

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8173-2015 (O&M)

Date of decision: 30.10.2023

Ram Saran

... Petitioner

VS.

Haryana Vidyut Prasaran Nigam Ltd. & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Arihant Goyal, Advocate for the petitioner

Mr. Prateek Mahajan, Advocate and

Mr. Daanish Mahajan, Advocate for respondents No.1 to 3

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents to consider and appoint him to the post of Assistant Lineman, being an oustee amongst the reserved category.

(2). Brief facts of the case unfolds that the petitioner, who was appointed as Assistant Lineman and having performed his duties as such w.e.f. 15.04.1993 to 23.09.1997 (Annexure P4), was terminated from service vide order dated 23.09.1997, in compliance to the judgment passed by this Court in CWP-7387-1993. However, later, vide judgment dated 03.12.2008 of this Court in CWP-15558-1997, wherein appointment, as per merit list, was directed to be offered to those members of the reserved category who were ousted as a result of wrong appointments made in the reserved category. An advertisement dated 07.01.2014 (Annexure P7) was issued in the Dainik Tribune newspaper calling upon the terminated candidates of SC/BC category to apply within one month, however, the petitioner could not apply

within the stipulated period. Thereafter, the petitioner sent a legal notice dated 04.02.2015 (Annexure P8) and in reply to the said legal notice, the respondents vide impugned letter/reply dated 21.04.2015 rejected the claim of the petitioner. The aggrieved petitioner has approached this Court.

(3). Notice of motion was issued on 28.05.2015 and in pursuance thereto, the respondents No.1 to 3 have filed their reply on 03.12.2015 to which the petitioner has also filed his rejoinder dated 06.02.2017.

(4). Learned counsel for the petitioner contended that the posts of ALM admittedly lying vacant and the petitioner being an oustee and a member of Scheduled Caste deserves to be appointed in compliance to the directions of this Court vide judgment dated 03.12.2008 and the action of the respondents, in not considering and offering appointment to the petitioner, as such, amounts to willful disobedience of court order. It is further submitted that the posts of ALM and Shift Attendants are lying vacant due to non-joining of some of the candidates and as such a duty is cast upon the respondents to fill up the posts in order to grant due representation to the category of those persons. He submits that as per the information supplied under RTI Act on 18.03.2011, out of 336 posts, 94 posts of ALM are lying vacant due to non-joining of the persons under the reserved category.

(5). Mr. Arihant Goyal, Advocate drew attention of this Court to the reply dated 21.04.2015 (Annexure P9) filed by the respondents to the legal notice dated 04.02.2015 (Annexure P8) vide which the respondents had wrongly rejected the claim of the petitioner on the ground that he was considered in General category and secured 54 marks whereas the last candidate in General category secured 55 marks and therefore, the petitioner

was not eligible. It is contended that once as per the advertisement, those candidates who had already applied in the year 1992 need not to apply again, there was no occasion for the petitioner to mention his category as the petitioner had already mentioned his category in the earlier form and in this view of the matter, it was incumbent upon the respondents to consider the petitioner for selection on the basis of his earlier application. He further averred that once the petitioner had applied in reserved category and the letter of appointment which was earlier issued to the petitioner did mention the petitioner to be of SC category, in such circumstances, the action of the respondents in considering the petitioner's application to be of General category as against SC category, is arbitrary and illegal in the eyes of law.

(6). Reliance has been placed on ***Naresh Kumari vs. State of Punjab & Anr. 2015(2) SCT 121*** to contend that the reservation policy and executive instructions issued under Article 162 of the Constitution has to be given full effect to make reservation meaningful till the prescribed percentage is achieved and all the reserved posts are filled as the reservation law presupposes relaxations and concessions to a special category or class of persons for whom the constitutional benefits are admissible.

(7). On the other hand, Mr. Prateek Mahajan, Advocate for the respondents, submits that the petitioner appeared in the written test in 1996 but did not mention his category in the answer sheet, accordingly, he was considered in General category and secured 54 marks as against the last candidate in General category who secured 55 marks and since the petitioner secured lesser marks, as such, he was not called for interview.

(8). He further averred that in pursuance to the judgment of this court dated 29.11.1995 vide which earlier selection was quashed with a direction to conduct a fresh selection and not to displace the selected candidates till then and in compliance thereof, fresh advertisement No.CRA 143 was issued for filling up 2056 post of ALM and written test was conducted on 05.05.1996 at Circle Level and result declared on 23.09.1997. It is then submitted that in the answer sheets there were five columns for the candidates to indicate their respective categories and as such the candidates were placed as such as per the particulars filled in by them and therefore, the candidates including the petitioner who had applied in pursuance to CRA-133 were not to apply again in pursuance to later advertisement CRA-143 in terms of judgment dated 29.11.1995. However, the petitioner did not mention his category. It is then argued that the petitioner has annexed caste certificate which is dated 01.05.2007 with the petition but he is claiming that he applied in the reserved category in 1992 against the post of ALM which itself mars the case of the petitioner.

(9). Heard learned counsel for the parties and gone through the record.

(10). The petitioner applied under the Scheduled Caste category and was appointed as such vide memo dated 06.04.1993 as Assistant Lineman under Scheduled Caste category as is evident from the appointment letter (Annexure P2), however, the same stood withdrawn on other grounds but evidently not on the basis of any fake caste certificate obtained by the petitioner. Therefore, there cannot be any doubt as to the claim of the petitioner that he belongs to the Scheduled Caste.

(11). Moreover, in compliance to the order dated 03.12.2008 passed by this Court, the respondents issued offer of appointment to the post of ALM and SA to as many as 336 and 75 reserved categories candidates, respectively. As regards the contention of the petitioner that the respondents have acted in contravention of the letter and spirit of the judgment, the respondents have come out with a stand that the cut off marks of the last selected candidate in SC-A category was 64 and as such the appointment has been made duly considering the merit list prepared at the time of original selection. Nothing has been placed on record to controvert the stand of the respondents to establish that while making appointments against reservation, merit of the candidate has not been considered.

(12). Besides, the petitioner appeared in the written test of ALM in 1996 but he did not mention his category. The respondents thus considered him in general category. That apart, the petitioner secured 54 marks and the last selected candidate in the general category secured 55 marks that is higher marks than the petitioner in the year 2009. As such, the offer of appointment was rightly not issued to the petitioner.

(13). It cannot be overlooked that the service of the petitioner along with other employees were dispensed with on 03.12.2008. The petitioner went into slumber and kept sleeping over until 2015 when he suddenly woke up and filed the instant writ petition. The present matter is not the one where the petitioner can allege recurring cause of action in relation to in-service employees like pension or salary etc. No sooner the order dispensing with the services of the petitioner was passed, the petitioner should have availed his legal remedies. Since 2008 till now, much water has flown and at this

stage, the petitioner cannot be heard that he may be given the benefit of appointment. The delay in taking recourse to the appropriate remedy by the petitioner cannot be undone and proves fatal to his case. Even otherwise, no waiting list was prepared as the recruitment process was carried out way back in 1997 and the validity of the select list had already expired in the year 1998 itself.

(14). In view of the foregoing reasons, there is no merit in the instant writ petition and the same is accordingly dismissed on the ground of delay and laches.

(15). Ordered accordingly.

30.10.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No