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2023:PHHC:166405

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-17005-2022

DECIDED ON: 3rd JULY, 2023

RAKESH SHARMA

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Parveen Chauhan, Advocate
for the petitioner.

Mr. Dimple Jain, DAG, Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* to quash the impugned action of the respondents whereby, respondent No.2 declined to consider the claim of the petitioner who is entitled to avail under 2% reservation for Dependant of Freedom Fighter in view of Government Instructions dated 15.07.2014 (Annexure P-5) with further prayer to quash the final list dated 05.02.2022 (Annexure P-4) to the extent of non inclusion of his roll number for recruitment to the post of Divisional/Revenue Accountant in Dakshin Haryana Bijli Vitran Nigam under Category No.17 as advertisement by respondent No.2 vide advertisement No.15/2019 (Annexure P-1) vide which the petitioner has not been considered in the final list dated 05.02.2022 (Annexure P-5) after operating the 2% reservation of Dependents of Freedom Fighters as per

notification dated 15.07.2014.

2. The gist of the case would read that respondent No.2 has advertised various posts including 42 posts of Divisional/Revenue Accountant vide advertisement 15/2019 under Category No.17 dated 07.09.2019 for which the petitioner has applied under EWS Category and was issued roll No. 24171174. A written examination was got conducted, the result of which was declared on 09.09.2011 and thereafter shortlisted candidates including the petitioner were called for scrutiny of documents on 29.09.2021. Final result for the post in question was declared on 05.02.2022.

3. Mr. Parveen Chauhan, learned counsel for the petitioner has vehemently contended that he had applied for the post of Divisional/Revenue Accountant under the Dependant of Freedom Fighter category. In terms of the clarification issued on 27.10.2021, posts which are horizontally reserved for Ex-serviceman of any category except scheduled caste, are to be offered to the dependents of the freedom fighters. The respondents have filled a post meant for Ex-Serviceman category with a candidate from BC'A category as there was no suitable candidate from Ex-Serviceman category, which is impermissible in terms of the clarification. The petitioner is the most meritorious candidate in the Dependant of Freedom Fighter category and thus would be eligible for appointment as Divisional/Revenue Accountant.

4. Ms. Dimple Jain, DAG, Haryana has contended that the petitioner is not entitled to invoke the extra ordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, as no

fundamental/constitutional rights of the petitioner have been infringed by the answering respondent. It is the contention of learned State counsel that the he was not selected for the post in question because the sufficient number of meritorious Self Ex-Servicemen candidates and Dependant of Ex-Servicemen, were available and accordingly DFF general category candidates were not selected for the post in question.

5. It is an admitted fact that the petitioner applied for the post of Divisional/Revenue Accountant in EWS category and had secured 45 marks in total for the post in question. From the perusal of writ petition, it is crystal clear that the petitioner mentioned his category in the application form as “General-DFF (Dependant of Freedom Fighter) Category and as per advertisement and Government of Haryana GS-III notification dated 15.07.2014, the post reserved for ESM category is to be utilized for further category, if the quota reserved for ESM candidate remained unfilled due to non-availability of suitable Ex-Servicemen. It would be appetite to reproduce the operative part of Government of Haryana GS-III notification dated 15.07.2014, which reads as under:-

“(h)	<i>Freedom Fighters & their children/grand children</i>	<i>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 dependants or non-availability of suitable candidates from Backward Classes. Over all reservation either from unfilled vacancies of Ex-Servicemen or from 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.”</i>
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6. From the afore-said condition, it is crystal clear that for the post of Class III and IV provides for 2% reservation to Freedom Fighters and their children/grand children, if the quota reserved for ESM remains unfilled to that extent due to non-availability of suitable ESM candidates.

7. As far as the contention of petitioner with regard to the fact that one post of Ex-Servicemen BC'A remained vacant due to non-availability of suitable candidates in the said category and while declaring the final result dated 05.02.2022, it has been filled up with the candidate i.e. respondent No.3-Shakti Rani, who is BC'A Category candidate, is concerned, there was one post of ESM BC'A category and due to non-availability of suitable candidate in the ESM BC'A category, respondent No.3 was selected for the post in question. Moreover, from the close scrutiny of instructions dated 30.04.2018, it is abundantly clear that in case no candidate is found suitable for appointment even on re-advertisement, the vacancies reserved for ESM of a particular category will be filled up from amongst the same category candidates. Thus, the case of the petitioner, who himself is a General Category candidate, for adjustment against ESM, BC-A category cannot be considered.

8. In view of discussions made hereinabove, this Court does not find any merit in the present petition and as such the same is dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

3rd JULY, 2023

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