



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

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CWP-5052-2023(O&M)
Date of decision: 04.09.2024

Subhash Chand and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sunil K. Nehra and Mr. Rahil Mahajan, Advocates
for the petitioners.

Mr. Dushyant Saharan, AAG, Haryana.

AMAN CHAUDHARY, J. (Oral)

1. Quashing the impugned order dated 26.03.2019 is being sought whereby the representation was rejected and for issuance of a direction to the respondents for appointing the petitioners as Drivers with all consequential benefits.

2. The petitioners being aspirants for appointment had applied for the post of driver pursuant to the advertisement dated 11.07.2007, where 910 posts were to be filled up on contract/daily wages in the Transport Department. After various tests that had been conducted including Dug, Zig-Zag/Driving Proficiency and Road Test etc., they were awarded Grade-A. However, only 809 candidates were selected and appointed, out of whom, 51 were from the general category, having secured Grade-A. Further that, CWP-2528-2009 and CWP-15374-2010 were filed by two candidates- Sajjan Kumar and Ved Parkash, which though were dismissed on the ground that the said posts in particular Hisar depot had all been filled up, however were allowed vide judgment dated 27.05.2014 in LPA-1231-2012 and



LPA-1255-2012, where against the former, SLP was dismissed on 03.09.2015 for not curing defects in the office report and in the latter, no appeal was filed.

The relevant paras of the judgment by the Division Bench read thus:

“There is nothing on the record to show that any marks were awarded to the candidates at the time of interview. It appears that probably the interview was conducted only for the purpose of verification of the documents, submitted by the applicants. The appellant has been denied the benefit of the selection by stating that the post advertised against general category for Hisar depot, had already been filled up. Relevant contents of the affidavit dated 28.04.2014, which was filed during pendency of the appeal by Mr. Lekh Raj, General Manager Haryana Roadways Hisar Depot, reads thus:-

“That in pursuance to the advertisement for the appointment of driver in year 2007, the candidates were selected category wise. All the posts falling in the Hisar depot in general category have been filled up and there are no vacancies available in this depot in connection with the above mentioned advertisement.”

We are not convinced with the contents mentioned in the affidavit.

There is nothing on record to show that the posts were advertised depot wise. Advertisement dated 11.07.2007 is a composite advertisement inviting applications for the post of drivers. For the purpose of convenience, it was stated that the applicant can submit only one application and that can be submitted before General Manager of Haryana Roadways Depot in the State of Haryana where he would like to appear for the test. The above said clause was added only for the purpose of receiving the application and to conduct the test. There is further nothing to show in the advertisement issued that if a candidate applies in 'A' depot, he would not be entitled to be selected in 'B' depot even if he was eligible and meritorious. The ground taken to deny the benefit to the appellant is imaginary and is not borne out from the record.

In view of the above, both appeals are allowed. Order dated 29.02.2012 passed by learned Single Judge is set aside. The respondent-State is directed to join the appellants against the post of Drivers from the date when others were appointed. However, at this stage very fairly concession was given by the counsel for the appellants that the appellants shall not claim actual benefit except calculation of notional benefits in fixing their pay.

Needful shall be done within three weeks from the date of



receipt of copy of this order. It is made clear that this order will not enure to the benefit to any other candidate, who has failed to challenge the selection made in the year 2008.”

3. The dates of birth of the selected candidates were those 01.04.1975 and 30.06.1984, while that of the petitioners 15.05.1972 and 04.03.1973 and they all had Grade-A, stand admitted by the respondents in their counter. While dealing with an identical issue of assessing the inter se merit of the candidates having equal marks, this Court in **Renu Rani vs. State of Haryana**¹, against which no LPA was filed, specifically referred to the resolution dated 25.09.2015 passed by the Haryana Staff Selection Committee, which reads thus:-

“...The relevant portion of resolution is reproduced as under:-

“The orders of Hon’ble Supreme Court in case of Prem Singh Versus Haryana State Electricity Board reported as 1996(4) SLR 661, wherein the appointments have been restricted to the extent of the advertised vacancies, should be followed meticulously. Thus, the selection of the last candidate in each category as per inter-se merit, if in case there are more than one candidate having equal marks in written examination and interview/ viva-voce combined, will be determined with reference to the date of birth i.e. the older in age will get precedence over the younger one.

In case two or more candidates have the same aggregated score and same date of birth, the inter-se merit shall be decided by the higher score achieved in the written Examination”.”

4. The Division Bench, in the previously mentioned LPAs had categorically clarified that the benefit of the order would not enure to any other candidate who failed to challenge the selection made in the year 2008, which the petitioners had unsuccessfully did by filing CWP-16383-2008 and CWP-11227-2009, decided on 01.11.2017. They had approached this Court

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I attest to the accuracy and
integrity of this order/judgment

¹ CWP-14512-2020, decided on 11.02.2021



again by filing CWP-18106-2018, wherein the two aforesaid candidates were also impleaded as private respondents, which was disposed of with a direction vide order dated 15.12.2018, to decide the legal notice dated 08.01.2018, which came to be rejected vide the impugned order on the solitary ground that the Departments have excess drivers, the relevant of which reads thus:

“After realization of staff requirement and deployment throughout the State, the Departments have drivers over and above the staff requirement i.e. 1:1.72, much beyond the sanction strength 1:1.4 norms. Hence, there are no vacant posts of drivers against which the petitioner(s) or similarly situated persons could be adjusted, the representation dated 08.01.2018 is rejected.”

5. A similar plea in case of appointment to the post of conductors taken in a batch of petitions with the lead case, **Sombir and others vs. State of Haryana and others**², that 644 conductors were in excess, was not accepted by this Court by observing that it was the duty of the official respondents not to ignore the seniors while giving appointments to the junior, the relevant paras whereof read thus:

“In the written statement filed by the respondents, it has been clarified that when recommendation vide list dated 01.02.2012 was sent, there were 644 conductors in excess and audit party had already made objection against the excess number of conductors. It has been clarified that those 644 conductors were working on contract basis and had been given salaries as per the judgment dated 31.01.2017 passed by Hon'ble the Supreme Court in State of Haryana vs. Mohinder Singh and others, Civil Appeal No.7391-7395 of 2013.

As per the order dated 19.05.2016 passed by this Court in Sunil Kumar's case (supra), direction was given to appoint the petitioners (therein) as Conductors as per their merit in the waiting list after replacing the Conductors, who were appointed on contract basis on the principle of 'last come first go'. The said direction was not to give appointments over and above the merit list. It was the duty of the official respondents not to ignore the seniors while giving appointments to the junior petitioners. However, case of the petitioners had been rejected on 15.07.2014 (Annexure P-13). While making appointments, case of similarly



situated employees was required to be taken into consideration by the respondent-State.”

6. Against the above writ petition, LPA-548-2019 was filed by the State, that also came to be dismissed vide order dated 22.12.2022 and to which there was no further challenge, the relevant paras whereof read thus:

“13. In such circumstances, the order of the learned Single Judge is well justified and the judgment passed in Virender Singh Hooda Vs. State of Haryana and another, 2004 (4) SCT 793 can be relied upon, wherein it has been held that it would be iniquitous to deny relief to the writ petitioners when it has been granted to other candidates who are lower in merit and resultantly the directions contained in the judgment of the High Court were not interfered with. In Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47 the Apex Court though held that the candidates do not acquire indefeasible right to be appointed but added a caveat to the aspect that the State did not have a license to act in a arbitrary manner. Relevant portion of the judgment passed in Shankarsan Dash (supra) reads as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899.”

14. Reliance can also be placed upon the judgment of a Coordinate Bench passed in Ritu Vs. State of Haryana and others, 2013 (3) SCT 281 wherein the appeal was allowed while setting aside the order of the learned Single Judge



and directions were issued to the respondent department to issue appointment letter to the appellant who was next in the waiting list and had not been offered appointment.

15. Reliance placed upon the judgment passed in Ravinder Yadav's case (supra) would not take the State to a long way, since it was a claim wherein the result had been declared on 20.04.2010 and the writ petition had been filed in the year 2018 and in such circumstances it was held that there is a shelf life of the waiting list and no directions can be issued to operate it after more than 7 years.

16. In the present case as noticed above the State itself was operating the wait list in pursuance of the directions issued by this Court, which was to be done as per the merit. Having failed to do so the writ petitioners who were higher in merit are entitled for appointment which was rightly directed by the learned Single Judge and, thus, the order of the learned Single Judge does not suffer from any infirmity.

17. Resultantly, there is no merit in the present appeals and the same are dismissed."

7. This Court in **Saurabh vs. State of Haryana and others**³, wherein the petitioner who had equal marks as of the last selected candidate, had approached this Court, however, being younger to him, the relief was denied only on the ground that as per resolution dated 25.09.2015 the inter-se merit was to be determined with reference to the date of birth i.e. the older in age will get precedence over the younger, the relevant paras whereof read thus:

"8. State Government has, however, justified the non-selection of the petitioner in terms of referring to a decision that had been taken by the Haryana Staff Selection Commission in its meeting held on 25.09.2015 and a copy of the proceedings of which have been forwarded by way of email. The same is taken on record as Mark 'A'.

9. Perusal of the document at Mark 'A' would reveal that a decision had been taken by the Haryana Staff Selection Commission on the subject of determining inter-se merit of candidates. It had been decided that in case, more that one candidate has secured equal/same marks in written examination and interview/viva-voce combined the inter-se merit will be determined with reference to the date of birth i.e. the older in age will get precedence over the



younger one.

10. State Counsel has apprised the Court that the petitioner herein namely Saurabh is approximately four years younger to the last candidate selected who otherwise has secured equal marks.

11. It is based upon such decision taken by the Haryana Staff Selection Commission on 25.09.2015 and which has been applied across the Board insofar as the recruitment process initiated vide advertisement dated 20.06.2019 that the petitioner has been deprived of selection and appointment to the post of Clerk in the General Category.”

8. As regards filing of the petition in 2023 to challenge the impugned order passed in the year 2019 is concerned, a reference has been made to para 21 thereof, wherein it has been stated that the petitioners had earlier engaged Sh. Ram Niwas Sharma, Advocate who unfortunately passed away and it was thereafter that the files were taken from his family, to file the case. Further in view of **Cognizance for Extension of Limitation, In re⁴** the two years, from 20.03.2020 to February, 2022, in any case, have to be excluded from the period of limitation.

9. Pertinently, once two candidates, having the same grade as the petitioners, though younger in age came to be appointed, they being older were virtually to be considered higher in merit in terms of the resolution passed by the Commission, thus making it imperative on part of the respondents to have offered appointment to them as well.

10. The premise of rejection of the claim of the petitioners that the drivers being in excess in the Departments, is misconceived, in the wake of it having already been found to be arbitrary in **Sombir and others** (supra).

11. On an overall analysis of the facts and circumstances of the case, the present petition is allowed and the impugned order dated 26.03.2019 is hereby set aside. The respondents are directed to appoint the petitioners from the date the persons younger in age were appointed, be it even by creating



supernumerary posts, within a period of two months. Needless to say, they shall be entitled to only notional benefits flowing therefrom.

(AMAN CHAUDHARY)
JUDGE

04.09.2024

Hemant

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