



CWP-7802-2024 (O&M)

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

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CWP-7802-2024

Date of Decision :30.05.2024

Mohit Rathee

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate with
Mr. Viren Nehra, Advocate &
Mr. Suryaveer Singh Surjewala, Advocate for the petitioner.

Mr. Pankaj Middha, Addl. A.G. Haryana.

Mr. Kanwal Goyal, Advocate & Ms. Sheena Dahiya, Advocate
for the respondent-HPSC.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, grievance being raised by the petitioner is that the claim of the petitioner for appointment to the post of Assistant Town Planner (Group-A) as advertised by the respondents vide advertisement No.05/2019 dated 05.07.2019 (Annexure P/1) has been rejected by the respondents, which act on the part of the respondents is totally arbitrary and illegal and rather amounts to overreaching the direction given by this Court while passing order in **CWP-15432-2020 titled as**

Mohit Rathee vs. State of Haryana and others decided on 13.09.2023.



2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. The Haryana Public Service Commission advertised 14 posts of Assistant Town Planner vide advertisement No.05/2019 dated 05.07.2019 (Annexure P/1). As per the advertisement, one post was reserved for ex-serviceman and in case of non-availability of ex-serviceman, the said post was to be offered to the dependent of ex-serviceman. The petitioner competed for the post in question as a dependent of the ex-serviceman and appeared in the written examination and cleared the said examination.

4. It may be noticed that qua the post of Assistant Town Planner to be filled in the category of ex-serviceman, three candidates were being considered to be appointed on the said post. After the interviews, as no ex-serviceman cleared the selection process, one Jyoti Yadav was declared selected in the category of ex-service being a dependent of ex-serviceman. The petitioner was aggrieved against the selection of said Jyoti Yadav as according to the petitioner, she was wrongly claiming the benefit of being a dependent of ex-serviceman as she was already employed at the time of competing for the post in question. A CWP-15432-2020 was filed by the petitioner challenging the candidature and selection of said Jyoti Yadav under the category of dependent of ex-serviceman. Notice of motion was issued and a direction was issued by this Court not to give appointment to said Jyoti Yadav on the said post till further orders are to be passed by this Court.

5. Ultimately, the said writ petition came up for consideration on

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13.09.2023 (a copy of which has been annexed as Annexure P/6) on which date, said Jyoti Yadav withdrew her candidature from the selection process. Keeping in view the said withdrawal from the selection process, this Court rendered the said writ petition filed by the petitioner as infructuous and a direction was given by this Court that as the post of ex-serviceman/dependent of ex-serviceman remained vacant, the claim of other candidates should be considered on the post in question including that of the petitioner.

6. In pursuance to the said direction given by this Court, the respondents have passed the impugned order dated 23.02.2024 (Annexure P/8) rejecting the claim of the petitioner on the ground that this Court has not declared the selection of Jyoti Yadav as bad on any account and, hence, as the said Jyoti Yadav has withdrawn his candidature from the selection process after her selection was already made on the said post, no further recommendation will be made qua the said post and as no recommendation can be made by the Commission qua the post of Assistant Town Planner to be filled in the category of ex-serviceman, claim of the petitioner for selection and appointment cannot be allowed. The said order passed by the Commission is under challenge in the present petition.

7. Notice of motion was issued. Respondent-Commission has filed reply wherein, the respondent-Commission maintained their stand as mentioned in the impugned order that once, this Court has not set aside the selection of Jyoti Yadav, who was the only selected candidate in the ESM category, the said post stands consumed and, hence, no other candidate can



be recommended for the said post as there was no waiting list.

8. Learned State counsel submits that till any recommendation is received from the Commission, no action is required to be taken by the State.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The question which arises for determination in the present petition is whether selection of Jyoti Yadav is to be treated as valid selection or whether the petitioner who claimed himself to be the next candidate in merit has a legal right to be appointed against the one post of Assistant Town Planner to be filled up in the category of ex-serviceman.

11. It may be noticed that the selection of Jyoti Yadav was challenged by the petitioner on the ground that she was not eligible under the category of dependent of ex-serviceman as she was already working somewhere and was not dependent upon an ex-serviceman. Keeping in view the facts, which had come on record, the said Jyoti Yadav deemed to be fit to withdraw her candidature. Once, the candidature has been withdrawn, it has to be presumed that the said candidate is not the part of the selection process at all. Once, the candidate is not the part of the selection process, there cannot be any selection of the said candidate much less occupying a post or consuming of the post in question so as to hold that nobody else can raise a claim qua the said post. Once, the petitioner raised a grievance qua the eligibility of the said Jyoti Yadav to be selected against the post of

Assistant Town Planner (ESM) and during the pendency of the said writ



petition, she withdrew her candidature despite being selected, it has to mean that she was not part of the selection process at all hence, the other candidates, who are competing for the said post has a right to claim appointment on the said post on the basis of the merit already prepared.

12. As per the impugned order dated 23.02.2024 (Annexure P/8) passed, the Commission is of the view that there was no waiting list hence, even if, the claim has been given up by the said Jyoti Yadav, the post stands consumed and the said post has to be filled up again by way of issuance of a fresh advertisement.

13. The said view of the Commission is not correct. In case any candidate, who is not eligible even on the date of submission of application form or selection, is selected and later on the said discrepancy is found, the selection of such candidate cannot take away the right of the other eligible candidates, who are competing for the post in question to be considered for the post in question and consequent selection.

14. In the present case, the petitioner was competing for the post in question and rather challenged the selection of the candidate on the ground of her ineligibility and the selected candidate withdrew her candidature from selection process itself. Hence, the respondents were under an obligation to consider the other eligible candidates for the post in question on the basis of merit already prepared.

15. Qua the argument of the learned counsel for the Commission that the waiting list is only to operate in case, the eligible candidate does not join despite being selected and as per the respondents, Jyoti Yadav is to be



treated eligible as no finding was recorded by this Court while passing earlier order qua the eligibility of the Jyoti Yadav.

16. It may be noticed that once, the candidature of a candidate is assailed on the ground of eligibility and the selected candidate withdrew her candidature keeping in view the pleadings, which had come on record before any decision is given, it has to mean that the candidate has given up her claim against the said post. Once selected candidate withdrew her candidature, question of eligibility and selection does not arise.

17. That being the position in the present case, the respondents were under an obligation to consider the claim of the petitioner against the post of Assistant Town Planner (ESM), which even as of now available to be filled up as Jyoti Yadav was not appointed keeping in view the challenge to her eligibility in the earlier petition.

18. Keeping in view the above, present petition is allowed. Impugned order dated 23.02.2024 (Annexure P/8) is set aside. The respondents are directed that the candidates, who are next in merit should be considered and the candidate, who is highest in merit should be recommended to the Government against the post of Assistant Town Planner (ESM).

19. Let the present order be complied with within a period of 06 weeks from the date of receipt of copy of this order.

20. It may be noticed that the grant of notional benefits keeping in view the merit position of the candidate, who is to be recommended, should also be decided while granting the benefit of appointment.



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- 21. Present petition stands allowed in above terms.
- 22. Civil miscellaneous application pending, if any is also disposed of.

May 30, 2024 (HARSIMRAN SINGH SETHI)
aarti JUDGE

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