

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

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CWP No. 24291 of 2015 (O & M)

Date of Decision : 19.7.2023

*Rajinder Kumar**..... Petitioner**versus**The State of Haryana and others**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. J.S. Yadav, Advocate, for the petitioner

Ms. Tanushree Gupta, DAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

The claim raised in the petition, as argued by learned counsel for the petitioner, is that the petitioner has a right to be appointed against 38 posts reserved for Ex-servicemen Backward Class-B (ESM BC-B) category out of 1270 posts of S.S. Masters, advertised vide Advertisement no.2/1999 (EDU) dated 14.11.1999 (Annexure P-1). In the advertisement only 4 posts for the ESM BC-B category have been reserved which constitutes 0.31% of the total posts; whereas, as per the entitlement, the respondents have to reserve 3% of the total posts advertised for the category which makes it to 38 posts. In that eventuality, the petitioner will be entitled to appointment against one such post since he belongs to ESM BC-B category.

2. A perusal of the reply filed by the Commission/respondent no.3 shows that the petitioner has secured 80 marks (62 marks in written exam

+ 18 marks in *viva voce*), and the marks secured by the last selected

candidate in ESM BC-B category for the post were 151. Therefore, the petitioner could not have been recommended for appointment on the post in question.

3. Further, it is apparent on record that the instant petition seeking appointment against the posts advertised on 14.11.1999 was filed in November 2015. It is also a matter of record that selection to the posts advertised was already over by that time. In this regard, plea taken by learned counsel for the petitioner is that the petitioner had approached this Court earlier by filing CWPs No.19960 of 2004, 1665 of 2005, 14429 of 2006, 3627 of 2007, COCP No. 485 of 2007 and CWP No. 21686 of 2008. Therefore, there is no delay in filing this petition on his part. However, it could not be disputed by the learned counsel that the petitioner's right to challenge the selection at a later date could not be said to have been protected by any order passed in any of those petitions.

4. Still further, the arguments raised by learned counsel for the petitioner that the respondents were bound to reserve 3% of the total posts for the ESM BC-B category, as has been provided in the Instructions, dated 14.7.2000, duly followed in subsequent advertisements, is also not sustainable in the peculiar facts of this case. Undisputedly, the petitioner is now about 60 years of age. He, therefore, cannot be appointed to the post even if it is held that the reservation in question was wrongly provided by the respondents way-back in 1999 by the advertisement in question.

5. Therefore, keeping in view the fact that the marks secured by the petitioner are far below the marks secured by the last selected candidate in the ESM BC-B category, as also that he is over-aged and

cannot be offered appointment, coupled with the fact that the petition has been filed after inordinate delay of about fifteen years, this Court is of the view that the relief claimed by the petitioner cannot be granted. And adjudicating the issue of providing 3% reservation against total advertised posts will only be an academic exercise. The petition, accordingly, stands dismissed. No costs.

6. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

19.7.2023
Ashwani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No