

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.		LPA-1543-2016
Krishan Kumar and others		 Appellants
	Versus	
Haryana Vidyut Parsaran Nigam Ltd. and others		 Respondents

2.		LPA-1564-2016
Harbans Lal and others		 Appellants
	Versus	
Haryana Vidyut Parsaran Nigam Ltd. and others		 Respondents

3.		LPA-1695-2016
Chand Ram and others		 Appellants
	Versus	
Haryana Vidyut Parsaran Nigam Ltd. and others		 Respondents

4.		LPA-2479-2016
Satbir Singh and others		 Appellants
	Versus	
Haryana Vidyut Parsaran Nigam Ltd. and others		 Respondents

5.		LPA-2505-2016
Krishan Lal and others		 Appellants
	Versus	
Haryana Vidyut Parsaran Nigam Ltd. and others		 Respondents

6.		LPA-2506-2016
Suresh Singh and others		 Appellants
	Versus	
Haryana Vidyut Parsaran Nigam Ltd. and others		 Respondents

7.			LPA-207-2017
Nar Singh			 Appellant
	Versus		
Haryana Vidyut Parsaran Nigam Ltd. and others			 Respondents

8.			LPA-210-2017
Rakesh Kumar			 Appellant
	Versus		
Haryana Vidyut Parsaran Nigam Ltd. and others			 Respondents

9.			LPA-586-2017
Sat Pal and another			 Appellants
	Versus		
Haryana Vidyut Parsaran Nigam Ltd. and others			 Respondents

10.			LPA-587-2017
Laxman			 Appellant
	Versus		
Haryana Vidyut Parsaran Nigam Ltd. and others			 Respondents

11.			LPA-348-2017
Rajesh			 Appellant
	Versus		
Haryana Vidyut Parsaran Nigam Ltd. and others			 Respondents

12.			LPA-449-2017
Bhagwam			 Appellant
	Versus		
Haryana Vidyut Parsaran Nigam Ltd.			 Respondent

Reserved on: 22.03.2023
Date of Decision: 19.04.2023

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS.JUSTICE SUKHVINDER KAUR

Present: - Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate for the appellants
(in LPAs-1543, 1564, 1695-2016).

Mr. Arihant Goyal, Advocate
for the appellants (in LPAs-2479, 2505, 2506-2016).

Ms. Sangita Dhanda, Advocate
for the appellants (in LPAs-207, 210, 348-2017).

Mr. Anil Dutt, Advocate for
Mr. Sukhdev Singh Gopera, Advocate
for the appellants (in LPAs-586, 587-2017).

Mr. Sanchit Punia, Advocate
for the appellant (in LPA-449-2017).

Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan, Advocate and
Ms. Nikita Goel, Advocate for HVPNL and UHBVNL.

Mr. Hoshier Singh Jaswal, Advocate
for respondent Nos. 5 and 11 (in LPA-1564-2016).

Mr. Arihant Goyal, Advocate
for respondent Nos. 6 and 8 (in LPA-210, 348-2017).

Ms. Tanisha Peshawaria, DAG, Haryana.

M.S. RAMACHANDRA RAO, J.

In this batch of LPAs, common questions of law arise and so they
are being disposed off by this common order.

The appellants in all these cases are seeking quashing of orders
passed terminating their services without any show cause notices and
opportunity of hearing vide Annexures P-25 and P-26 collectively.

It is not in dispute that the appellants had been appointed as Assistant Linemen/Shift Attendants in the Haryana Vidyut Parsaran Nigam Ltd. ('HVPNL' for short) and had been working from 1993 to 1996.

Their selection made in the year 1992 was quashed by this Court being faulty and the said decision was also upheld by the Supreme Court.

The judgment in CWP No.17812 of 1997 on 03.12.2008

The selection was quashed by this Court in CWP No.17812 of 1997 on 03.12.2008. This Court had held that 336 Assistant Linemen belonging to reserved category had obtained higher marks to the last general category candidate; so they are to be treated in general category, and the next 336 candidates of reserved category are entitled to be appointed.

Similarly, this Court had also held that 75 Shift Attendants belonging to reserved category had obtained higher marks to the last general candidate and hence, direction was issued that next 75 candidates of reserved category be offered appointments.

Later events

Thereafter, it is not disputed that 336 Assistant Linemen of reserved category were offered appointments and similarly, 75 Shift Attendants were also offered appointments.

Of them, only 94 Assistant Linemen did not join and likewise, 59 Shift Attendants had also not joined.

In the process of implementing the judgment dt.03.12.2008 passed in *CWP No.17812 of 1997*, a fresh merit list was prepared in the year 2009, but the appellants were not selected or given appointment.

The judgment in CWP-22873-2010 and CWP-6101-2010

So they filed Civil Writ Petition bearing No. *CWP-22873-2010 and CWP-6101-2010* before this Court seeking a direction for their selection/appointment on the ground that they have secured more marks i.e. 76 marks against the last selectee under BC category who secured only 63 marks, though according to the respondents, the last selectee secured 70 marks.

Relying on the decision of this Court in *CWP No.5356 of 2010* dt.06.12.2010, the said CWP was allowed and it was held that the only ground of denying appointment to the appellants is that they did not indicate the category in the answer sheet; merely because they did not indicate their category in the answer-sheet, it does not mean that they cannot be considered under the reserved category, while previously they had applied under the reserved category of 'BC' in the year 1992; denying selection/appointment under such circumstances is violative of Articles 14 and 16 of the Constitution of India; and therefore the respondents were directed to declare the appellants as selected, and consequently, issue appointment orders to them against the posts of Assistant Linemen under the reserved category of 'BC-A'.

Review Application No.137 -2011 in CWP-22873-2010 and CWP-6101-2010

An application seeking review of the said order was filed but no stay was granted in the review application.

Thereafter, a contempt case bearing No.*COCP-2987-2012* was filed in which notice of motion was issued for 15.11.2012.

After receipt of notice, the respondent gave appointments to all the appellants in view of the pendency of the contempt petition against the existing

vacancies vide orders dt.15.11.2012 and 23.11.2012 (Annexures P-17 and P-18 collectively). In some of the appointment letters, a condition was imposed that said appointments would be subject to decision of the review petition.

The review application No.137 of 2011 in *CWP-22873-2010 and CWP-6101-2010* was subsequently allowed on 11.12.2014 vide Annexure P-23. The Court opined that as per record, none of the appellants secured 76 marks as recorded by it in its order dt. 22.12.2010; that the Court had proceeded on a factually incorrect basis before treating the appellants' cases as similar with that of one *Amit Chand*; that it is an error apparent on the face of the record, and the order passed on 22.12.2010 is therefore to be recalled.

Events after the Review Applications were allowed

After the review applications were allowed, the respondents decided to terminate the services of the appellants, even though by then, the appellants had completed their period of probation.

The appellants therefore challenged the termination orders in *CWP-16745-2015, CWP-16751-2015, and CWP-19626-2015*.

The common order of the learned Single Judge

These writ petitions were tagged along with *CWP-22873-2010 and CWP-6101-2010* and were disposed off by a common order by the learned Single Judge.

On 24.02.2016, this Court had directed the respondents to state whether in compliance of the judgment passed in *CWP-17812-1997* dt.03.12.2008, the department was required to prepare a waiting list in case of non-joining of some Assistant Linemen and Shift Attendants and counsel for respondents were also asked to get instructions with regard to availability of

the posts as the appellants were appointed in the year 2012 during the pendency of the contempt petition which was later disposed of on 15.11.2012 as infructuous.

Thereafter an affidavit dt. 29.03.2016 was filed by the Deputy Secretary/HR & SR, HVPNL, Panchkula, clarifying that pursuant to the directions given in *CWP-17812-1997*, offer of appointment was made to 336 Assistant Linemen and 75 Shift Attendants, but *no waiting list was prepared* as offers were issued pursuant to recruitment process carried out in 1997. It was further stated that *as per instructions dt.20.01.1998, the validity of the waiting list of the year 1997 would be over by 1998; no post pursuant to recruitment carried out in 1997 as per advertisement No.CRA-143, was lying vacant*; after issuing offer of appointment to the 336 reserved category candidates for the post of Assistant Linemen and 75 reserved category candidates for the post of Shift Attendants, requisition for filling up of various posts including Assistant Linemen and Shift Attendants was sent; and subsequently, 2329 posts of Assistant Linemen were advertised on 08.07.2008 by Haryana Staff Selection Commission on behalf of UHBVNL, DHBVNL and HVPNL and recruitment was made in the year 2010.

It was further stated that 1000 posts of Assistant Linemen were again advertised on 19.03.2011 by the Haryana Staff Selection Commission on behalf of UHBVNL and DHBVNL and recruitment had been made in the year 2012.

It was also stated that recruitment process of filling up of 552 posts of Shift Attendants was initiated vide advertisement No.13/2007 and recruitment was made in the year 2010.

It was stated that the offer of appointment to 12 candidates/appellants was given in compliance of the order dt.22.12.2010 in *CWP-22873-2010* and *CWP-6101-2010* subject to the outcome of Review Application No.137 of 2011 and 138 of 2011; as on 24.02.2016, several posts of Assistant Linemen and Shift Attendants were vacant in UHBVNL, DHBVNL and HVPNL; these vacancies became available in 2012 and no backlog of vacancies was available qua selection carried out in 1997, and so, the appellants cannot be appointed on the above said posts.

The learned Single Judge referred to the above affidavit and also the decision rendered by this Court on 13.01.2016 in *CWP-28663-2013*, wherein the writ petitioner had made a claim that persons junior to him had been appointed and he had a prior right of appointment, and had sought the benefit of judgment dt.03.12.2008 rendered in *CWP-17812-1997*, but the said writ petition was dismissed as withdrawn; that he was not a party to the writ petitions; validity of the waiting list was over by 1998; and so he had no right to be appointed on account of non-joining of some candidates pursuant to a selection made way back in 1997 and the decision given by the Court on 03.12.2008.

The learned Single Judge applied the said judgment and held that appellants had approached the Court in 2010 and were seeking appointment on vacant posts on the ground that persons who had been appointed way back in 1997 had got less marks than them; that their claim was that in the merit list prepared in 1997, they had got higher marks than the selected candidates in SC-A, SC-B, BC-A AND BC-B categories; that *they are seeking accommodation on account of non-joining of some of the candidates*; and

instead of approaching the Court in 1997, they filed the writ petitions in the year 2010. Reliance was also placed on the decision in *CWP-14137-2010* dt.23.08.2011 holding that candidates who had filed original petition had been given appointments out of the earlier ranking list, and persons who were not parties to the original writ petition had no right to claim appointment on account of non-joining of some candidates.

The LPA

Assailing the same, this batch of LPAs was filed.

Sh. R.K. Malik, Sr. Counsel and other counsel appearing for the appellants sought to contend that the learned Single Judge erred in taking the view that the appellants had no right to continue in service, and the learned Single Judge ought to have held that in the vacancies which remained unfilled after the decision rendered by this Court in *CWP-17812-1997* dt.03.12.2008, the appellants were entitled to be appointed and their services cannot be terminated by the respondents.

The learned Advocate General for the State of Haryana strongly refuted the said contentions and supported the judgment of the learned Single Judge. He pointed out that no post pursuant to recruitment carried out in 1997 was lying vacant; merely because 94 Assistant Linemen posts and 59 Shift Attendants posts remained vacant on account of the fact that the reserved candidates did not join their duties, after being invited to do so after the decision in *CWP-17812-1997*, the appellants cannot claim any right to be appointed in those vacancies because the waiting list had a validity of only one year which lapsed in the year 1998 itself. He contended that the appellants had no right to be appointed on account of non-joining of some candidates,

pursuant to a selection made way back in 1997, since the validity of the waiting list of the year 1997 would be over by 1998 as per instructions dt.20.01.1998.

Consideration by the Court

We have noted the contentions of both sides.

Admittedly, the appellants are claiming their right to be appointed against the 94 Assistant Linemen and 59 Shift Attendants posts (forming part of the 336 Assistant Linemen and 75 Shift Attendants posts), in which reserved category candidates were offered appointments after the decision of this Court on 03.12.2008 in *CWP-17812-1997*, when these posts remained unfilled, because 94 Assistant Linemen and 59 Shift Attendants did not join.

The appellants cannot rely on the order dt.03.12.2008 in *CWP-17812-1997* for the reason that the said order had directed the then HSEB to consider appointments of at least 336 reserved category candidates for the posts of Assistant Linemen and 75 reserved category candidates for the posts of Shift Attendants from amongst candidates of reserved category who may have been ousted as a result of wrong appointments made in the reserved category on account of the fact that though the said candidates of the year 1997 selection belonged to the reserved category had obtained higher marks to the last general category candidate, and instead of being treated in the general category, they were appointed against reserved category posts.

Once, the HSEB/HVPNL had complied with the direction and offered appointments to the next 336 candidates of reserved category among Assistant Linemen and 75 candidates of reserved category among Shift

Attendants for filling up 75 Shift Attendants posts, nothing more was required to be done by the respondents.

If some of these posts remained unfilled because the candidates offered such appointments by the respondents did not join, the only course open to the respondents was to take up the fresh selection because the validity of the waiting list of 1997, pursuant to which the appellants had secured marks, had ended in 1998.

Unless the waiting list in law remains live and valid, the appellants could not have been issued appointment orders on 15.11.2012 and 23.11.2012.

They were given such appointment orders only because of the contempt application No.*COCP-2987-2012* seeking implementation of the order dt.22.12.2010 passed in *CWP-22873-2010*.

Once the said order came to be reviewed on 11.12.2014 and was recalled, the services of the appellants had to be terminated, and no fault can be found with the respondents for taking such action.

The learned Single Judge was also right in holding that some of the appellants could not have filed writs in the year 2010 seeking appointment in the vacancies arising out of the 1997 selection, when they were not parties to *CWP-17812-1997*, and had not approached the Court in 1997 to be considered in those vacancies.

We are of the opinion that the learned Single Judge had properly considered the matter in the right perspective and the order of the learned Single Judge does not warrant any interference by us in exercise of jurisdiction under the Letters Patent Appeal.

Accordingly, all the LPAs are dismissed.

No costs.

Pending application(s), if any, also stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 19, 2023.

Mohit Goyal

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