



CWP-6530-2022(O&M)

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

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CWP-6530-2022 (O&M)
Date of decision: 14.08.2024

Ajay

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Deepsikha, Advocate for
Mr. Sandeep Goyat, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

AMAN CHAUDHARY, J. (Oral)

1. Feeling aggrieved by his non-selection, the petitioner has filed the present petition with the prayer to quash the final merit list and consequently, select him.
2. The candidature of the petitioner came to be rejected during the scrutiny of documents, on the ground that there was no post available/ mentioned in the General Category, as per Advertisement No.15/2019 and he ought to have been vigilant by not applying for the said post as he belonged to the above category, which is misconceived, inasmuch as, it is explicit from paras 3 and 4 of the petition and 6 of the short reply filed by respondent No.4-Commission, that in Advertisement No.1/2015, General Category posts were also advertised for appointment to the post of TB Health Visitor, under category No.16 therein, however, in the latter, was shown in No.7, but not for afore referred category. In order to facilitate the General Category candidates of the former advertisement, a provision was made for them to apply afresh against the subsequent one. It is based on the aforesaid that the petitioner applied by submitting an application online on 03.02.2020, was issued the



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Roll No.0016070063, whereafter, he appeared on 16.07.2021 and cleared the written examination as per the result that was declared on 11.08.2021.

3. As is depicted in the final result dated 17.02.2022, on account of non-availability of suitable candidates in the ESM General Category, for which two posts had been advertised, the same remained unfilled.

4. This Court vide interim order dated 30.03.2022 had directed to keep one post vacant.

5. The premise of the claim of the petitioner for consideration against the aforesaid posts stems out of Instructions dated 02.07.2010, issued by the Chief Secretary to Government Haryana, which read thus:

“I am directed to invite your attention towards Government letter No. 22/15/92-3GS-III dated 26.07.2001 which inter alia provide 14% horizontal reservation for ESM category in direct recruitment in Group ‘C’ And ‘D’ categories as detailed below:-

Sr.No.	Category	Percentage of Reservation
1.	S.C. ‘A’	1% for ESM (Presently there is no
2.	S.C. ‘B’	1% for ESM bifurcation in SC category)
3.	B.C. ‘A’	2% for ESM
4.	B.C. ‘B’	3% for ESM
5.	General Category	7% for ESM

It has been brought to the notice of the Government that while making recruitment under ESM category, most of the vacancies of direct quota remain unfulfilled due to non availability of eligible ESM/DESM candidates. Due to this reason Department has to undertake fresh process of recruitment.

The matter has been reconsidered by the Government. The horizontal reservation is a smaller compartment within the bigger compartment of vertical reservation. It has, therefore, been decided that in case no candidate is found suitable for appointment even on re-advertisement, the vacancies reserved for ESM of a particular category will be filled up from amongst the same category candidates. For example, if suitable candidate belonging to Schedule Castes of ESM category is not available, then the post can be filled up from amongst the candidates of Scheduled Castes. The same position shall be followed in other categories.

These instructions should be brought to the notice of all concerned for strict compliance.”

6. The words ‘even on re-advertisement’ mentioned in the aforesaid

Instructions stood deleted vide the one dated 23.05.2014, the relevant portion



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whereof reads thus:

“I am directed to invite your attention towards Government letter No. 22110/2010-3GS-II dated 2.07.2010 which inter alia provides that in case no candidate is found suitable for appointment in Group ‘C’ & ‘D’ category, even on re-advertisement, the vacancies reserved for EM of a particular category will be filled up from amongst the same category candidates.

The matter has been reconsidered by the Government and it has been decided to delete the word "even on re-advertisement" from the third paragraph of the letter dated 02.07.2010. Rest of the contents shall remain unchanged.”

7. A conjoint reading of the aforesaid Instructions, leaves no ambiguity that it was imperative on part of the respondents, to have considered the candidature of the petitioner in compliance thereto.
8. In view of the afore discussion, this Court finds it to be in the interest of justice to direct the respondents to consider the petitioner against the posts that remained vacant of ESM General category and subject to his merit position, appoint him, for which, if required, a supernumerary post be created. He would be entitled to notional benefits from the date, candidates lower than him in merit came to be appointed. Needful be done within a period of two months.
9. Disposed of accordingly.

14.08.2024

Hemant

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No

(AMAN CHAUDHARY)
JUDGE