



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

257

**CWP-22763-2023(O&M)
Date of Decision:07.11.2024**

NARESH KUMAR

...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Balraj Gujjar, Advocate
for the petitioner.

Mr. Parveen Mehta, DAG, Haryana.

Mr. Kanwal Goyal, Advocate and
Ms. Sheena Dahiya, Advocate
for respondent No.2.

Mr. Sajjan Singh Malik, Advocate
for respondent No.4.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the speaking order dated 22.09.2023, Annexure P-19, passed by the second respondent/Haryana Public Service Commission rejecting the petitioner's representation dated 26.06.2023, Annexure P-13, seeking benefit of reservation under Ex-serviceman (ESM) General category for the post of PGT (Commerce) pursuant to advertisement 25/2023, dated 24.06.2023, in the light of instructions dated 09.03.2022, Annexure P-3.

2. Learned counsel for the petitioner contends that the petitioner is an Ex-serviceman from Haryana, and an applicant for the post of PGT (Commerce) in response to the aforementioned advertisement. This was in

continuation of earlier advertisements 13/2019 and 32/2022, issued by the



respondents for the aforesaid posts, but the same were later withdrawn leading to issuance of the instant advertisement 25/2023. Since the petitioner had applied for the post of PGT (Commerce) under ESM BC-B category in response to the first advertisement, 13/2019, on 10.09.2019, he would be entitled to claim the benefit of reservation as ESM General category in the instant advertisement as per instructions dated 09.03.2022. In terms of these instructions a candidate who had applied for the post prior to his joining service by availing the benefit of reservation as ESM could claim the benefit again. Therefore, despite his appointment as Clerk in Lala Lajpat Rai University of Veterinary and Animals Sciences (LUVAS), Hisar, on 11.09.2019, he can claim the benefit of reservation as ESM as he applied for the post on 10.09.2019.

3. Learned counsel for the respondents, on the contrary, contend that the petitioner is not entitled to claim the benefit of the reservation, and his representation has been rightly rejected vide the impugned order. Firstly, the instant advertisement is not in continuation of the earlier advertisements. It clearly stipulates that it is not to be considered in continuation of earlier advertisements. Secondly, the petitioner is not entitled to the benefit of instructions, dated 09.03.2022, as the same have been made effective prospectively. Thirdly, it has been contended that the petitioner cannot claim the benefit as ESM since, as per averments in the petition, he had earlier applied as ESM BC-B category candidate in response to advertisement 13/2019, next time he applied as General category candidate in response to advertisement 32/2022, and for the third time he applied as ESM General category candidate which could not be permitted.



5. It remains undisputed that the petitioner has already availed the benefit of reservation as ESM category candidate by accepting employment as Clerk in LUVAS University on 11.09.2019. Just before that, on 10.09.2019, he had applied for the post in response to the first advertisement 13/2019. The instant advertisement 25/2023 explicitly stipulates in Note (ii) that it has not been issued in continuation of earlier advertisements. Besides, the respondents have specifically averred on those lines that the number of posts as well as the subjects for which the posts have been advertised, were different in the earlier two advertisements and the instant one cannot be termed a continuation of the earlier ones. This specific stand of the Commission has not been disputed by the petitioner by filing any counter-affidavit or bringing any other material on record.

5.1. Further, a reference can be made to the relevant Note in the advertisement with regard to the relaxations admissible to the applicants of earlier advertisements; it is as under:

Note:

(i) Candidates who had applied earlier in response to Advertisement No.13/2019 dated 26.08.2019 issued by Haryana Staff Selection Commission (HSSC) and/or Advertisement No.32/2022 dated 19.11.2022 issued by Haryana Public Service Commission (HPSC), would have to submit fresh application. Their eligibility conditions with regard to Age, Fee deposition and having qualified HTET would be considered as per the cut-off date of the respective advertisements against which the candidates had applied earlier. In respect of other eligibility conditions, the determination of eligibility shall be with respect to the closing date for submission of online application form of this advertisement i.e. 18.07.2023. The cut-off date for



Advertisement No.13/2019 issued by HSSC was 18.09.2019 and for Advertisement No.32/2022 issued by HPSC was 01.01.2023. The candidates would be asked to provide their earlier Application No. and on entering the same, the application would be verified on the basis of the data already available with the Commission in response to earlier Advertisement.

(ii) This advertisement should not be considered as a continuation of the earlier advertisement mentioned above.

Apparently, in terms of the Note relaxations admissible to the earlier applicants are limited to, 'Age, Fee deposition and having qualified HTET' as per the cut-off date of the earlier advertisements. There is no relaxation regarding the reservation benefit to the applicants, and in its absence the petitioner cannot claim the same based upon his applications in response to previous advertisements.

5.2. Still further, in terms of instructions, dated 09.03.2022, an Ex-serviceman can claim the benefit of reservation for subsequent employment despite joining a civil employment, in case he has applied for various vacancies before joining. The instructions, however, have been made effective prospectively as has been clearly stipulated in para 3 thereof. The petitioner undisputedly joined service and applied for the post in question much prior to issuance of the instructions, on 10/11.09.2019, and cannot claim any benefit in terms thereof.

5.3. Additionally, it also remains undisputed that the petitioner himself has been wavering in claiming benefit of reservation as ESM, as in response to the first advertisement he applied as ESM BC-B category candidate, in response to the second he claimed no reservation and applied as

General category candidate, and in response to the third/instant one he again



claimed reservation as ESM General category candidate. Once he has willingly given up the claim for reservation while applying in response to the second advertisement, he is estopped from claiming the same again in the facts and circumstances of the case.

6. In view thereof, there is no merit in the petition and it stands dismissed.

7. Pending miscellaneous application(s), if any, shall also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

07.11.2024
Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>