



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237 (8 cases)

CWP-33501-2018 (O&M)
Date of Decision: 18.03.2025

Sunil Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

With

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-1997-2019	Murari Lal and another	State of Haryana and others
3.	CWP-10393-2019	Anil Kumar	State of Haryana and others
4.	CWP-10420-2019	Ashok Kumar	State of Haryana and others
5.	CWP-16258-2020	Bijender	State of Haryana and others
6.	CWP-5072-2022	Vikas @ Vikash Saini	State of Haryana and others
7.	CWP-5820-2019	Jitender and others	State of Haryana and others
8.	CWP-6037-2019	Subash Chander	State of Haryana and others

Present: - Mr. G.S. Gopera, Advocate for the petitioner(s)
(in all petitions except CWP-5820-2019)

Mr. Diwan S. Adlakha, Advocate for the petitioners
(in CWP-5820-2019)

Ms. Shruti Jain Goyal,
Senior Deputy Advocate General, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-33501-2018*.



2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to the respondents to allot him constabulary number against unfilled vacancies under Ex-Servicemen BC(B) Category.
3. The petitioner, pursuant to advertisement, applied for the post of Constable under BC(B) Category. The posts were advertised District-wise. He appeared in the written test. On the basis of his result, he was directed to appear before the Recruitment Board at Bhiwani. He passed Physical Screening and Measurement Test. His name figured in the waiting list at Serial No.3 in his category.
4. There were 21 seats ear-marked for Ex-Servicemen [BC(B) Category]. The respondent could select 5 candidates under Ex-Servicemen [BC(B) Category]. The respondent issued instructions dated 02.07.2010 (Annexure P-7) whereby it was clarified that unfilled posts of Ex-Servicemen would be utilized for the selection of candidates belonging to same category e.g. ESM (SC) posts would be utilized for SC category. Relevant extracts of instructions dated 02.07.2010 are reproduced as below:-

“I am directed to invite your attention towards Government Letter No.22/15/92-3GS-III dated 26.07.2001 which inter alia provide 14% horizontal reservation for ESM category in direct recruitment in Group ‘C’ and ‘D’ categories as detailed below: -

Sr. No.	Category	Percentage of Reservation	
1.	S.C. ‘A’	1% for ESM	(presently there is no bifurcation in SC category
2.	S.C. ‘B’	1% for ESM	
3.	B.C. ‘A’	2% for ESM	
4.	B.C. ‘B’	3% for ESM	
5.	General Category	7% for ESM	



It has been brought to the notice of the Government that while making recruitment under ESM category, most of the vacancies of direct quota remain unfilled due to non availability of eligible ESM/DESM candidates. Due to this reason Department has to undertake fresh process of recruitment.

The matter has been reconsidered by the Government. The horizontal reservation is a smaller compartment within the bigger compartment of vertical reservation. It has, therefore, been decided that in case no candidate is found suitable for appointment even on re-advertisement, the vacancies reserved for ESM of a particular category will be filled up from amongst the same category candidates. For example, if suitable candidate belonging to Scheduled Castes of ESM category is not available, then the post can be filled up from amongst the candidates of Scheduled Castes. The same position shall be followed in other categories.

These instructions should be brought to the notice of all concerned for strict compliance.”

5. In the light of afore-cited instructions, many candidates approached this Court and their petitions came to be allowed. They were permitted to join. The respondent filed Intra-Court Appeals against orders passed by Single Judge. A Division Bench of this Court has dismissed Intra-Court Appeals, thus, different orders passed by Single Benches have attained finality.

6. Mr. G.S. Gopera, Advocate submits that case of the petitioner is squarely covered by order dated 14.01.2016 (Annexure P-8) passed by this Court in ***Dharambir Singh and others v. State of Haryana and others, CWP No.24503 of 2015***. The respondent had filed Intra-Court Appeal against the said order which stands dismissed. The instant petition remained pending for more than 5 years on account of pending Intra-Court Appeal



before the Division Bench. The similarly situated candidates have been issued appointment letter from 2016 onwards, thus, it would be discriminatory if the petitioner is denied appointment.

7. Ms. Shruti Jain Goyal, Senior Deputy Advocate General, Haryana submits that it is factually correct that case of the petitioner is squarely covered by order dated 14.01.2016 passed by this Court in ***Dharambir Singh (supra)***, however, submits that the petitioner has approached this Court in the year 2018 and selection process was completed in 2012-13 which had commenced in 2008. The claim of the petitioner is badly hit by principle of delay and laches. The instant petitions need to be dismissed on the ground of delay and laches.

8. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

9. From the perusal of afore-cited instructions dated 02.07.2010, it is evident that petitioner was eligible for the post of Constable because he belongs to BC(B) Category and seats reserved for ESM BC(B) Category could not be filled up. The case of the petitioner is also squarely covered by different orders passed by this Court including order dated 14.01.2016 passed in ***Dharambir Singh (supra)***. The respondent is raising objection of delay and laches. There is substance in the said argument but claim of the petitioner cannot be turned down because respondent, in view of instructions dated 02.07.2010 and order dated 14.01.2016 passed by this Court, was bound to extend benefit to all the candidates irrespective of their approaching this Court. The respondent is equally responsible. Claim of petitioners deserves to be entertained.



10. The petitioners are claiming post of Constable. Physical/mental fitness is of paramount consideration for Police Force. The minimum age prescribed for the post of Constable was 17 years and maximum 25 years (5 years relaxation to reserved category). The petitioners at present are more than 35 years old. They may not be physically/mentally fit for the post, thus, to maintain balance and achieve object of prescription of physical fitness, this Court finds it appropriate to direct the respondent to conduct physical fitness test of all the petitioners and if they are found fit, they be issued appointment letter. This exercise shall be completed within three months from today.

11. As conceded by Mr. G.S. Gopera and Mr. Diwan S. Adlakha, counsel for petitioners, the date of joining of the petitioners shall be date of their appointment for all intent and purposes (service benefits). It is hereby further made clear that petitioners would be considered against posts which had remained vacant under Ex-servicemen Category and were advertised vide advertisement dated 21.07.2008.

12. Allowed in above terms.

13. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

18.03.2025
Mohit Kumar

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