



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

208

CWP-8574-2021 (O&M)

Date of decision: 06.09.2024

Dinesh Kumar

....Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner

Ms. Vibha Tewari, AAG Haryana

AMAN CHAUDHARY, J. (ORAL)

1. The petitioner seeks quashing of the order dated 08.04.2021 whereby his services were terminated.

2. As the facts go, the petitioner, being dependent of Ex-serviceman, had applied under the ESM category, for appointment to the post of Clerk, pursuant to the Advertisement No.10/2015 dated 24.11.2015, whereby 4425 posts had to be filled and 301 were reserved for the above category. His certificate required in that regard dated 15.01.2014 is appended as Annexure P-1. He, having obtained 186 marks was placed in the select list, therefore appointed vide letter dated 19.03.2018, continued as such for 3 years and cleared the period of probation.

3. On having found that no certificate to fall within the ESM category was uploaded by him, his services came to be terminated vide the impugned order, even though, as stated, his specific case before the authorities



was that the said dependent certificate was produced during the scrutiny of documents, apparently to be correct, as only thereafter would he have been appointed. Be that as it may, much lesser marks obtained by the last selected candidate in the General category, being 174, entitled him to be considered therein, ex-serviceman category being a horizontal reservation.

4. As is evincible from the information received under RTI Act, vide letter dated 01.09.2023, two candidates in the General category having not joined under the Advertisement No.10/2015, consequently the posts remained vacant, to which there was no denial even during the course of arguments, despite an adjournment having been granted to ascertain the same. Had there even been none, in that eventuality, a supernumerary post would have to be created.

5. In a case, wherein the petitioner, who had applied under EWS category, however despite having more marks than the last selected candidate in the General category, had been not appointed, this Court allowed his petition titled **Om Roj vs. Haryana Staff Selection Commission and Others**¹, the relevant paras whereof read thus:

“6. It is the basic principle of reservation, which the respondents need to be aware and be careful in future, that first and foremost general category seats are to be filled from the merit list as per result and thereafter the reserved category seats are to be allocated as per the quota assigned thereto.

7. First and foremost, once the merit list is prepared of the general or open category and if any candidate, who has applied under reserved category and not considered eligible, but obtained higher marks than the last selected candidate in general category, even then he has a right of selection and appointment under general category. In the

¹ CWP-2667-2022, on 28.04.2022



present case, concededly the petitioner had though applied under EWS category and as per declaration of result he scored more marks than the last selected candidate in general category. Petitioner, even if not given the benefit of EWS reservation, he was/is eligible to be considered in General Category as he got more marks i.e. 79 marks as against the last selected candidate in general category, who has scored 70 marks.

8. It is rather preposterous to argue, as is being canvassed by learned State counsel that if in the scrutiny round, a candidate is found not eligible for the reservation sought by him, then he shall not be considered even in the open (General) Category. The same goes against the very content and intent of Article 16 of the Constitution.

9. No doubt, reservation is envisaged on the basis of backward class under Sub Article (4), but in case a candidate is not found or found entitled to the reservation, by no stretch of imagination Article 16 is to be interpreted so as to mean that right of a candidate to be considered in open general category is taken away. If that were to be done, same would be also violative of Article 14 of the Constitution of India, apart from Article 16(1) itself.

10. In fact, what has been opined by me as above is trite in view of the repeated pronouncements from time to time. Reference may be had to a Supreme Court judgment dated 18.12.2020 in case titled as “Saurav Yadav and others Vs. State of Uttar Pradesh and others” in W.P. (C) No.237 of 2020. Relevant part thereof is reproduced hereinbelow:-

“22. The Principle that candidates belonging to any of the vertical reservation categories are entitled to be selected in “Open or General Category” is well settled. It is also well accepted that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories for vertical reservation that they belong.”

“27.1 XXXX XXX

.....If we go by the first view, the claim of reserved category candidates if they are more meritorious, has to be considered, in which case the candidate at Serial No. 86 will be required to be accommodated. Resultantly, the candidate at Serial No.88 must give way.

XXX XXX

28 The second view, based on adoption of a



different principle at the stage of horizontal reservation as against one accepted to be a settled principle for vertical reservation, may thus lead to situations where a less meritorious candidate, not belonging to any of the reserved categories, may get selected in preference to a more meritorious candidate coming from a reserved category.

XXX XXX

32 The second view will thus not only lead to irrational results where more meritorious candidates may possibly get sidelined as indicated above but will, of necessity, result in acceptance of a postulate that Open/General seats are reserved for candidates other than those coming from vertical reservation categories. Such view will be completely opposed to the long line of decisions of this Court.

33 We, therefore, do not approve the second view and reject it.

XXX XXX

54 The open category is not a ‘quota’, but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria, there is no quota for men. If we are to accept the second view. The result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit.

XXX XXX

58 I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be , if the state’s argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in its merit, regardless of whether reservation benefit of either type is available to her or him.”

11. To summarize, it is re-emphasized that the respondents would do better in future to follow the aforesaid principles enunciated by the Supreme Court of India. In the event, it is the same selection, pursuant to the same very



open competition along with general category candidates, then he will not be adjusted against unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category.”

6. On cumulative consideration, the candidates belonging to categories of vertical reservations entitled to be selected in open or general category, there is found to be no error in the impugned judgement. The appeals being sans merit, are hereby dismissed.”

7. The premise in the written statement as also the affidavits dated 24.03.2022, 04.11.2022, 11.01.2024 and 14.05.2024, for ousting the petitioner from service that he had not uploaded the requisite certificate at the time of filing of the application, pertaining to either the Ex-serviceman or the dependent thereof, paled into insignificance on a glance at the marks obtained by him in the selection process.

8. Pertinently, the plea raised in the petition to drive home his claim to a post under the General category, being the sole aspect thereof, has been not countered in any manner whatsoever, in all probability, owing to its genuinity and legality.

9. Merely that the petitioner being desirous of consideration of his candidacy against the General-Ex-servicemen, being a dependant, opted for the said category, however, even in spite of securing marks way higher than the one appointed in the General category, would by no stretch imply that his right against a post therein, under any circumstances, would get eclipsed. It was imperative upon the respondents themselves to have acceded to his legitimate claim raised via a representation dated 25.05.2017, even prior to he having been appointed on 19.03.2018, to be placed in the select list in the above category.



10. On a conspectus evaluation of the matter, the present petition is allowed and the impugned order dated 08.04.2021, set aside. The respondents are directed to consider his previous appointment to have been made in the general category, within a month.

(AMAN CHAUDHARY)
JUDGE

06.09.2024
M.Kamra

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