



CWP-6880-2019

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

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CWP-6880-2019

Date of Decision: 26.09.2024

Rachita Sharma

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Ravinder Malik (Ravi), Advocate for the petitioner
Mr. Harish Rathee, Sr. DAG, Haryana
Mr. Kanwal Goyal, Advocate, and
Ms. Sheena Dahiya, Advocate for respondent no.2

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *mandamus* directing the respondents to consider and appoint the petitioner to the post of Assistant Professor (College cadre) HES-II in the subject of Home Science under General (Dependent of Freedom Fighter) category pursuant to advertisement 10, published on 16.02.2016.

2. Facts of the case in brief are, the second respondent/Haryana Public Service Commission issued the aforementioned advertisement inviting online applications for 1647 posts of Assistant Professor (College Cadre) HES-II in various subjects in the Department of Higher Education; it included twelve posts of Assistant Professor Home Science, out of which two were of Ex-servicemen (ESM) category. The reservation of posts for DFF category was provided in Note of the advertisement, which reads as under:

The reservation to Freedom Fighter & their Children/Grand Children of Haryana will be available only if quota reserved for Ex-servicemen or Backward Classes 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 (parental as well as maternal) of the Freedom Fighters.

2.1. The petitioner being fully eligible, applied for the post of Assistant Professor Home Science as a Dependent of Freedom Fighter/DFP, since she is granddaughter of Freedom Fighter Pt. Tulsi Ram. The fact has been certified by Secretary to Government of Haryana, Department of Protocol, vide certificate No.16/10/92-4PP, Annexure P-6. She was, accordingly, issued roll no.1440, Annexure P-3, for the written examination and appeared for it on 21.05.2017. Final result of selection for the post was declared vide notice dated 23.10.2017, Annexure P-4, wherein both the posts of ESM category remained vacant for the reason, '*No candidate is available*'.

2.2. The petitioner made a representation to the respondents seeking consideration against the vacant posts of ESM category. Being grandchild of a Freedom Fighter, she was entitled to be considered against the posts which could not be filled due to non-availability of suitable candidates. Her candidature, however, was not so considered by the respondents, leading to filing of the instant petition by her.

2.3. During pendency of the petition, in terms of interim order, dated 14.03.2019, the petitioner's documents were scrutinized, and was provisionally interviewed as well. Her result has been kept in a sealed cover. Further, pursuant to interim order, dated 25.07.2024, this Court has been apprised that the two advertised posts of Assistant Professor Home Science in ESM/DESM category

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are still vacant, as no appointment could be made for want of suitable candidates.

2.4. As per written statement filed by the Commission, after receiving the petitioner's representation, a clarification was sought from the government regarding consideration of her candidature against the vacant posts. The clarification received vide communication dated 24.08.2018, Annexure R-2/2, was, *"It is intimated that Haryana Government issued instructions dated 15.7.2014 are very much clear. The reservation for Freedom Fighters and their dependents is conditional i.e. if suitable candidates in Ex-servicemen and Backward Classes are not available and same is available on total posts of ESM/DESM sent in the requisition. This 2% reservation is applicable to the requisition of Department sent after 15.7.2014, the day the notification was issued."* Accordingly, it has been stated that none of the two posts can be filled-up by DFF category candidates as two per cent (2%) reservation comes to zero point four per cent (0.4%).

3. In this factual background, learned counsel for the petitioner has argued that grant of reservation in jobs under government/government undertakings is regulated vide instructions dated 15.07.2014, Annexure P-9. It provided that over all reservation for Freedom Fighters and their grandchildren from the unfilled vacancies of Ex-servicemen will remain limited to two per cent only. Further, the government issued a clarification vide instructions dated 27.10.2021, Annexure P-10, on operational aspects of two per cent reservation quota for children of Freedom Fighters, that the benefit will be available to both, children and grandchildren, from both, maternal and paternal lineage. Still further, another clarification was issued by the government vide instructions dated 26.04.2022, Annexure P-11, on the issue, that two per cent reservation

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benefit to children/ grandchildren of Freedom Fighters is to be given against vacant posts only, and overall benefit will remain limited to two per cent. Accordingly, once it has been clarified by the government itself that the benefit of reservation to grandchildren of Freedom Fighters is to be extended on the basis of posts remaining vacant under ESM category, there was no justification for the respondents to reject the petitioner's candidature against the vacant post of this category.

4. *Per contra*, learned counsel for the Commission contends that the petitioner is not entitled to be considered against the vacant posts since the instructions relied upon by her have been issued after completion of the selection process with declaration of final selection result on 23.10.2017. Besides, the instructions have no application to the petitioner's case, as they are not clarificatory in nature. In fact, the government, vide instructions dated 27.10.2021 and 26.04.2022, had re-considered and reviewed the matter to lay down that children/ grandchildren of Freedom Fighters were to be considered against vacant posts of ESM category only. And there is a stipulation in the instructions itself that the amendment is with immediate effect. Accordingly, there is no basis for the petitioner's claim.

5. The submissions made by learned counsel for the parties have been considered.

6. The issue arises for consideration is, whether the petitioner is entitled to be considered as DFF category candidate against the vacant advertised post of Assistant Professor Home Science under ESM category to give effect to two per cent reservation meant for the category. The government instructions relevant to consider the issue are as under:



a) Instructions dated 15.07.2014.

...The State Government on reconsideration, has now decided to give reservation in direct recruitment as well as in promotion under Government/Government Undertakings & Local Bodies and in admission in Government/Government Aided Educational/ Technical/ Professional Institutions to the following categories as per detail given below :-

1. In case of direct recruitment in Class I & II Posts

Sr. No.	Category	Quantum of reservation	Roster points
(a) to (e)	XXX	XXX	XXX
(f)	Freedom fighters and their children/ grand children	2% This reservation will be available only if quota reserved for Ex-servicemen or Backward Classes 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.	

b) Instructions dated 27.10.2021.

Subject: Reservation regarding filling up 2% posts amongst the children of freedom fighters against the vacant posts reserved for Ex-Servicemen or Backward Classes in Direct recruitment.

I am directed to invite your attention to Government instructions No.22/10/2013, dated 15.07.2014 on the subject cited above vide which 2% reservation quota for dependent children/grandchildren of freedom fighters were allowed subject to certain conditions.

2. The recruiting agencies have sought further clarification on operational aspects of the 2% reservation quota for children of freedom fighters. Government has re-considered the matter and after thorough consideration it has been decided that the benefit of



reservation to a child or grandchild (either maternal and paternal) shall be admissible as under:

(1) xxx

(2) *Children of Freedom Fighters includes both children and grandchildren from both maternal and paternal lineage.*

(3) to (5) xxx

3. The instructions already issued vide No 22/10/2013, dated 15.07.2014 shall be deemed to have been amended to this extent with immediate effect. These instructions may please be brought to the notice of all concerned for strict compliance.

c) Instructions dated 26.04.2022.

Subject: Clarification regarding grant of benefit of Reservation of 2% posts to the children/grandchildren of Freedom Fighters against the vacant posts reserved for Ex-Servicemen or Backward Classes in Direct recruitment.

I am directed to invite your kind attention to the State Government's instructions of even number dated 27.10 2021 on the subject noted above vide which the benefit of 2% reservation amongst the children of freedom fighters in direct recruitment has been reviewed and it has been restricted to one of the children/grand-children of a freedom fighter.

2. On receipt of representations from the grandchildren of freedom fighters with the request to clarify how the 2% benefit of reservation is to be worked out by the Recruiting Agencies under the above said instructions. In view of above Government has decided to clarify with illustrations as under:-

(A) Illustration of Group B posts: One hundred posts of direct recruitment of PGT (Group B post) were advertised by HSSC, out of which 20 posts are vertically reserved for Scheduled Castes, 11 posts for Backward Classes-A, 6 posts for Backward Classes-B, 10 posts for EWS categories. The 5 posts are horizontally reserved for ESM and 4 posts are horizontally reserved for Disabled persons. If two or more posts of PGT reserved for Backward Classes or Ex-servicemen remained unfilled due to non-availability of suitable candidates of these categories, then the



name of children/grandchildren of Freedom Fighters may be considered against 2 posts only reserved for Backward Classes or Ex-servicemen, as the case may be. These posts will be de-reserved from that date by the Recruiting Agency/concerned Department.

(B) xxx xxx xxx

3. It is also clarified that the benefit of reservation will be admissible @ 2% of total advertised posts subject to the condition that out of these the posts remain vacant due to non-availability of suitable candidates for selection against the posts vertically reserved for Backward Classes or horizontally reserved for Ex-servicemen excluding the posts horizontally reserved for Ex-servicemen of Scheduled Castes category. The overall benefit of reservation for children/grand-children of Freedom Fighters either from the unfilled vacancies of Ex-servicemen or from the Backward Classes will remain limited to 2% only. This benefit will be admissible to one of the children/grandchildren i.e. sons and daughter of sons and daughters (parental as well as maternal) of the freedom fighters.

7. As apparent on record, the advertisement for the post of Assistant Professor in Home Science was issued on 16.02.2016, wherein two posts were specifically reserved for ESM category. It was provided that reservation to Freedom Fighters and their children/grandchildren would be available only if posts reserved for ESM remained unfilled due to non-availability of suitable candidates. It was also stipulated that overall reservation for Freedom Fighters, their children/ grandchildren would remain limited to two per cent only. This provision for reservation to the DFF category was based on government instructions dated 15.07.2014. These were clarified, so far as its operational aspects were concerned, vide another instructions, dated 27.10.2021, to the effect that *children of Freedom Fighters include both, children and*

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therein that, *'The instructions already issued vide No 22/10/2013, dated 15.07.2014 shall be deemed to have been amended to this extent with immediate effect'*. Accordingly, by way of this clarification children along with grandchildren of Freedom Fighters from maternal as well as paternal lineage were given the benefit of reservation for the category. The clarification had to be issued because under the earlier instructions, dated 15.07.2014, the benefit was available to the grandchildren only. The instructions, dated 27.10.2021, however do not affect the petitioner, as her paternal grandfather was the Freedom Fighter. Being a grandchild, she remains entitled to the benefit of reservation against the vacant ESM category post in terms of instructions, dated 15.07.2014, itself.

8. Still further, the government came up with another instructions, dated 26.04.2022, issuing clarification regarding grant of reservation to DFF, that after reviewing the two per cent reservation it has been decided to restrict the same only to *one of the children/grandchildren* of the Freedom Fighter. It gave an illustration how to carry out the reservation, viz., if two or more posts of ESM category remained unfilled due to non-availability of suitable candidates, children/grandchildren of Freedom Fighters are to be considered against those ESM posts only, subject to the condition that the benefit will be limited to two per cent of the total advertised posts.

9. It is undisputed fact on record that both the ESM category posts advertised pursuant to the advertisement in question remained vacant for want of suitable candidates; and the same are still vacant. Two posts do not exceed two per cent of the total advertised posts either. Also, that the petitioner belongs to DFF category being paternal granddaughter of a Freedom Fighter. She has been denied consideration against the vacant posts only on the ground that two

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per cent reservation cannot be made applicable to the two vacant posts, as it means zero point four (0.4) per cent posts, which is not even one post. Later instructions issued by the government, dated 26.04.2022, clarified the issue by illustration that the benefit of reservation to DFF category is to be extended against the posts remaining vacant due to non-availability of suitable candidates, provided it does not exceed two per cent of the total advertised posts. Apparently, this is a clarification of operational aspects of two per cent reservation meant for the category which is regulated in terms of instructions, dated 15.07.2014, based upon which stipulations in the advertisement were incorporated. The contention of learned counsel for the Commission that later instructions, dated 26.04.2022, are not clarificatory since the reservation meant for ESM/DFF stands reviewed by the same, is not sustainable so far as facts of the instant case are concerned. It is because the petitioner remains entitled to be considered against the vacant ESM category post in terms of original instructions, dated 15.07.2014, irrespective of instructions, dated 27.10.2021, which extend the benefit to children as well as grandchildren. The second instructions, dated 26.04.2022, which reviews the reservation for DFF to restrict the benefit to one of the children/ grandchildren of a Freedom Fighter, also does not affect the petitioner since there is no dispute regarding her being the only child/grandchild of the Freedom Fighter. In para 2 of these instructions, the procedure to work out two per cent benefit of reservation has been explained. It is to the effect that DFF category candidates are to be considered for appointment against the vacant/unfilled ESM category posts, which ought to be the position so far as instructions, dated 15.07.2014, are concerned. However, the Commission in its wisdom interpreted the same by applying the overall two per cent reservation meant for total advertised posts, to the two vacant ESM



category posts of Assistant Professor Home Science only. This is illogical and irrational, and has therefore resulted in untenable conclusion of availability of zero point four (0.4) per cent post, which could not be offered to anyone. To make the reservation workable for benefiting the deserving as per merit, the Commission’s interpretation has to be discarded, *dehors* the later instructions on the issue. Therefore, the reason to deny consideration to the petitioner against any of the two vacant ESM category posts, hereby stands rejected as it flies in the face of logic, rationality and reasonableness, as also the instructions.

10. In view thereof, the petition is allowed. The respondents are directed to consider and appoint the petitioner as Assistant Professor (College cadre) HES-II in the subject of Home Science under General (Dependent of Freedom Fighter) category against the vacant ESM category post as per merit, from the date other similarly situated candidates have been appointed pursuant to the selection in question. She shall be entitled to only notional benefits from the date of appointment and actual benefits from the date of joining service. The directions are to be carried out within four weeks of receiving a certified copy of the judgment. There shall be no order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

26.09.2024
Payal

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