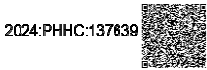


CWP-23117 of 2015



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23117 of 2015
Date of decision: 21.10.2024

Kuldip Singh
.....Petitioner

Versus

The State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. S.K. Verma, Advocate, and
Mr. Jatin Verma, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. Instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking a writ of *mandamus*, directing respondent No.3 – Chairman, Selection Committee to consider the candidature of the petitioner for the post of Canal Guard (Group-D), being fully eligible, as dependent of ex-serviceman in Scheduled Caste category.
2. Brief facts of the case, as have been pleaded in the petition, are that respondent No.2, advertised 712 posts of Canal Guards (Group-D) in Irrigation Department, Haryana, in the year 2011, vide advertisement Annexure P-1, belonging to various Circles. Out of the said 712 posts, 50 posts were meant for YWS Circle, Bhiwani, and bifurcation of the said 50 posts is as under: -

Sr. No.	Name of the Selection Centres	Circle wise Distribution of 712 post of Canal Guards	Gen	SC	BC(A)	BC(B)	ESM	Backlog of ESM	Sports Men	Backlog of Sports Men
8.	YWS Circle Bhiwani	50	23	7	4	4	Gen-3 SC-1 BC(A)-2 BC(B)-1	SC-1	Gen-1 SC-1 BC(A)-1	BC(A)-1



The last date for submission of applications was 15.05.2011. Petitioner applied against the said advertisement at Selection Centre No.8 i.e. YWS Circle, Bhiwani, in SC (Ex-Serviceman Dependent) category and along with the said application attached the Scheduled Caste certificate and eligibility certificate to be considered under the said category of ex-serviceman. The result of the said selection was finalised on 06.03.2013 and the claim of the petitioner was not considered in Ex-serviceman-Scheduled Caste category on the ground that no post of ex-serviceman-Scheduled Caste category was meant for dependants of the ex-servicemen. The petitioner submitted a representation dated 04.07.2013 in this regard, but to no avail. Hence, this petition.

3. On issuance of notice of motion, written statement on behalf of respondents No.1 to 3 has been filed wherein it has been stated as under: -

“1. The applications were invited for 712 posts of Canal Guard (Group-D) in Irrigation Department Haryana vide advertisement Annexure P-1. As per the advertisement Annexure P-1, the candidates were required to apply at their respective Selection Centre.

2. That the petitioner has applied for the said post at Selection Centre No.8 i.e. YWS Circle, Bhiwani. It is also pertinent to mention here that the petitioner, in his application form, in the column of Category had mentioned “SC (Ex, Serviceman Dependent)”. It is also relevant to mention here that there was neither such Category under which the posts were advertised nor there any such instructions of the Haryana Government for



reservations of posts under the Category SC (Ex.Serviceman Dependent).

3. *That as there was no bifurcation of posts under “Scheduled Caste” Category, so the application of the petitioner was treated under the Category “Scheduled caste” because he had enclosed the Scheduled Caste certificate (Annexure P-3) along with his application form Annexure P-2.*

4. *That only 7 posts of Canal Guard were reserved under the category “Scheduled caste” but the petitioner had failed to make his place in the first seven candidates in the merit list and as such the petitioner was not selected. It is also worthwhile to mention here that as per advertisement (Annexure P-1) there was one post reserved for “Ex-Serviceman (S.C.)” However, since the petitioner had not applied under “Ex-Serviceman (S.C.)” category, so his application was not taken/not considered under the said category.”*

4. The petitioner has filed replication to the written statement and denied the averments made therein and along with the said replication, instructions dated 23.01.2008 have been placed on record, which read as under: -

“2. On reconsideration of the matter, State Government has decided that the Ex-servicemen who had not availed the benefit of ESM in re-employment in any Government Service, Public Sector Undertaking, including Para Military Forces, their dependent sons and daughters will be considered for appointment(s) against the posts reserved for Ex-servicemen to the extent of non availability of suitable ex-servicemen, provided they fulfil all the required conditions viz qualifications, age,



experience etc. This entitlement would be available to one dependent child only.

3. *These instructions may please be brought to the notice of all concerned for compliance.”*

5. Learned counsel for the petitioner has submitted that one post of ESM-SC category was advertised and the second one as backlog vacancy of ESM-SC category was also advertised and the petitioner being fully eligible had applied against the said two posts of ESM-SC category being dependent of ex-serviceman and has a right of consideration for appointment in case no ex-serviceman was available in view of instructions dated 23.01.2008. However, claim of the petitioner has not been considered by the respondents.

6. *Per contra*, learned State counsel while referring to the averments made in the written statement, has opposed the claim of the petitioner by stating that no post belonging to petitioner's category i.e. dependent of ex-serviceman was advertised nor there are any such instructions of the Haryana Government for reservation of posts under the Category SC (Ex-serviceman dependent) therefore, the claim of the petitioner has not been considered under the said category.

7. I have heard learned counsel for the parties and perused the record.

8. The matter was heard by a Co-ordinate Bench of this Court on 13.02.2023 and the following order was passed: -

“State counsel requests for an adjournment to get instructions as to whether the post reserved for Ex-servicemen (SC) has been filled. He will also produce the result of the petitioner on the next date.



List on 01.05.2023.”

9. Thereafter, on 11.10.2023, the following order was passed:

“Learned State counsel, on instructions, submits that the post of ex-serviceman under SC category is vacant. Pursuant to the order dated 13.02.2023, the petitioner’s result has been produced which shows he has scored 36.5 marks under SC category, and marks of the last selected candidate under this category were 46.9.

Learned counsel for the petitioner contends that though post of SC (ESM) category was advertised vide advertisement, Annexure P-1, the petitioner who is dependent of ex-serviceman has a right to be considered for appointment in terms of instructions, dated 23.01.2008, Annexure R-1, which require in case ex-serviceman had not availed the benefit of ESM in re-employment, their dependent sons and daughters will be considered for appointment against the post reserved for ex-serviceman. He seeks a short accommodation to cite law.

Adjourned to 08.12.2023.”

10. As per written statement reproduced above, it is clear that claim of the petitioner has only been considered under SC category and not against the ex-serviceman-SC category on the ground that petitioner has filled out the application in the category of dependent of ex-serviceman (SC). Clause 2 of instructions dated 23.01.2008, as reproduced above, clearly provides that the ex-servicemen who had not availed the benefit of ESM in re-employment in any Government Service, Public Sector Undertaking, including Para Military Forces, their dependent sons and daughters will be considered for appointment against the posts reserved for ex-servicemen to the extent of non-availability of suitable ex-servicemen provided they fulfill all the

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required conditions viz the qualifications, age, experience etc. and the said entitlement would be available to one dependent child only. The instructions regarding reservation of posts in the advertisement further provide that benefit of reservation shall be admissible to SC/BC/ESM/Sportsperson candidates of Haryana State only.

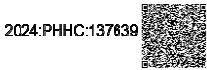
11. The Hon'ble Supreme Court in ***Dilwan Singh v. State of Haryana, 1996(2) SCT 637*** while considering similar issue has held as under: -

“3. It is contended by Shri Mahabir Singh, learned counsel for the appellants that the Selection Board has adopted a policy of calling the ex-servicemen and the dependent children of the ex-servicemen together to consider their cases for recruitment according to merit which would stand an impediment to the ex-servicemen. We find force in the contention. The object of reservation of the ex-servicemen is to rehabilitate them after their discharge from the defence services. As per the instructions issued by the State Government, in the absence of availability of the ex-servicemen instead of keeping those posts unfilled, the dependent children, namely, son or daughter of ex-servicemen would also to be considered. The object thereby would be that the Selection Board should first consider the claim of the ex-servicemen and have their eligibility considered independently in the first instance before the claims of the dependent children of the ex-servicemen are considered. If they are found eligible and selected, for the balance unfilled posts, the selection should be done from among the dependent children of the ex-servicemen.”

12. In view of the above, present petition is allowed. It is held

that the action of the respondents in not considering the claim of the

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petitioner for appointment to the post of Canal Guard (Group-D) against the posts meant for ESM-SC category is illegal and arbitrary and against the instructions dated 23.01.2008 and the law laid down by the Hon’ble Supreme Court in *Dilwan Singh’s* case (supra). Respondents are directed to consider the claim of the petitioner for appointment to the post of Canal Guard (Group-D) against ESM-SC category if he is found in the merit in the said category and satisfy the eligibility/requirements within a period of two months from the date of receipt of certified copy of this order.

21.10.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No