

CWP No.29537 of 2017

[1]

2023:PHHC:055619

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

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CWP No.29537 of 2017

Date of decision:20.04.2023

Sandeep Kumar

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kuldip Singh, Advocate
for the petitioner.

Mr. Pankaj Middha, Addl.A.G., Haryana.

SUVIR SEHGAL, J. (Oral)

1. Instant petition has been filed seeking issuance of a writ in the nature of mandamus directing the respondents to consider the candidature of the petitioner for interview for the post of Clerk.

2. Vide advertisement No.10/2015, dated 24.11.2015 (Annexure P-1), which was followed by corrigendum dated 18.05.2016, Haryana Staff Selection Commission-respondent No.2 invited the applications for 6134 posts of Clerks, out of which 455 posts were earmarked for ESM (Ex-Servicemen) General category. Petitioner applied for the post in General/DESM (Dependent of Ex-Servicemen) category and appeared for written examination. His grievance is that despite securing more marks than the last short listed candidate, his roll number has not been mentioned in the result (Annexure P-4) declared by respondent No.2 and he has not been called for scrutiny of the documents.

3. Upon notice, short reply has been filed on behalf of respondent No.2, wherein, it has been submitted that petitioner was not considered as sufficient number of ex-servicemen candidates were available and short listed for interview. Reference has been made to instructions dated 21.05.1979 (Annexure R-2/1) issued by the Govt. of Haryana.

4. Heard counsel for the parties.

5. Similar controversy pertaining to the same selection process came up for consideration before this Court in **CWP No.4115 of 2019 titled as ‘Parmod Kumar Lamboria Vs. State of Haryana and others’**. This Court by judgment dated 27.02.2023 observed as under:-

“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.

Note:-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 nonavailability 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.”

6. Hon’ble Supreme Court in **Dilwan Singh Vs. State of Haryana (1996) 8 SCC 369** has held that the object of reservation of the ex-servicemen is to rehabilitate them after their discharge from the defence

services. As per the instructions issued by the State Government, in the absence of availability of the ex-servicemen instead of keeping those posts unfilled, the dependent of ex-servicemen would also be considered. The object thereby would be that the Selection Board should first consider the claim of the ex-servicemen and have their eligibility considered independently, in the first instance before the claims of the dependent of the ex-servicemen are considered. It has been further held that after the ex-servicemen are not found eligible and selected, for the balance unfilled posts, the selection should be done from amongst the dependents of the ex-servicemen.

7. Upon instructions from Ms. Kamaljeet Kaur, Law Officer, Commission-respondent No.2, a categoric submission has been made by State counsel that all the available posts ear-marked for ESM candidates have been filled from the eligible candidates belonging to that category and no post is lying vacant.

8. In view of the above factual and legal position, this Court is of the opinion that there is no merit in the petition, which is hereby dismissed.

April 20, 2023

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No