



LPA-2930-2024 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

LPA-2930-2024 (O&M)
Date of Decision: 25.11.2024

Haryana Staff Selection Commission

..... Appellant

Versus

Dinesh Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE LAPITA BANERJIPresent: Mr. Hitesh Pandit, Addl. A.G., Haryana,
for the appellant.Mr. R.K. Malik, Sr. Advocate with
Mr. Varun Veer Chauhan, Advocate
for respondent No.1.

DEEPAK SIBAL, J (ORAL)

1. The present intra court appeal has been filed to challenge therein the judgment dated 06.09.2024 passed by a learned Single Judge of this Court through which respondent No.1's petition has been allowed.

2. Through advertisement No.10/2015, the Haryana Staff Selection Commission (for short 'the Commission') invited applications for appointment to 4425 posts of Clerks. Out of the advertised posts, 1237 were meant for the general category and 301 posts had been reserved for the Ex-servicemen (General Category).

3. As per the advertisement qualified dependents of Ex-servicemen were to be considered against the posts reserved for the Ex-servicemen but only to the extent of non-availability of suitable ESM candidates; eligible



Ex-servicemen or their dependents, claiming reservation under the ESM category were required to possess a valid eligibility certificate of a date prior to the last date of submission of their online application; the original of afore referred certificate was required to be produced by them at the time of their interview; the candidates applying under the Ex-servicemen category were further required to produce, at the time of their interview attested photocopies of their identity cards issued by the concerned Zila Sainik Board as also their Discharge Book and that the last date to apply was 06.01.2016.

4. Respondent No.1 applied well in time. In his application, he clearly specified that he was a dependent of an Ex-serviceman and that he was seeking consideration of his candidature under the posts reserved for the Ex-servicemen.

5. After being successful in the written examination, respondent No.1 was called for interview where he produced all the original documents certifying his father to be an Ex-serviceman and the certificate, issued by the competent authority, showing him to be a dependent of an Ex-serviceman. After the respondent was interviewed, the final results were declared in which he secured 186 marks. Since suitable ESM candidates were not available, as a dependent of an Ex-serviceman, on the recommendations made by the Commission through its letter dated 19.03.2018, respondent No.1 was offered appointment as a Clerk. Accepting the offer, he joined the said post. After he had put in service for over three years and had also cleared the period of his probation, the State served upon him a show-cause-notice as to why his services be not terminated on the ground that respondent No.1 had



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applied under the Ex-servicemen category whereas it was his father who was an Ex-serviceman and that he was only his dependent. Respondent No.1 filed a reply to the said show-cause-notice which did not find favour with the State resulting in the passing of the order dated 08.04.2021 terminating respondent No.1's services. Respondent No.1 knocked the doors of this Court to challenge therein the aforesaid order dated 08.04.2021 which challenge of his has been accepted by a learned Single Judge of this Court through the judgment which is assailed at the Commission's behest through the instant intra court appeal.

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

7. Relevant portions of advertisement No.10/2015 (Annexure 'X') read as under:-

"Online applications are invited for direct recruitment of under mentioned categories of posts using the website of **HARYANA STAFF SELECTION COMMISSION** ie. www.hssc.gov.in.

The online application can be filled up from **07.12.2015 to 06.01.2016 till 5.00 p.m.**, thereafter website link will be disabled. The candidates are strictly advised to apply online well in advance without waiting for last date of submission of online application form. The printed copy of the online application form with necessary certificates must be brought at the time of verification/scrutiny-cum-interview. No offline application form or copy of downloaded application form will be accepted by the



office. Qualifications/eligibility conditions, age and other documents will be determined with regard to last date fixed to apply online applications also called as closing date i.e **06.01.2016** given in the advertisement. The details of the posts are as under:

DETAILS OF POSTS AND QUALIFICATIONS

VARIOIUS DEPARTMENT/BOARDS & CORPORATION

Cat. No. 1 4425 posts of Clerks

Gen-1287, , BC8-389, EBPG-520, ESM GEN-301, ESM SC=857. BCA = 651 SC = 97, ESM BCB-128, OSP GEN-32, OSP SC = 53 OSP BCA 37, OSP BCB-18,

TOTAL-4425, PHC OH = 51 HH = 44 VH = 18.

E.Q. i)10+2/10+2 First Division/Graduation or its equivalent from a recognized Board/University.

ii) Hindi/Sanskrit upto Matric Standard or higher education.

Age: 17-42 years

Pay Scale: Rs. 5200-20200+ Rs.1900 GP

XXXX XXXX XXXX XXXX

The dependents of ESM who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates.

ESM/DESM candidates of Haryana claiming benefit must have valid eligibility certificate on last date of submission of



online application form and will have to produce the valid Eligibility Certificate from the concerned Zila Sainik Board at the time of interview. Mere dependent certificate will not be entertained. ESM candidates should also produce attested photocopy of Identity Card issued by concerned Zila Sainik Board & Discharge Book at the time of interview.

XXXX XXXX XXXX XXXX

DOCUMENTS TO BE UPLOADED WITH APPLICATION FORM

- 1) Scanned Copy of Essential Qualifications ie. Matric showing Date of Birth and mark sheet of 10+2/Graduation etc.
- ii) Scanned Copy of Sport Gradation Certificate in case of Outstanding Sports Persons, duly issued by the Competent Authority.
- iii) Scanned Copy of Haryana Domicile Certificate in case of BCA/BCB/SC/PHC/EBPG/ESM/ DESM/DFP and women issued by competent authority.
- iv) Copy of Challan/credit certificate issued by Treasury-Challan as the case may be, in case of candidates who have applied earlier.
- v) Scanned Photographs duly signed by the Candidate.
- vi) Scanned signatures of the Candidate.

DOCUMENTS TO BE BROUGHT AT THE TIME OF INTERVIEW



i) All original certificates/documents/testimonials of educational qualifications and other documents mentioned in the online applications and one set of self attested copies of all these certificates.

ii) Printed Copy of online application form alongwith latest stamp size photograph duly attested by a gazetted officer and pasted on the application form.

iii) Original proof of earlier fee deposited ie. Treasury Challan/Credit Certificate issued by concerned treasury etc.”

(emphasis supplied)

8. A perusal of the afore-quoted portions of the advertisement in question clearly reveal that through the same 310 posts had been reserved to be filled up from the ESM category. There was no reservation for the dependents of Ex-servicemen. However, the dependents of Ex-servicemen could apply and those of whom who fulfilled all the prescribed qualifications, were to be considered against the posts reserved for the ESM but only in the eventuality of non-availability of suitable candidates belonging to the ESM category. Thus, there being no posts reserved for the dependents of Ex-servicemen, the dependents of Ex-servicemen could apply for consideration of their candidature only under the ESM category. However, in the required column of their application they were to state that they were dependents of Ex-servicemen. In terms of the advertisement, if suitable ESM candidates were not available, these dependents of Ex-servicemen would then be



considered under the ESM category.

9. The advertisement further provided that an Ex-serviceman and his dependents were required to possess valid eligibility certificates which should be dated before the last date to apply and that they would have to produce these certificates, issued by the Competent Authority, at the time of their interview. In the list of documents required to be uploaded along with the application, the certificate certifying a candidate to be an Ex-serviceman or his dependent did not find mention. Therefore, these documents were not required to be uploaded alongwith the online application.

10. Neither the Commission nor the State disputes that respondent No.1 is in fact a dependent of an Ex-serviceman and that in his application, he had not only claimed himself to be so, he had also applied for consideration of his candidature under the ESM category. It is further the admitted position that at the time of his interview, respondent No.1 had produced all the required certificates in original which were all dated prior to the last date to apply.

11. In the light of the afore facts and the terms of the advertisement, the State could have not terminated the services of respondent No.1 which is what has been held through the impugned judgment by the learned Single Judge.

12. Even otherwise, since respondent No.1's final score was 186 marks which was admittedly much higher than the last person appointed as a Clerk in the general category, even if respondent No.1 could not have been considered under the ESM category, the State could and should have



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considered his candidature under the General Category and not resorted to terminate his services especially when the State chose to terminate respondent No.1’s services after he had put in unblemished service of three years and had also cleared the period of his probation.

13. Dismissed.

(DEEPAK SIBAL)
JUDGE

(LAPITA BANERJI)
JUDGE

25.11.2024
D.Bansal

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