

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

1. CWP No. 3300 of 2019

Subhash Chander

...Petitioner

versus

State of Haryana and another

..Respondents

2. CWP No. 5314 of 2019

Sunil Kumar

...Petitioner

versus

State of Haryana and anr.

..Respondents

Date of Decision:16.01.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jatinder Kumar, Advocate, for the petitioners

RITU BAHRI, J. (Oral)

This order shall dispose of the above two petitions as common question of facts are involved in the above petitions wherein petitioners are seeking quashing of final result of Ex-servicemen category dated 19.01.2019 (P-5). However, for facility of reference, the facts are being taken from CWP No. 3300-2019.

Issue notice of motion.

On asking of the Court, Mr. Kiran Pal Singh, AAG, Haryana accepts notice on behalf of the respondent-State.

On 04.07.2019, this Court passed the following order:-

“Learned counsel for the petitioner submitted that though in pursuance to order dated 27.02.2019, application was submitted to Haryana Staff Selection Commission for getting information under Right to Information Act, 2005 whether any post under ESM category is lying vacant but reply of application is not satisfactory,

for, as per condition 2.46 of advertisement, seats belonging to ESM category are not fulfilled.

The petitioner had submitted an application under DFF category. According to averments, seat under ESM category remained un-filled, therefore, petitioner is entitled to seek appointment under ESM category.

Adjourned to 26.08.2019.

Ms. Palika Monga, Deputy Advocate General, Haryana is directed to file a short affidavit of Secretary of concerned Department whether any candidate under ESM category after having been selected, joined or seat is lying vacant.

Photocopy of this order be placed on the file of connected case.”

On 23.09.2019, this Court passed the following order:-

“Learned State Counsel has filed affidavit, wherein it has been pointed out that 304 posts under Ex-Servicemen (General) Category are lying vacant, which shall be filled from waiting list as per merit. He has informed that petitioners had applied under Ex-Servicemen Dependent Category, which will be filled up only after exhausting ESM posts.

In order to appreciate the fact whether the petitioners have been able to achieve marks more than cut off, I deem it appropriate to direct learned State Counsel to bring the result of petitioners, in a sealed cover, on the next date of hearing.

Adjourned to 17.10.2019.

Photocopy of this order be placed on the file of connected case.”

On 17.10.2019, learned State counsel has produced the detailed marks obtained by the petitioners. As per result, petitioner Subhash Chander and Suresh Kumar obtained 44 and 57 marks respectively against the cut off

submitted that the benefit to the dependent of freedom fighter would be given after exhausting the general category.

In para No. 2 of the affidavit filed on behalf of respondent No. 2, reference has been made to para No. 6 and 14 of the advertisement dated 26.08.2018, which reads as under:-

“6. If the quota reserved for Ex-Servicemen category (ESM-GEN, ESM-SC, ESM-BCA, ESM-BCB) remains unfilled due to non-availability of suitable ex-servicemen or their dependents or non-availability 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 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.”

Keeping in view the fact that 304 posts are still lying vacant under ESM (General Category) and the fact that petitioners had secured 44 and 57 marks respectively against the cut off marks i.e 40 under ESM (General Category), this Court is of the opinion, the petitioners can be adjusted against the vacant posts as they have obtained higher marks than the cut off marks under ESM (General Category), in view of instructions dated 15.07.2014 mentioned in para No. 2 of the affidavit dated 22.09.2019 wherein in column No. h, it has been stated that the 2% reservation will be available only if quota reserved for Ex-servicemen or backward class remains

unfilled to that extent due to non-availability of suitable ex-servicemen or their dependents or non-availability of suitable candidates from Backward classes. Over all reservation either from the unfilled vacancies of Ex-servicemen or from the Backward Classes for Freedom Fighters/their children/grand children will remain limited to 2% only. This benefit will be available to all grand children i.e sons and daughters of sons and daughters (paternal as well as maternal) of the freedom fighters.

Accordingly, the writ petitions are allowed and respondent No. 2 is directed to recommend the case of the petitioner for appointment to Group D post and petitioners shall be adjusted in the departments where the posts are lying vacant. The petitioners shall be given benefit of notional fixation of pay from the date the person juniors to them have been appointed.

(RITU BAHRI)
JUDGE

16.01.2020
G Arora

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>