



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

118

LPA-1907-2024 (O&M)
Date of decision: 27.08.2024

HARYANA PUBLIC SERVICE COMMISSION

...Appellant

VERSUS

MOHIT RATHEE AND ANOTHER

...Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Kanwal Goyal, Advocate,
Ms. Sheena Dahiya, Advocate and
Mr. Prince, Advocate
for the appellant-Commission.

Mr. Sunil K. Nehra, Advocate
for respondent No.1-caveator.

DEEPAK SIBAL, J.(ORAL)

1. Through advertisement No.05/2019 the Haryana Public Service Commission (for short – the Commission) invited applications for appointing 14 Assistant Town Planners (Group-A) (for short – ATP). Out of the said 14 posts, 01 post was reserved for ex-servicemen. The advertisement further stipulated that in case ex-servicemen were not available, the post reserved for ex-servicemen shall be offered to the dependents of ex-servicemen.
2. Respondent No.1 and one Jyoti Yadav applied for consideration of their candidature as dependents of ex-servicemen.



3. After the culmination of the selection process, the Commission made a recommendation to the State to appoint Jyoti Yadav as ATP under the ex-servicemen category. Respondent No.1 challenged such recommendation through filing of a petition before this Court being CWP No.15432 of 2020 in which petition, at the time of issuance of notice, this Court passed interim directions restraining the State of Haryana to act upon the recommendation made by the Commission in Jyoti Yadav's favour. During the course of hearing of respondent No.1's petition, on 13.09.2023, Jyoti Yadav, who was present in Court, stated that she withdraws her candidature from the entire process of selection. Her statement was accepted and respondent No.1's petition was disposed of by issuance of directions to the Commission to consider respondent No.1's claim qua the post which had become available on the withdrawal of Jyoti Yadav's candidature.

4. The Commission then passed an order dated 23.02.2024 through which respondent No.1's claim was rejected on the ground that once the name of Jyoti Yadav had already been recommended, no further recommendation could now be made by the Commission as there was no waiting list. Order of the Commission dated 23.02.2024 became the subject matter of challenge at the hands of respondent No.1 through another petition filed by him before this Court. On being put to notice of respondent No.1's second petition, the Commission defended its order which had been impugned by respondent No.1 but such justification did not find favour with the learned Single Judge primarily for the reason that on withdrawal of candidature by Jyoti Yadav, a fresh recommendation ought to be made by the Commission for appointment of an ATP under the ex-servicemen category. The judgment of the learned Single Judge dated 30.05.2024



allowing respondent No.1's petition has been challenged by the Commission through the instant intra Court appeal.

5. Learned counsel for the parties have been heard.
6. The operative portion of the impugned judgment reads as under:-

“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.”

7. A perusal of the afore reproduced portion of the impugned judgment reveals that the learned Single Judge did not accept the Commission's justification offered in support of its decision not to recommend respondent No.1's name for appointment even after Jyoti Yadav, the only candidate between respondent No.1 and the recommendation to appoint him, had withdrawn her candidature primarily for the reason that once Jyoti Yadav had withdrawn her candidature, it would be deemed that she was never a part of the selection process and therefore, the Commission was under an obligation to make a recommendation for the only post of ATP reserved to be filled up from ex-servicemen.

8. The plea of the Commission that after they had recommended Jyoti Yadav's name, there being no waiting list, they could not make a fresh recommendation has been considered and rejected by the learned Single Judge for the reason that once Jyoti Yadav has withdrawn her candidature, it was immaterial that no waiting list was being maintained by the Commission and that in the facts of the present case a fresh recommendation was required to be made by the Commission.

9. We not only concur with the reasons forthcoming from the impugned judgment on the basis whereof respondent No.1's petition was allowed but further add that for the sole post of ATP, reserved to be filled up from ex-servicemen, the Commission had made a recommendation to the State for appointing one Jyoti Yadav. However, before the State could act on such recommendation, Jyoti Yadav withdrew her candidature from the selection in question. Thus, at the stage of recommendation itself, the



recommendee having withdrawn her candidature would oblige the Commission to make a fresh recommendation in accordance with the merit already prepared by it under the category to which the recommendee belonged. The position would have been different, had on the basis of the recommendation made by the Commission, the recommendee would have been offered appointment by the State on the basis whereof the recommendee had not joined or after having joined left the post as in such a situation, in the absence of a waiting list, there could and would be no question of a fresh recommendation by the Commission.

10. In the light of the above discussion, we find no error in the impugned judgment.
11. Dismissed.
12. All pending miscellaneous application(s) also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

August 27, 2024
Nisha Yadav

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No