the second proviso;

Explanation: *For the purpose of this proviso, Gallantry Award Winner includes the winner of the Paramvir Chakra, the Mahavir Chakra, the Vir Chakra, the Sena or Nao Sena or Vayu Sena Medal and Mention-in-Despatches."*

"Provided further that the total number of reserved vacancies including those reserved for the candidates belonging to the SCs, STs and BCs shall not exceed fifty of the posts to be filled in a particular year."

(2) Where a reserved vacancy remains unfilled for non availability of a (person eligible for recruitment under these rules) such vacancy may be filled in, temporarily from any other source in accordance with the rules.- regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved;

Provided that the reserved vacancies filled in shall be carried forward for the subsequent occasions (arising during at least 2 years in each of which such occasion arises for recruitment) where after the vacancy in question shall be treated as un-reserved."

4. The selection was based on the written examination and the interview. The petitioner as well as the private respondents, after qualifying the written examination, were called for interview which was slated to be on 01.07.2011 and 04.07.2011. The petitioner did not find his name amongst the selected candidates while the private respondent No. 4 to 8 were appointed on 08.06.2013. Consequently, the petitioner has filed the present writ petition in the month of July, 2013.

5. It is an undisputed case of the parties that the respondent No.8 and 9 did not attend the interview on 01.07.2011 or 04.07.2011 and the

private respondents were not eligible as they had already availed the benefit of the appointments under the Rules under the National Health Rural Mission. While filing the separate written statements, it is claimed that the respondent No. 4 to 8 were previously not holding a regular post and as such, they cannot be said to have availed the benefit available under the 1982 Rules. The State, while filing the reply, has submitted that the respondent No.8 and 9 attended the interview on 21.06.2011 and 22.06.2011.

6. On 16.01.2023, after hearing the learned counsel representing the parties, the following order was passed:-

“Learned counsel representing the petitioner contends that respondent no.4 to 8 were engaged on a contract basis under the scheme/mission NRHM sponsored by the Government of India. Thus, they were not dependent on the ex-serviceman. In support of his submission, he relies upon ‘Haryana Public Service Commission vs. Harinder Singh’ (1998) 5 SCC 452 and ‘Harvel Kaur and others vs. State of Punjab and others’ 2011 (2) SCT 755.

Learned counsel representing respondents prays for some time to examine the matter before assisting the Court.

List on 06.02.2023, in the urgent list.”

7. Thereafter, on 10.02.2023, again, a detailed order was passed.

8. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book as well as the synopsis along with the gist of arguments filed by them.

the written arguments, has contended that the plea of dependency is a subjective plea which cannot be permitted to be raised in the absence of specific pleadings to that effect. It is submitted that without giving the respondents an opportunity to rebut the same, this Court should not permit the petitioners to take this plea.

10. This Court has considered the submission and examined the pleadings. Undoubtedly, in the writ petition, the petitioner has not taken this point. Ordinarily, this Court would not have permitted the petitioner to even address the arguments on the aforesaid issue, however, on 16.01.2023 this argument was raised and noticed by the Court while granting an opportunity to the respondents to examine the matter before assisting the Court. Thereafter, once again, on 10.02.2023 this argument was noticed while giving an opportunity to the learned counsel representing the respondents while adjourning the case. On 20.02.2023, before reserving the judgment, the arguments were, once again, heard. In these circumstances, it would not be appropriate to hold that the private respondents have not been granted sufficient opportunity to explain. In fact, the learned counsel representing the parties have submitted their written notes.

11. It is not disputed that when the respondent No. 4 to 8 applied for the recruitment, they were already serving on contract basis as the Assistant Ayurvedic Medical Officers on contract basis under the National Rural Health Mission on the consolidated remuneration of ₹20,000/- per month. This Scheme, though, is jointly funded by the Central Government and the State Government, but managed by the officials of the Punjab Government in the area of Punjab. Moreover, it has come on the record that

the respondent No. 5 was not only employed under the National Rural Health Mission but also married and residing with her in-laws. She was appointed on the basis of an affidavit sworn in by her father to the effect that she is lineal dependent upon him.

12. On the careful reading of Rule 4 of the 1982 Rules, it is evident that the wife and the dependent child of the Ex-Servicemen shall be entitled to claim reservation where an Ex-Serviceman is not available for the recruitment. Second proviso to Rule 4 of the 1982 Rules is subject to the following five conditions:-

- i) An Ex-Serviceman is not available for recruitment;
- ii) Only then the wife or the dependent child of the Ex-Serviceman is entitled.
- iii) he or she possesses the prescribed qualifications and is within the prescribed age limits;
- iv) he or she is not already in service;
- v) he or she has not already availed the benefit because it is only once in life time.

13. The first proviso to Rule 4 of the 1982 Rules mandates that where an Ex-Serviceman is not available for the recruitment against a reserved vacancy, the same shall be filled in by the recruitment of the wife or one dependent child of the Ex-Serviceman who has not been previously recruited against the reserved vacancy under the 1982 Rules. The expression used in the 1982 Rules is “the dependent child of Ex-Serviceman”. This expression is not used with respect to the wife of Ex-Serviceman. The unamended 1982 Rules do not throw any light on the word “dependent”.

Hence, the literal meaning or the dictionary meaning is required to be examined. In the context of recruitment, the expression “dependent child” would take its colour from the financial dependence. It cannot be restricted only to emotional or other kinds of dependents. In the Concise Oxford English Dictionary Tenth Edition (Revised), the word “dependent” has been defined as “the contingent on or determined by or relying on someone or something for financial or other support”. Similarly, in Bryan A. Garner’s Black Law Dictionary Tenth Edition, the word “dependent” is defined as someone who relies on another for support. Whereas the expression “dependent child” is defined as a “Child”.

14. The private respondents herein are the qualified Ayurvedic Medical Doctors. They were already in job under the National Rural Health Mission, though, on the contractual basis. The service rules do not qualify or elaborate the word “dependent”. In the considered view of this Bench, it would not be appropriate to hold that an employed major child, who is a qualified doctor, continues to be financially dependent on his parents.

15. Moreover, the purpose of providing reservation is to provide better competing environment to a dependent child of an Ex-Serviceman who is required to be preferentially rehabilitated. The reservation for Ex-Servicemen and in their absence, their wives or the dependent children is to ensure rehabilitation of their families in order to survive in the era of cut-throat competition in seeking employment to the civil posts. In such circumstances, the employed major child of an Ex-serviceman who is professionally qualified doctor does not fit in the definition of “the dependent child”. In the year 1992, Rule 2(i)(aa) of the 1982 Rules was

added in an effort to define “the dependent child” as under:-

“(aa) “dependent child” means a son or an unmarried daughter of an Ex-serviceman who is wholly dependent on him and is residing with him or in the case of death of an Ex-serviceman, means his son or unmarried daughter who was wholly dependent on him and was residing with him before his death, and to whom a certificate to that effect has been issued by the authority appointed by the Government.”

16 On its careful reading, it is evident that the dependent child includes a son or an unmarried daughter of an Ex-Serviceman who is wholly dependent on him and is residing with him. Once the expression “wholly dependent” has been used, obviously it excludes partially dependent. A doctor employed on the contractual basis earning ₹20,000/- does not fit in the definition of “the wholly dependent”. The learned counsel representing the petitioner has drawn the attention of this Court to the judgment rendered by the Supreme Court in ***Haryana Public Service Commission v. Harinder Singh (1998) 5 SCC 452***, wherein the question arose in the context of employment with the State of Haryana. While reversing the judgment of the High Court, the Supreme Court held as under:-

“7. The whole idea of the reservation is that those who are dependent for their survival on men who have lost their lives or become disabled in the service of the nation should not suffer. The public purpose of such reservation would be totally lost if it were to be made available to those who are gainfully employed.

There is no justification for construing the words "dependants of ex-serviceman" in any manner other than that in which the appellant has construed them. This is in accord with the reservation policy itself, as shown by the quotation therefrom aforestated."

17. A similar conclusion was drawn in ***Jatinder Kumar v. State of Haryana and Another 2016(2) SCT 87***, wherein the child employed as a Lecturer on the salary of ₹35,000/- per month was held "not dependent". While interpreting the 1982 Rules in ***Harvel Kaur and Others v. State of Punjab and Others 2011(2) SCT 755***, the Court held that the benefit can be taken only once and not repeated for later employment in the category of dependent of the Ex-Serviceman.

18. On the other hand, the learned counsel representing the respondents relies upon a Division Bench judgment in ***Ram Kumar v. State of Haryana and Others (Civil Writ Petition No. 172 of 2005, decided on 24.04.2006)***. In the context of the rules and the instructions applicable in the State of Haryana, the expression "dependent" was interpreted. After noticing that the instructions provide for nature of employment and income of the dependent child under Clauses (i), (ii) and (v) and (vi), the Court held that the respondent No.4 was working as a part time and hence, falls within the definition of the dependent of Ex-Serviceman. In the State of Punjab, the expression used is significantly different. The expression "dependent" has been used in the context of child of the Ex-Serviceman. The expression is not qualified by any other expression.

in *Kanhaiya Lal v. State of U.P. 2001(4) SCT 581* in support of his submission. In the aforesaid case, the Division Bench of the Allahabad High Court after examining the definition of the word “dependent” with reference to a freedom fighter defined in the *Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993* (hereinafter referred to as “the 1993 Act”) held that the dependent grandson of a freedom fighter is covered by the definition. The learned counsel has also relied upon the judgment rendered in *Kumari Priyanka Aggarwal v. State of Uttar Pradesh 2001(1) SCT 85*. With reference to the 1993 Act as applicable to the State of Uttar Pradesh with reference to the admissions to the medical colleges in the State, the Court held that the petitioners are neither gainfully employed nor they are studying in any other college. In that context, the Court held that a dependent of a freedom fighter does not have to be financially upon the freedom fighter to claim its benefits. With highest respect, the aforesaid judgment is not applicable to the facts of the present case.

20. The next argument of the learned counsel representing the petitioner is with respect to the proviso to Rule 4(2) of the 1982 Rules, which provides that the benefit of reservation will be available only once in life. It would be noted here that the petitioner has specifically asserted that the Director of Ayurveda, Punjab, issued the appointment letters to the private respondents while recruiting them under the National Rural Health Mission and even the recruitment notice was issued by the Directorate of Ayurveda, Punjab. Their posting orders at the Primary Health Centres of the Punjab Government are also issued by the Director, Department of

Ayurveda, Punjab. While filing the reply to the replication, the State has taken a stand that the contractual and short period appointments cannot be treated as a regular one and the rules applicable to the regularly appointed persons cannot be made applicable to the contractual and the short term daily basis appointees. The salaries of the officials of the National Rural Health Mission appointed on the contractual basis are not drawn wholly from the budget of the Punjab Government but funded by the Government of India. The National Rural Health Mission is a temporary scheme which is supported and funded by the Government of India.

21. It would be noted here that the petitioner has specifically asserted that in the recruitment notice issued for engaging the private respondents under the NRHM Scheme was on the basis of their reservation for the category of Ex-Serviceman. While filing reply to the rejoinder, this fact is not specifically denied. It would be noted here that the 1982 Rules do not make any distinction between the regular appointment or the temporary or contractual appointment. In proviso to Rule 4(2) of the 1982 Rules, it is not explicitly provided that such benefit of reservation once in life time shall only be with respect to the regular appointment and not the temporary or the contractual appointment. In these circumstances, the appointment of the private respondents No. 4 to 8 is contrary to Rule 4 of the 1982 Rules.

22. It is an admitted fact that the respondent No. 8 and 9 did not attend the interview which was slated for the category of Ex-Serviceman on 01.07.2011 and 04.07.2011. Clause (2) of the public notice dated 08.06.2011 mandates that “the candidates who do not report for the interview on the fixed schedule shall be deemed to be not interested for having the post and

their candidatures shall be cancelled”. It is the stand of the State that the respondent No.8 and 9 were interviewed on 21.06.2011 and 22.06.2011. There is lack of clarity on the part of the State as to how the respondent No.8 and 9 were interviewed on 21.06.2011 and 22.06.2011 particularly when the dates for interview, as per the public notice, were 01.07.2011 and 04.07.2011.

23. Moreover, there is another aspect of the matter. As per the definition of the dependent child under Rule 2(aa) of the 1982 Rules which was added on 22.09.1992, an unmarried daughter of the Ex-Serviceman is dependent. Necessarily, the married daughter is excluded. It is the affidavit of the father of the respondent No.5-Deepika Parmar that she was married and is residing with her in-laws. She was also in service. In these circumstances, she could not be considered against the reserved vacancy.

24. It would be noted here that on 10.02.2023, the learned State counsel submitted that consistently, the rule has been interpreted in the manner to include the already employed children of the Ex-Servicemen which may adversely affect a large number of appointments.

25. This plea requires serious consideration. If a large number of appointments have been made in a similar manner, then the question is what course of action the Court is expected to adopt. It is evident that the private respondents are not guilty of the concealment or misrepresentation of the facts. It is the Committee who have interpreted the provisions of the 1982 Rules in an incorrect manner. Moreover, there is no clarity about the merit of the petitioner. The private respondents are in service since 2013 i.e. for a period of nearly ten years.

26. Keeping in view the aforesaid facts, this Court does not find it appropriate to direct the removal of the private respondents from the service particularly there may be significant developments in their personal life on account of the appointment. The private respondents have also earned the sufficient experience. However, at the same time, the petitioner cannot be illegally deprived of an opportunity.

27. Keeping in view the aforesaid facts, the writ petition is disposed of while issuing the direction to the respondents to consider the petitioner as a dependent child of Ex-Serviceman against the 13 posts kept reserved for the said category while for the time being, ignoring the appointment of the private respondents. In other words, the officials will assume that the private respondents have not been recruited against the vacancies reserved for the Ex-Serviceman and then examine the entitlement of the petitioner. If the officials find that the petitioner is entitled, he shall be issued the appointment letter. It is ordered that he will be entitled to the notional benefits without any financial benefit for the period he did not work. If no vacancy is available, the last selected candidate from the private respondents shall be shifted to the supernumerary post which will be created to accommodate the petitioner.

28. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 03, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No