

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No. 195 of 2024 (O&M)

Date of Decision: 15.04.2024

Rajinder Kumar

.....Appellant

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKAS SURI, JUDGE

Present : Mr. J.S.Yadav, Advocate, for the appellant.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (oral)

Consideration in the present appeal is to the order dated 19.07.2023 passed by the learned Single Judge in Civil Writ Petition No. 24291 of 2015 whereby the writ petition filed by the appellant-petitioner was dismissed.

2. It was noticed by the learned Single Judge that the dispute was qua the posts of S.S.Masters reserved for Ex-servicemen Backward Class-B related to the advertisement dated 14.11.1999. The argument raised with regard to the earlier litigation initiated in the year 2004 onwards repeatedly, was repelled and the contention that the respondents were bound to reserve 3% of the total posts advertised for the ESM BC-B category as per the instructions dated 14.07.2000 had been rejected by the learned Single Judge. It was noticed that the appellant-writ petitioner was about 60 years of age and therefore, he could not be appointed on the post at this point of time even if the reservation in question was wrongly provided by the respondents. The fact that the marks

secured by the appellant-petitioner were far below the marks secured by the last selected candidate in the ESM BC-B category had been kept in mind by holding that the relief cannot be granted and the issue of providing 3% reservation against total posts advertised will only be an academic exercise.

3. It is not in dispute that 1270 posts of S.S.Masters were advertised by the State of Haryana on 14.11.1999. In the advertisement, only four posts for ESM BC-B category were reserved whereas the claim of the appellant was of 38 posts being 3% of the total reserved posts.

4. The appellant-writ petitioner had also challenged the order dated 09.09.2014 (Annexure P-22) passed by the respondent-authorities whereby the claim of the appellant had been rejected by the authorities by noticing that a direction had been issued by this Court vide order dated 19.03.2014 passed in Civil Writ Petition No. 21686 of 2008 to pass an appropriate order in terms of the judgment dated 18.03.2014 passed in LPA No. 160 of 2010.

5. A perusal of the order dated 09.09.2014 (Annexure P-22) would go on to show that one Hanuman Singh had filed a Civil Writ Petition No. 2094 of 2007 regarding the vacancies for Ex-servicemen Backward Class which was disposed of by this Court on 04.05.2009 by issuing a direction as such to the official respondents to appoint the petitioner-Hanuman Singh against the said vacancy keeping in view the fact that the vacancies could not be pegged at 4 out of 1270 and a direction was also issued to grant him all the benefits.

6. Civil Writ Petition No. 21686 of 2008 then came to be filed by the appellant-petitioner which was tagged with LPA No. 160 of 2010 (State of Haryana and others vs. Hanuman Singh and another) whereby a direction was issued to the respondents to pass an appropriate order in terms of the judgment

mentioned above within a period of one month. Civil Writ Petition No. 21686 of 2008 came to be disposed off in terms of the judgment passed by the learned Single Judge on 04.05.2009. While considering the case of the appellant-writ petitioner, it was noticed by the authorities that the appellant-writ petitioner had secured 80 marks out of 225 marks in his category and the last selected candidate had secured 151 marks out of 225 marks. Resultantly, the claim of the appellant-writ petitioner was rejected by the authorities vide order dated 09.09.2014

7. After having passed the impugned order by the authorities on 09.09.2014, the second round of litigation was started by filing Civil Writ Petition No. 24291 of 2015 by the appellant-writ petitioner which has been dismissed by the learned Single Judge vide impugned order dated 19.07.2023. The said petition had been contested by the State of Haryana by pointing out that the appellant-writ petitioner had already completed 60 years of age and still was seeking consideration of his right for appointment.

8. It is settled principle of law that the appointment as such is not a vested right and it is apparent that even if the appellant-petitioner had a right as such he has chosen not to challenge the impugned action initially as the recommendation for reducing the posts was sent on 13.09.2004 and the result was declared on 09.10.2004. The writ petition had been preferred by the appellant-petitioner after a period of four years in the year 2008 and eventually at that point of time a direction was issued to the authorities for reconsideration of the issues raised by him.

9. We are of the considered opinion that much water has flown under the bridge and in such circumstances the impugned order dated 09.09.2014 had come to be passed by the authorities denying him the

consideration while noting that he does not fall in the zone of consideration against the four posts. However, the fact remains that at this point of time no effective relief can now be granted to the appellant as noticed by the learned Single Judge as he has already attained the age of superannuation and in such circumstances, he has no right to claim the compensation in writ jurisdiction. Therefore, the learned Single Judge as such has rightly dismissed the writ petition filed by the appellant by noticing that adjudicating the issue of providing 3% reservation against total advertised posts at this point of time would only be an academic exercise but also be a futile exercise. Accordingly no interference is called for in the impugned judgment passed by the learned Single Judge in the peculiar facts and circumstances of the case. The appeal is accordingly dismissed. Pending applications, if any, also stand disposed of.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

(VIKAS SURI)
JUDGE

15.04.2024

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No