



**Cms-12173, 1803, 1805,1806-CWP-2021 &
CM-15716-CWP-2023 in
RA-CW-33-2021 in CWP-3300-2019**

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**CMs-12138,1896,1900,1903-CWP-2021 &
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RA-CW-36-2021 in CWP-5314-2019**

judgment dated 16.01.2020 passed by the Coordinate Bench of this Court, by which, the main writ petitions were allowed and a direction was issued to to the respondent-State to consider the claim of the petitioners under the category of Freedom Fighter against the posts, which remained unfilled in the category of Ex-serviceman or backward class to the extent of 2%.

2. Learned counsel appearing for the review-applicant/respondents submits that the petitioners had applied for Group-D post as advertised vide advertisement No.4/2018 dated 26.08.2008 (Annexure P/1) issued by the respondents. In pursuance to the said advertisement, petitioners submitted an application under the reserved category of Freedom Fighter (DFF). After the selection process was over, the petitioners approached this Court with the grievance that all the posts advertised in the ESM/Backward class category have not been filled up hence, the vacant posts to the extent of 2% are to be filled up amongst the eligible dependents of Freedom Fighter and the petitioners, who had already submitted their application form in the said category should be accommodated.

3. In the reply filed by the respondents, it had come on record that 304 posts in the category of Ex-serviceman were lying vacant and as the petitioners had secured more marks than the last selected candidate in the ESM category, the petitioners are entitled to be adjusted against the said vacant posts as they had secured higher marks in the said category.



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4. The Coordinate Bench of this Court directed that the vacant posts in the ESM category be offered to the petitioners to the extent of 2%.

5. Learned counsel for the review-applicant/respondents submits that the recommendations were made by the Commission against all the advertised posts and 392 candidates were placed in the waiting list in the category of ESM. After exhausting the main selection list, a request was received from the departments to recommend 292 names, which were recommended out of the waiting list and, thereafter, again a recommendation was made for further names to the extent of 135, which was also received but as there were only 110 candidate remained in the waiting list, their names were recommended and no person could be recommended against the 34 posts as there was no waiting list available to recommend their name and the petitioners could not be adjusted even against the 34 posts, for the reason that even after exhausting the waiting list, there are still 2274 Ex-serviceman general category candidates and 2596 dependents of ex-serviceman candidates, who are eligible to claim the said 34 posts against which, the claim is being made by the petitioners to be filled up from dependents of ex-serviceman, hence, under these circumstances, the petitioners cannot be accommodated as it cannot be said that all the candidates, who are eligible to be appointed against the advertised posts of ex-serviceman are not available.



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6. Learned Senior counsel appearing for the petitioners submits that the judgment dated 16.01.2020, review of which is being sought, is very clear that the posts which are lying vacant, should be given to the dependents of Freedom Fighter and it is a conceded fact that 34 posts of ex-serviceman could not be filled up even as of now which 2% posts should be given to the petitioners and, hence, direction given by the Court vide judgment dated 16.01.2020 is perfectly valid and legal.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. Clause VI of the advertisement, which has already been reproduced in the judgment dated 16.01.2020 is being reproduced herein again for the ready reference as the direction can only be given under the said clause to appoint the candidates from the reserved category of Freedom Fighter:-

“6. If the quota reserved for Ex-Servicemen category (ESMGEN, ESM-SC, ESM-BCA, ESM-BCB) remains unfilled due to nonavailability of suitable ex-servicemen or their dependents or nonavailability of suitable candidates from Backward classes there will be 2% reservation for freedom fighter/their children/grand children to that extent (Chief Secretary Instruction No. 22/10/2013-IGSIII, dated 15.07.2014.

14. For Disabled ESM/Dependent of Killed/Disabled in action reservation will be as per Haryana Government instructions contained in letter No. 945-GS-II72/6451, dated the 6th March, 1972. The reservation for ESM will be



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utilized in the order given below:-

*i. Disabled ex-servicemen with disability between 20% to
50%*

*ii Up to two dependents of Service personnel killed/disabled
beyond 50%.*

Other ex-servicemen.”

A bare perusal of the above would show that it is only where the posts remained unfilled in the category of ex-serviceman due to non-availability of a suitable ex-serviceman or their dependent or non-availability of suitable candidate backward class, the candidate from category of dependents of Freedom Fighter are to be appointed.

In the present case, though, it is a conceded position that 34 posts in the ex-serviceman quota are still lying vacant but it cannot be said that there is no suitable ex-serviceman or their dependent is available to be appointed against the said vacant posts. 34 vacant posts could not be filled up due to the non-framing of 2nd waiting list. Had there been a rule to frame the 2nd waiting list, the candidates who are still in the merit qua those 34 posts belonging to the ex-serviceman category or dependent of ex-serviceman category could have been appointed hence, it cannot be said that 34 posts which remained vacant have remained vacant due to the non-availability of the suitable candidate in the said category. The said posts could not be filled up due to non framing of 2nd waiting list.

The petitioners can only get the appointment in case, no



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suitable candidate is available in the category of ex-serviceman or backward class but in the facts and circumstances of the present case, which have been brought to the notice of this Court by way of an affidavit dated 15.02.2024, 2274 Ex-serviceman general category candidates and 2596 dependents of Ex-serviceman candidates are still available to be considered against 34 posts, but the same could not be considered due to non-framing of the 2nd waiting list.

That being the factual position, the claim of the petitioners to be appointed under the Freedom Fighter quota cannot be considered as it cannot be said that any post in the ex-serviceman quota remained vacant after exhausting all the eligible candidates, who can be appointed under the Ex-serviceman quota.

Learned counsel for the review-applicant/respondents further submits that 34 vacant posts have already been taken into consideration in the subsequent recruitment process and the selection process is already underway for appointment.

That being the factual position, once, 34 vacant posts have already been included in the subsequent recruitment process, and the selection process is already underway, benefit of the same cannot be given to the petitioner.

Keeping in view the facts and circumstances of the present



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case, both the review petitions are allowed. Judgment dated 16.01.2020 passed by the Coordinate Bench of this Court is recalled and the writ petitions are taken up for hearing again on today itself.

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Keeping in view the facts and circumstances recorded hereinbefore in the order while deciding the review petitions, no ground is made out to grant the prayer as raised in these petitions and both the writ petitions are accordingly dismissed.

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

A photocopy of this order be placed on the file of connected case.

May 15, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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