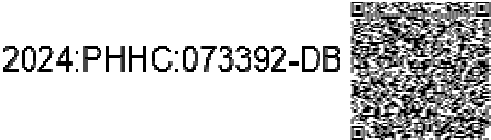


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117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: May 22, 2024

TEJASWINI GARG Petitioner

Versus

HARYANA PUBLIC SERVICE COMMISSION AND ANOTHER
..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Akshay Jindal, Advocate for the petitioner.
Mr. Balvinder Sangwan, Advocate for respondent No. 1 – HPSC.
Ms. Supriya Garg, Advocate for respondent No. 2.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside result dated 09.04.2024 of Haryana Civil Service (Judicial Branch) Preliminary Examination 2023-2024 conducted on 03.03.2024 to the extent that petitioner be declared successful in the said exam and consequently be permitted to participate in further selection process. Petitioner stakes claim being grandchild of freedom fighter of Haryana.
2. Learned counsel for petitioner submits that online applications were invited from eligible candidates for 174 posts (129 actual posts – 45 anticipated

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posts) of Civil Judge (Junior Division) in Haryana Civil Service (Judicial Branch) vide advertisement dated 01.01.2024 (Annexure P1). Category wise bifurcation of vacant post as detailed in para 5 of advertisement is reproduced as hereunder:-

Category wise bifurcation of the vacant post is as under:-

Categories	No. of posts
General/Unreserved	77
Scheduled Castes of Haryana	30
Backward Classes-A of Haryana	11
Backward Classes B of Haryana	01
Economically Weaker Section of Haryana	10
Total	129
Ex-Servicemen(Gen./UR) of Haryana	04
Ex-Servicemen (SC) of Haryana	01
Ex-Servicemen (BC-A) of Haryana	01
Persons with Benchmark Disability	VH-03 HH-03 OH-01 MD-02

Category wise bifurcation of the anticipated posts is as under:-

Categories	No. of posts
General/Unreserved	24
Scheduled Castes of Haryana	09
Backward Classes-A of Haryana	06
Backward Classes B of Haryana	02
Economically Weaker Section of Haryana	04
Total	45
Ex-Servicemen(Gen./UR) of Haryana	04
Persons with Benchmark Disability	OH-01 MD-01

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3. It is submitted that petitioner being fully eligible for the post in question applied for the same under General (unreserved category) but as 'Grandchild of Freedom Fighter of Haryana'. Admit card was duly issued to petitioner who took Haryana Civil Service (Judicial Branch) Preliminary Examination 2023-2024. Petitioner secured 289.60 marks. Final result of preliminary examination by giving roll number wise details of candidates under relevant categories was declared on 09.04.2024. However, petitioner's name does not figure in said result as a successful candidate entitled to take main examination. Representation in this respect, it is stated, had been submitted before authorities but the same is not being decided.

4. Learned counsel for petitioner submits that for Ex-servicemen category, number of posts are six, therefore, 60 candidates i.e. ten times the vacancies should have been declared successful in the preliminary examination as eligible to take the main examination but only 55 candidates have been so declared. Learned counsel for petitioner refers to Note 4 of Clause 5 of advertisement to submit that petitioner is entitled to take main examination inasmuch as 2% reservation for Freedom Fighters and their children/grand children has been made available if quota reserved for Ex-servicemen or Backward Classes remained unfilled due to non-availability of suitable Ex-servicemen or children of Ex-servicemen or non-availability of suitable candidates from Backward Classes. Benefit, thus, has to be available to grand children of Freedom fighters. It is submitted that in the result declared by respondent No. 2, it is clarified in Note 1 that while preparing result if an inadvertent error has crept in, Commission/Selection Committee reserves its right to rectify an error at a later stage. In the given circumstances, where petitioner being grandchild of Freedom Fighter of Haryana has not been called to

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take main examination even when seats of candidates of ESM (General) category to be called for main examination remain vacant, the error should be rectified. It is, thus, prayed that this writ petition be allowed.

5. Learned counsel for respondents have opposed this writ petition while submitting that no ground whatsoever is made out for interference by this Court. Learned counsel for respondent No. 1 while referring to short reply dated 17.05.2024 filed on behalf of said respondent submits that admittedly petitioner had applied under General (unreserved) category but as Grandchild of Freedom Fighter of Haryana. In terms of clause 9 (A)(vi) of advertisement dated 01.01.2024, it is stipulated that, “candidates equal to 10 times the number of vacancies advertised, selected in order of their merit in the respective categories shall become eligible to sit in the Main Written Examination”. In the present case, five posts were reserved for Ex-servicemen (General/UR) of Haryana. Learned counsel further submits that as the petitioner belongs to General category, her claim for benefit of reservation would lie only qua five posts of Ex-servicemen (General/UR) of Haryana. Qua said five posts, 50 Ex-servicemen candidates have already been declared successful to take the main examination, therefore, candidates ten times of number of vacancies advertised have already been called for. It is incorrectly stated by petitioner that 60 candidates were required to be called for. It is informed by learned counsel for respondents that representation submitted by petitioner has since been rejected on 15.05.2024, subject to final outcome of present writ petition. It is, thus, prayed that this writ petition be dismissed.

6. We have heard learned counsel for parties and have gone through the file with their assistance.

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7. Calling for applications for the post of Civil Judge (Junior Division) in Haryana Civil Service (Judicial Branch) vide advertisement dated 01.01.2024 is a matter of record. Category wise bifurcation of vacant posts as well as anticipated posts is reproduced in the foregoing para No. 2 of this order. Note 4 of Clause 5 of advertisement reads as under:-

“ Note 4. 2% Reservation for Freedom Fighters (FF) and their children/grand children of Haryana will be available only if quotas reserved for Ex-servicemen or Backward Classes remains unfilled due to non-availability of suitable Ex-servicemen (ESM) or Children of Ex- Servicemen or non-availability of suitable candidates from Backward Classes.)”

8. As per clause 9 of advertisement dated 01.01.2024, object of preliminary examination is to short list candidates for main examination. Candidates equal to ten times the number of vacancies advertised selected in order of merit in respective categories, it is provided, would be eligible to take the main written examination. Clause 29 (vi) of advertisement provides that reservation for Freedom Fighters and their children/grandchildren will be available only if quota reserved for Ex-servicemen and Backward Classes remained unfilled due to non-availability of suitable Ex-servicemen or their children or non-availability of suitable candidates from Backward Classes and overall reservation from unfilled vacancies of Ex-servicemen or from Backward Classes for Freedom Fighter and their children/grand children will be limited to 2% only. Clause 29(vi) and (vii) of advertisement dated 01.01.2024 reads as under:-

“vi. Reservation for Freedom Fighters (FF) and their children/grand children of Haryana will be available only if quotas reserved for Ex-servicemen or Backward Classes remains

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unfilled due to non-availability of suitable Ex-servicemen (ESM) or Children of Ex-Servicemen 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 Fighter and their children/grand-children of Haryana 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. Those candidates shall be required to upload the latest certificate in this regard duly issued by the respective competent authority.

vii. The reservation for Ex-servicemen of Haryana will be given as per instructions issued vide No. 12/15/2019-4GS-II dated 09.03.2022 and further clarified vide letter even No. dated 13.04.2022 by the Chief Secretary to Govt. Haryana.”

9. Clause 29(vii)(h) further provides that benefit of reservation against posts reserved for Ex-servicemen would be admissible only at the time of final selection list and not at the time of preliminary test, main test or interview.

Clause 29(vii)(h) of advertisement reads as under:-

“ In all circumstances the benefit of reservation against the posts reserved for Ex-servicemen shall be admissible at the time of final selection list only and not at the time of preliminary test, main test or interview.”

10. Another aspect to be considered at this juncture is that petitioner did not challenge clause 29(vii)(h) of advertisement at any time prior to taking preliminary examination, therefore, she is, in any case, estopped from raking up the issue at this stage having taken the exam and then being unsuccessful therein.

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11. Pledged case of petitioner is that there were six posts for which only 55 candidates had been called by the respondents to take the main examination whereas 60 candidates should have been called for and if needful had been done, petitioner would have been entitled to take said exam. This aspect has been duly clarified by respondents. Five posts have admittedly been reserved for Ex-servicemen of Haryana (General category) and petitioner having applied under General (unreserved) category being grandchild of Freedom Fighter of Haryana can lay claim only qua said five posts. It is not denied that 50 candidates have already been called, therefore, this argument raised by learned counsel for petitioner is devoid of any merit.

12. It is to be noted that, though not pleaded, learned counsel for petitioner at the time of arguments submitted that benefit of reservation should be given at this juncture itself and not at the time of final selection. This argument is also devoid of any merit. As detailed in foregoing paras, clause 29(vii)(h) specifically provides for benefit of such reservation only at the time of final selection list and not at any earlier stage. It is clearly provided in the advertisement itself that 2% reservation would be available for Freedom Fighter and their children/grand children only if quotas reserved for Ex-servicemen or Backward Classes remain unfilled due to non-availability of suitable Ex-servicemen or children of Ex-servicemen or non-availability of suitable candidates from Backward Classes. 50 candidates from Ex-servicemen category (General/UR) qua 5 vacancies have already been called, therefore, no ground for interference is made out.

13. It is pertinent to note at this stage that matter is squarely covered against petitioner in view of decision dated 31.03.2021 in LPA-339-2021.

Similar controversy had arisen in the abovesaid matter in respect to Punjab State

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Civil Services Combined Competitive Examination, 2020. Issue revolved around extension of benefit of reservation under Ex-servicemen category to the Lineal Descendants of Ex-servicemen (LDESM) with the allegation that requisite number of candidates in the said category as per advertisement and Rules were not short listed. Clause 11 of advertisement, which was in question in CWP-7072-2021/LPA No. 399 of 2021 included a similar provision for reservation of lineal descendant of Ex-servicemen (LDESM). It was stated in clause 11 Note (1b) of the said advertisement that consideration of LDESM shall be carried out against vacancies meant for Ex-servicemen only if no Ex-servicemen are available. CWP-7072-2021 was dismissed on 25.03.2021 while concluding that unless and until selection is final, it is not possible to conclude whether authorities have strictly followed the advertisement/rules/instructions. Reference was made to Note (1b) of Clause 11 above. LPA No. 399 of 2021 challenging decision dated 25.03.2021 was dismissed on 31.03.2021. It was held that as requisite number of candidates belonging to Ex-servicemen category were available/qualified for main examination, lineal descendants of Ex-servicemen would not come into picture at that stage.

14. Reliance by learned counsel for petitioner on interim order dated 25.03.2022 in CWP-26411-2021/LPA-1582-2019 is of no avail to petitioner inasmuch as said order apart from being an interim order was apparently passed upon a proposal which came from counsel for parties where on petitioners therein and other similarly situated candidates, were permitted to participate provisionally in the proposed main examination. As the said petitioners did not qualify minimum benchmark, writ petition was disposed of as infructuous on 01.09.2022. Petitioner cannot derive any benefit from the abovesaid.

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15. Keeping in view the facts and circumstances as above, we do not

find any ground whatsoever to interfere in this writ petition.
16. Writ petition is, accordingly, dismissed.

(LISA GILL)
JUDGE

May 22, 2024
rts

(AMARJOT BHATTI)
JUDGE

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