



261

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1612-2023

Date of decision: 17.07.2024

POONAM DEVI

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Pawan Attri, Advocate for the petitioner.

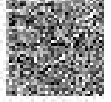
Ms. Dimple Jain, DAG, Haryana.

Mr. Padamkant Dwivedi, Advocate for respondents No.3 to 5.

JASGURPREET SINGH PURI, J. (Oral)

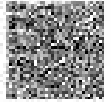
1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing respondents No.4 and 5 to consider the petitioner for appointment on the post of Assistant Lineman as per offer letter Memo No.CH-2 APF-1389/ALM/2022 dated 26.07.2022 (Annexure P-4) from the date of reporting along with all the consequential benefits.

2. The brief facts of the present case are that the petitioner applied for the post of Assistant Lineman (ALM) in pursuance of the advertisement issued vide Annexure P-1 by the Haryana Staff Selection Commission. In pursuance of the aforesaid, the petitioner was selected for the post of Assistant Lineman (ALM) and was offered appointment vide Annexure P-4 dated 26.07.2022. The



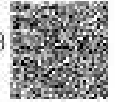
petitioner applied under the category of Dependent of Ex-Serviceman. After the issuance of the aforesaid letter of appointment to the petitioner by the Uttar Haryana Bijli Vitran Nigam Limited, she was not permitted to join on the ground that she being a married daughter of Ex-Serviceman was not eligible for being appointed in view of Clause (f) of the Policy dated 11.10.2001, under which only married a son can be made eligible but not a married daughter.

3. Learned counsel for the petitioner submitted that when the petitioner applied under the category of Dependent of Ex-Serviceman, she was selected on merits and the Haryana Staff Selection Commission forwarded the case of the petitioner to the respondent-Uttar Haryana Bijli Vitran Nigam Limited and she was offered appointment vide Annexure P-4 but strangely enough no further steps were taken to permit the petitioner to join on the post of Assistant Lineman (ALM) despite repeated requests. He further submitted that the reason for not permitting the petitioner to join on the aforesaid post was that the respondent-Nigam deliberately violated the law laid down by a Division Bench of this Court vide Annexure P-7 dated 19.10.2011, wherein the earlier provision of Clause (f) in the Policy dated 11.10.2001 to the extent that married daughter of an Ex-Servicemen is not eligible for dependent certificate was struck down being ultra vires of Article 14 of the Constitution of India and rather a new clause was substituted. He further submitted that it was held by a Division Bench of this Court that now the aforesaid Clause (f) of the Policy dated 11.10.2001 shall be substituted to be read as “*married dependent son or married daughter of Ex-Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate*”. He further submitted that in this way after the aforesaid judgment which was passed by a Division



Bench judgment of this Court on 19.10.2011, even the married daughters who were not having an independent source of livelihood were also made eligible for the dependent certificate. The petitioner is also a married daughter of an Ex-Serviceman and does not have any independent source of livelihood although her husband is employed in the respondent-Nigam but that would not disqualify her from being considered as eligible for dependent certificate. He referred to Annexure P-5 and Annexure P-6, which are the letters issued by the XEN (OP) Division, UHBVN, Samalkha to the S.E. (OP) Circle, UHBVN, Panipat and also to the Secretary of the Haryana Staff Selection Commission, wherein the XEN (OP) Division, UHBVN, Samalkha while referring to the aforesaid judgment passed by a Division Bench of this Court stated that married daughter of an Ex-Servicemen is not eligible for dependent certificate and the aforesaid is absolutely in contrast to the law laid down by a Division Bench of this Court as aforesaid and it was because of this reason that she has not been permitted to join the duties and in this way, about two years have elapsed after the offer of appointment was issued to the petitioner and she is jobless and rather she had prayed before this Court for release of her documents at least so that she can search for a job but even till date she is jobless and not having any independent source of livelihood at all.

4. On the other hand, learned counsel for respondents No.3 to 5 submitted that so far as the language which has been used by the XEN (OP) Division, UHBVN, Samalkha in Annexures P-5 and Annexure P-6 is concerned, the same is contrary to the judgment passed by a Division Bench of this Court vide Annexure P-7 and there is no dispute with regard to the same but he referred to the reply filed by the respondent-Nigam and submitted that the

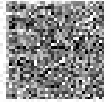


petitioner has not been able to give any document pertaining to the fact that she is not having any independent source of livelihood. He further submitted that as per the law laid down by a Division Bench of this Court, there is no doubt that married daughter of an Ex-Servicemen if she does not have any independent source of livelihood would be certainly eligible for the dependent certificate.

5. Learned State counsel submitted that the Haryana Staff Selection Commission has recommended the case of the petitioner to the respondent-Nigam and thereafter, it was the duty of the respondent-Nigam to have considered the same in accordance with law.

6. I have heard the learned counsels for the parties.

7. The issue involved in the present case is that as to whether the petitioner could have been disqualified on the basis of Clause (f) of the Policy dated 11.10.2001 in which married daughters were debarred from being considered as dependent of Ex-Servicemen and which has been struck down by a Division Bench of this Court vide Annexure P-7 dated 19.10.2011 being violative of Article 14 of the Constitution of India or not. A perusal of the aforesaid judgment passed by a Division Bench of this Court would show that rather a specific stand was taken by the State in the aforesaid judgment that married daughters are dependent on their husband and not on their father but the aforesaid stand was repelled and ultimately it was so observed that the aforesaid Clause (f) of the Policy dated 11.10.2001 would now be read as including the married daughter of Ex-Servicemen as well. Paras No.5, 6 and 10 of the aforesaid judgment passed by a Division Bench of this Court dated 19.10.2011 are reproduced as under:-



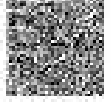
5. *In the written statement filed by respondent Nos.1 to 3 the primary stand taken is that a married daughter would be dependent on her husband and not on her father, therefore, in the policy dated 11.10.2001 (P-1) a married daughter of the Ex-servicemen has not been held entitled to the dependent certificate and the application filed by the petitioner has been rightly rejected. According to the respondents there is no ambiguity in the stipulation provided by clause (f) of the policy dated 11.10.2001 (P-1).*

6. *Having heard learned counsel for the parties at length and perusing the paper book with their able assistance we are of the considered view that the instant petition deserves acceptance. When we examine the impugned clause (f) of the Policy dated 11.10.2001 (P-1), it is clear that the same extends the benefit of dependent certificate to a married dependent son of Ex-servicemen who does not have independent source of livelihood but it excludes a married daughter of an Ex-servicemen from such benefit. Clause (f) of the policy dated 11.10.2001 (P-1) reads as under:-*

"(f) Married dependent son of Ex-Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate. Married daughter of an Ex-servicemen is not eligible for dependent certificate." (Italics by us)

10. *In view of the above, the instant petition is allowed. The offending part of clause (f) of the policy shown in italics is declared ultra vires of Article 14 of the Constitution and the clause (f) shall read as under:*

"(f) Married dependent son or married daughter of Ex- Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate".



The respondents are directed to issue dependent certificate to the petitioner for his daughter, subject to fulfilling other conditions by her.

8. A perusal of the aforesaid would make it very clear and has been so endorsed by learned counsel for respondents No.3 to 5 as well that now after the aforesaid judgment of a Division Bench of this Court, married daughters of Ex-Servicemen who does not have any independent source of livelihood will also be eligible for dependent certificate. The present petitioner is a married daughter of an Ex-Serviceman and she has been offered appointment letter but not permitted to join because of the reason which has been given by the XEN (OP) Division, UHBVN, Samalkha vide Annexure P-5 and Annexure P-6. The aforesaid letter dated 27.09.2022 (Annexure P-5) is reproduced as under:-

UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED

*Office of the Executive Engineer (OP) Division
UHBVN, Samalkha near 220 KV Power House, Samalkha.
E-mail address: -xenopsamalkha@uhbvn.org.in
M. 9354918993 www.uhbvn.org.in*

To

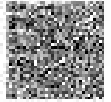
*The S.E. (OP) Circle
UHBVN, Panipat*

Memo No. Ch-02/EP-1121 Dated: - 27.09.2022

***Subject:- Regarding appointment of Smt. Poonam Devi
D/o Sh. Sunder Singh against advertisement no. 11/2019,
category no. 21 of UHBVNL.***

*Please refer to your good office Endst. No.
Ch-108/EG-21/Vol-11 Dt. 12.08.2022 on above cited
subject on above cited subject.*

*In this connection it is intimated that the subject cited
candidate has appointed in the Ex-Servicemen category
against subject cited advertisement. But at the time of filling
of application form of ALM, she shows married at the*



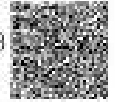
column of marital status (Copy attached). As per CWP No. 18110 of 2009 titled as Jai Narain Jakhar VS. State of Haryana & others, decided on 19.10.2011, wherein a Division Bench of this Court Struck Down Clause (F) of the Policy dated 11.10.2001, which was as under: (F) Married dependent son or Ex-Servicemen who does not have independent source of livelihood will also be eligible for dependent. certificate. Married daughter of an Ex-Servicemen is not eligible for dependent certificate (Copy attached).

It is requested to tendered the advice regarding appointment of above said candidate be made to him or not, so that further action could be taken accordingly.

DA: - As Above.

**XEN (OP) Division
UHBVN, Samalkha**

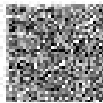
9. A perusal of the aforesaid would show that the XEN (OP) Division, UHBVN, Samalkha has so stated in the aforesaid letter even after referring to the aforesaid judgment of a Division Bench of this Court that clause pertaining to ineligibility for married daughters of an Ex-Servicemen has been struck down. It is very strange as to how the XEN (OP) Division, UHBVN, Samalkha has used such a language which is absolutely contrary and violative of the aforesaid judgment passed by a Division Bench of this Court without referring to the read down new clause. It appears that either it is because of lack of understanding or it is a deliberate attempt on the part of the XEN (OP) Division, UHBVN, Samalkha to have clearly stated as aforesaid. A clause which was struck down was referred to but new clause was not referred even while referring to the judgment itself. Such kind of communications sent by the officers which are against the law are not acceptable and are deprecated.



10. An argument has been raised by the learned counsel for respondents No.3 to 5 that although the petitioner was within the definition of dependent of Ex-Serviceman even if she is a married daughter but she did not give any document pertaining to the fact that she is not having any independent source of livelihood. However, during the course of arguments a query was raised to the learned counsel for respondents No.3 to 5 as to what effort was made by the respondent-Nigam to have even asked the petitioner with regard to her independent livelihood status, to which he submitted that no such communication has been made. Therefore, this Court is of the considered view that no presumption can arise against the petitioner that she is not having any independent source of livelihood and it was a duty of the respondent-Nigam to have made an enquiry in this regard but shockingly the respondent-Nigam instead of going in the direction of making an enquiry with regard to her livelihood has gone in a wrong direction in violating the aforesaid judgment passed by a Division Bench of this Court in which the law was settled.

11. The petitioner is a lady and was offered appointment letter vide Annexure P-4 about two years ago in the year 2022 and vide order passed by this Court on 27.01.2023 when notice of motion was issued, it was also directed that one post of Assistant Lineman (ALM) be kept vacant for the petitioner.

12. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The respondent-Nigam is directed to permit the petitioner to join the service forthwith by issuing appropriate orders in this regard. Benefit shall be given to the petitioner with effect from the date when the other candidates had joined on the same post. On doing so, the petitioner shall be entitled for all the benefits pertaining to seniority and all other consequential



benefits in this regard. However, the petitioner shall not be entitled to any arrears of salary because she had not worked on that post.

13. The petitioner has been deprived of her right of employment because of the aforesaid reason as mentioned, whereby the XEN (OP) Division, UHBVN, Samalkha has so sought an advice from the S.E. (OP) Circle, UHBVN, Panipat, without referring to the correct law laid down by a judgment passed by a Division Bench of this Court vide Annexure P-7 as aforesaid. Therefore, considering the aforesaid totality and circumstances of the present case, whereby the petitioner has been deprived of her employment, she is also entitled for exemplary costs in the nature of compensation, which are assessed as Rs.1,00,000/- (One Lakh), which shall be paid to the petitioner by the respondent-Nigam within a period of two months from today. The aforesaid costs shall be paid by the respondent-Nigam to the petitioner at the first instance and thereafter, the Managing Director of the respondent-Nigam is directed to fix the accountability of the officer(s) because of whom employment of the petitioner has been delayed and recover the same from him/them in accordance with law.

17.07.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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