

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

CWP-20552-2022 (O&M)

Decided on : 03.11.2023

Lt. Col. Manish Gupta and another

....Petitioners

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Abhishek Arora, Advocate and
Ms. Ananya Ahluwalia, Advocate for
Mr. Sumit Jain, Advocate
for the petitioner(s).

Mr. Kanwal Goyal, Advocate,
Mr. Shobit Rapria, Advocate and
Mr. Govind Tanwar, Advocate
for respondent-HPSC.

Mr. Tapan Kumar Yadav, DAG, Haryana.

Mr. Rajesh Garg, Sr. Advocate with
Ms. Neha Matharoo, Advocate for respondent No. 3.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the prayer of the petitioners is that the petitioners, who are claiming themselves to be an ex-servicemen should be treated eligible to compete for the post of Dental Surgeon (Class II) under the reserved category of Ex servicemen as advertised by Advertisement No. 2 of 2021 dated 25.02.2021 (Annexure P-3).

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. Petitioner No. 1 was appointed in the Indian Army vide appointment letter dated 22.12.2008. His appointment was for period of five years initially which was extendable to another nine years.

4. Similarly, petitioner no. 2 was appointed in the Indian Army on 05.03.2014 under the same terms and conditions.

5. The State of Haryana issued an advertisement No. 2/2021 dated 25.02.2021 advertising the post of Dental Surgeon to be filled with the Haryana Public Service Commission (herein after referred to as 'the Commission'). The petitioners applied in pursuance to the said advertisement under the reserved category of ex-servicemen. Keeping in view the application form, the petitioners were given the roll numbers for appearing in the written examination which was held on 19.06.2022. The result of the said written examination was declared on 17.08.2022. The said result was revised and category wise result was declared on 24.08.2022 and in the revised result, both the petitioners were found having qualified in the written examination in the category of ex-servicemen.

6. Thereafter, upon scrutiny of the documents, the candidature of the petitioners were rejected by the respondents vide communication dated 30.08.2022 and liberty was given to the petitioners that in case they have any objection to the said action of the Commission, they can file representation in respect of the same. Both the petitioners submitted through their representations with the respondent- Commission that though they were in active service as on last date of submission of their application form but, as they were having 'No Objection Certificate' from their respective employer, they should have been treated as ex-servicemen and hence, they were very much eligible to be treated as ex-servicemen for the purpose of advertisement No. 2 of 2021 dated 25.02.2021 (Annexure P-3).

7. Keeping in view the representation filed, the respondents again rejected the claim of the petitioners on 06.09.2022 holding that as the petitioners were in active service on the last date of submission of their

application form and even the No Objection Certificate which has been submitted by the petitioners subsequently was issued after the last date of submission of application form hence, keeping in view the terms and conditions of the advertisement especially the definition of ex servicemen given in the advertisement, they cannot be treated eligible for consideration under the reserved category of ex-servicemen.

8. The said orders Annexure P-16 and Annexure P-16A qua both the petitioners have been impugned in the present petition.

9. While issuing notice of motion on 09.09.2022, the Co-ordinate Bench of this Court allowed the petitioners to compete provisionally in the selection process for the post in question with the clear direction that the result of the petitioners shall be kept in sealed cover.

10. Keeping in view the pendency of the present petition as there were two posts reserved for the ex-servicemen, which were to be filled and the challenge was from the two petitioners in the present case, the Commission restrained itself from proceeding further in the matter till the question of law raised in the present petition is decided by this Court.

11. In reply to the writ petition, the respondent-Commission has submitted that the selection process for the post in question is to be undertaken as per the provisions of the advertisement and a candidate has to be an ex-servicemen in terms of the advertisement upto the last date of submission of application form hence, the petitioners who were in active service on the last date of the application form, cannot be treated as an Ex-servicemen for competing against the post of Dental Surgeon as advertised by advertisement No. 2 of 2021 dated 25.02.2021 (Annexure P-3) in the said reserved category. As per the Commission only the ex-servicemen who were not in active service are to be considered as eligible ex-servicemen

candidates keeping in view the terms and conditions qua the eligibility mentioned in the advertisement.

12. Learned counsel for the respondents-commission further submits that similar clause has already been interpreted by the Co-ordinate Bench of this Court while deciding the CWP No. 7938-2012, titled as '**Pawan Kumar v. State of Haryana and others**', decided on 28.09.2016, wherein, it has been held that only ex-servicemen candidates will be eligible to compete for the post in the said category and not the candidates who were in active service on the last date fixed for consideration of eligibility as per the Advertisement.

13. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

14. The only question which arises for adjudication is whether, the petitioners who were concededly in active service on the last date of submission of application form which was 26.03.2021, can be treated as the eligible candidate to compete for the two posts of Dental Surgeon under the reserved category of Ex-servicemen or not.

15. For the appreciating the arguments of both sides, the provisions of advertisement need to be perused. The definition of ex servicemen given in the advertisement itself is reproduced here under for reference.

“(II) Definition of Ex-Servicemen (ESM):

(As per instructions No. 36034/5/85-Estt. (SCT) dated 14.04.1987, No. 12/99/8- 2GSII dated 08.11.1988 and No. 12/18/2006-4GSII dated 08.01.2008)

—An ex-serviceman‘ means a person, who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy and Air Force of the Indian Union and

(I) who retired from such service after earning his / her pension; or

- (II) *who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or*
- (III) *who have been released otherwise than on his own request from such service as a result of reduction in establishment; or*
- (IV) *who has been released from such service after completing the specific period of engagements, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity'; and includes personnel of the Territorial Army of the following categories namely:-*
- ⌚ *Pension holders for continuous embodied service*
 - ⌚ *Persons with disability attributable to military service; and*
 - ⌚ *Gallantry award winners.*

Note 1. *ESM candidates of Haryana claiming benefit under this category must have valid Identity Card and Discharge Book / Certificate showing the date of entry into military and date of release, on the last day of submission of online application form and will have to produce the same as and when required by the Haryana Public Service Commission.*

Note 2. *The reservation for ESM will be utilized as per Haryana Government instructions issued vide No. 945-GS-II-72/6451 dated 06.03.1972 and further clarified vide Govt. Instructions No. 12/15/2019-4GSII dated 07.08.2019 & even letter no. dated 16.12.2019 (available on the website of Chief Secretary to Govt. Haryana i.e. <http://csharyana.gov.in/>*

Note 3. *It is made clear that the dependent of ESM candidates will be considered as General / SC / BC-A / BC-B Category (their own category) candidates for all intents and purposes. However, in case of non-availability of suitable Ex-servicemen of Haryana, their dependent sons and daughters of the same category who fulfill all the*

conditions of qualifications, age etc. prescribed for the posts in question will also be considered on merit against the reserved posts for ESM and this entitlement would be available to one dependent child only.”

16. A bare perusal of the above reproduced definition of ex-servicemen will show that as per the advertisement, only the personnel, who have already retired or were released from service of Army, Navy and Air Force of the Union of India are to be treated as ex-servicemen. Any person who is in service, has been excluded from the definition of the ex-servicemen. That being so, the petitioners who were concededly serving with the Army on the last date of submission of application form, cannot claim themselves to be an ex-servicemen so as to be considered under the said reserved category.

17. Further, it is a conceded position that there is no challenge to the definition of ex-servicemen given in the advertisement in question in the present petition. Keeping in view the fact that the petitioners have not chosen to challenge the said definition on any ground, this Court is not required to pronounce any opinion as to whether, under any rule or instructions, the petitioners can be treated as ex-servicemen for the purpose of the present advertisement or not, hence, the claim of the petitioners is to be only decided keeping in view the definition of ex-servicemen as envisaged in the advertisement.

18. It has been submitted by the counsel for respondent-commission that a similar question of law came up for consideration before the Coordinate bench of this Court in Pawan Kumar's case (Supra) in the somewhat similar circumstances where the definition of an ex-servicemen was decided to cover only a servicemen who is no more in service and not

the one who were serving upto the last date of submission of application form and it was held that any candidate who might be released from service in the near future cannot be treated as an eligible candidate for consideration under the reserved category of ex-servicemen. Learned counsel for the petitioner has not been able to distinguish the said judgment so as to not to be applicable against the claim of the petitioners.

19. That being so, the petitioners who were in active service on the last date of submission of application form cannot claim themselves as ex-servicemen so as to compete for the post of Dental Surgeon as per advertisement No. 2 of 2021 dated 25.02.2021 (Annexure p-3) under the said reserved category.

20. Learned counsel for the petitioners submits that though the petitioners were in active service on the last date of application form but as per the 'No objection Certificate' given to them (which was admitted issued after the last date of submission of application form), copy of which has been appended as Annexure P-18, the petitioners were given permission to apply for the post of Dental Surgeon, hence, once the permission has been granted by the authorities concerned, the petitioners are required to be treated as eligible Ex-servicemen for the purpose of giving benefit of the reservation under the advertisement.

21. Learned counsel for the respondent-commission in this regard has argued that even if, the petitioners have 'No Objection Certificates' from their respective employers to compete for the post in question, however a perusal of the said certificate will show that the same does not confer a right upon them to seek release from their service even upon selection. Therefore, once the petitioners were in active service and their release is not certain from active service even after the completion of the regular selection process,

therefore, in the absence of any certainty of the petitioners being an ex-servicemen on the date of completion of selection process, the petitioners cannot claim themselves to be an ex-servicemen.

22. The 'No objection Certificate issued by the concerned authorities on the strength of which the petitioners are seeking consideration is reproduced as under:-

“ MINISTRY OF DEFENCE
DTE GEN ARMED FORCES MEDICAL SERVICE
'M' BLOCK, NEW DELHI-110001

NO OBJECTION CERTIFICATE

This office has no objection to DS-12330L Lt Col Manish Gupta, Dental Offr of 333 FD HOSP to apply for the post of Dental Surgeon at Haryana Public Service Commission, subject to condition that if the Offr is selected, the officer will apply for release through proper channel and the release will be subject to exigencies of service and at the discretion of the DGAFMS.

*Sd/-
(KP Singh)
DY Dir DG-1B (I) & (ii)
For DGAFMS”*

23. A bare perusal of the 'No Objection Certificate' will show that there is no certain date of the release of the petitioners from the army rather it has been mentioned that in case the petitioners are selected for the post in question, they can apply for the release through proper channel, which will be subject to the exigencies of the service and will be at the discretion of the DGAFMS. Hence, there is no certain date or confirmation given for the release of the petitioners from their respective service with the armed forces so as to treat them as ex-servicemen for the purpose of present advertisement.

24. Keeping in view the same, once there is no definite date of the release of the petitioners from the army even if, the 'No Objection

Certificate' which was issued after the last date of submission of application form is to be taken into consideration for the sake of arguments, the petitioners cannot claim themselves to be an ex-servicemen keeping in view the specific definition of ex-servicemen as given in Advertisement No. 2/2021 dated 25.02.2021 (Annexure P-3) and therefore, the 'No Objection Certificate' issued by the concerned authorities in the light of the facts and circumstances of the present case does not entitled the petitioners to be treated as eligible for consideration under the reserved category of ex-servicemen.

25. Further, the same question has been considered by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 12441 of 2022 tilted as **Sudhir Singh and others v. State of U. P. and others**', decided on 30.10.2023, wherein the question was whether an individual, who is serving on the last date of submission application form in pursuance to the advertisement, can be treated as an ex-servicemen or not.

Hon'ble Supreme Court held that any person who is in the regular service of the Armed Forces on the last date of application form cannot be treated as ex-servicemen for the purpose of claiming reservation or to compete for the advertised post under the said reserved category. The relevant paragraphs of the said judgment are as under:-

“11. *It was further urged that the stance of the appellants for consideration as Ex-Servicemen on the date of appointment is clearly in teeth of the settled principle of law where the advertisement itself was very clear that only Ex-Servicemen were eligible to even apply.*

14. *Having bestowed anxious thought and consideration to the rival submissions at the Bar combined with a careful perusal of the record, we are*

unable to find any error in the Impugned Judgment passed by the High Court, much less any illegality, warranting our interference. It is well-settled that the basic question on eligibility has to be determined on the basis of the cut-off date/point of time which stands crystalized by the date of the advertisement itself, being the last date of submission of application forms, unless extended by the authority concerned.

In the present scenario, none of the appellants can be said to have been Ex- Servicemen at the time of the advertisement in question, as, undisputedly, they were still in service. This Court has also examined the relevant rules and even the clarification(s) to the advertisement. We are afraid that they do not indicate that the appellants can be deemed Ex- Servicemen from a prospective date, despite being in actual service on the relevant date. As such, in the case at hand at least, there is no concept of serving personnel being deemed Ex-Servicemen.

It would not be proper for this Court to hold or interpret otherwise. Arguendo, if we were to venture down such a path, it would be unjust to a large number of others similarly placed as the appellants, who were not Ex-Servicemen as on the date of advertisement but came under the category later, but did not apply at the relevant time. This concern has not emanated for the first time. In Rakesh Kumar Sharma v State (NCT of Delhi), (2013) 11 SCC 58, this Court observed:

'22. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.'

(emphasis supplied)

15. *This Court would pause to state that the position discussed in the preceding paragraph is logical on the simple premise that even if a certification is given to a person indicating a prospective date till when he would be in employment, circumstances could intercede between the date of such certificate and the prospective date of retirement/resignation/relieving indicated therein.*

Illustratively, if for any reason there is a proceeding/charge pending against the person(s) concerned and/or there are circumstances for which the person cannot be relieved from his post till conclusion of such proceedings or otherwise, such date indicated in the certificate cannot be taken as the date of being finally and actually relieved from service.

However, in the instant situation, such date is also prospective and much later to the date on which the applications were invited and even till the last date of submission of the application forms. Thus, on this count alone, the appellants' claim of a right to consideration under the Ex-Servicemen category fails.

16. *In Rakesh Kumar Sharma (supra), this Court, after noticing, inter alia, Dr M V Nair v Union of India, (1993) 2 SCC 429; Uttar Pradesh Public Service Commission v Alpana, (1994) 2 SCC 723; Bhupinderpal Singh v State of Punjab, (2000) 5 SCC 262, and; State of Gujarat v Arvindkumar T Tiwari, (2012) 9 SCC 545 reiterated that basic qualification is to be adjudged as on the last date of submission of application forms, subject to any extension of such date by the concerned authority. In Rekha Chaturvedi (Smt.) v University of Rajasthan, 1993 Supp (3) SCC 1683, the proposition was enunciated as under:*

'10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications.

Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications.

But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications.'

(emphasis supplied)

- 17.** *The Court, vide its judgment in State of Bihar v Madhu Kant Ranjan, 2021 SCC OnLine SC 1262, also took the view that 'As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. '*

26. Keeping in view the above settled principle law, the petitioners who were in active service on the last date of submission of application form for the post of Dental Surgeon as advertised by advertisement No. 2/2021 dated 25.02.2021 (Annexure P-1) have rightly not been treated as an ex-servicemen for the grant of the said benefit.

27. At this stage, learned counsel for the petitioners submits that the ground which has been taken in the impugned order is that the petitioners are not ex-servicemen in terms of the advertisement so as to consider under

the said reserved category and not that they did not had a valid 'No Objection Certificate' in their favour.

Qua the said argument of the learned counsel for the petitioners it may be noticed that this Court is only deciding the claim of the petitioners on the basis of the definition of ex-servicemen given in the advertisement so as to adjudge the eligibility of the petitioners. This Court is not rejecting the claim of the petitioners on the ground that 'No Objection Certificate' submitted by the petitioners was after the last date of submission of application form, rather, in the preceding paragraphs, the wording of the NOC has been noticed in detail to record the finding that as per the wording of NOC, there is no definite date of treating the petitioners as ex-servicemen hence, the claim of the petitioners is being decided keeping in view the objection taken by the respondents in the impugned order and not on the ground that the NOC was submitted after the date of submission of application form.

28. Learned counsel for the petitioners further submits that as per the Clause 15 of the advertisement in question, the NOC from the employer has to be submitted at the time of scrutiny of the documents. This argument is to be tested on the basis of clause 15 of the advertisement which is reproduced here under for reference:

“15. Regarding No Objection Certificate by the Employer:

- (i) The employees of Haryana Government who have not executed any bond with the State Govt., may forward their application without NOC from the Department. However, self-declaration of such Govt. employees is required to be submitted to the effect that employee is not facing any disciplinary proceedings. In case of employees who have executed bond with the State Govt. (viz. Doctors) the NOC of Head of the Department (HOD)*

shall, however, be required. If the candidate resigns after sending the application, then such candidate will be interviewed only if he/ she produces a letter from the HOD to the effect that he / she has resigned from the post and his / her resignation has been accepted. The NOC or the letter, as the case may be, shall be submitted on or before the date of his/her interview failing which he/she will not be interviewed.

- (ii) *The candidate who joins service under any Govt., Quasi-Govt. Organisation, Public Sector Undertaking after the submission of application and has executed a bond, will have to produce NO OBJECTION CERTIFICATE from the employer, on or before the date of his / her interview failing which he or she will not be interviewed. Persons in private employment are not required to submit their application forms through their employer or to produce the employer's NOC / permission at the time of interview."*

29. A bare perusal of the above clause will show that the same relates to the employees of Government of Haryana who are competing for the post and not for the ex-servicemen. Hence, the question of claiming the benefit under the said clause by the petitioners does not arise, moreover in respect of above reproduced Clause 15 (ii), the same will not be applicable in the present case as, the petitioners were already in service at the time of submission of application form. **Even otherwise, the claim of the petitioners is not being declined by this Court on the basis of the No Objection Certificate being submitted after the last date of submission of application form but is being decided on the facts and circumstances of the present case keeping in view the definition of the ex-servicemen given in the advertisement coupled with the settled principle of law.**

30. Keeping in view the above position, the prayer of the petitioners

as made in the present petition cannot be accepted and the petitioners cannot be treated as ex-servicemen for the purpose of consideration under the said reserved category in terms of the advertisement in question so as to quash the impugned order.

31. No other argument has been raised.

32. As the commission has not proceeded further with the said selection qua the reserved post and the private respondents who have been impleaded in the present petition have prayed that the Commission be directed to proceed further in accordance with law so that the fate of the candidates who have been found eligible for the post in question is decided.

32. Learned counsel for the respondent-Commission submits that appropriate action with regard to the post in question will be taken by the Commission within the period of six weeks from the date of receipt of copy of this order.

33. Accordingly, the present petition stands dismissed.

34. Civil miscellaneous application pending, if any, is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

03.11.2023

Riya

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*