

(2010) 11 P&H CK 0429

In the Punjab And Haryana At Chandigarh

Case No : LPA No. 555 of 2010 in C.W.P. No. 17276 of 2009

Ashwani Kumar Kaushik and Another

APPELLANT

Vs

Haryana Public Service Commission and Others

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Constitution of India, 1950 — Article 16(4), 16(4A), 335

Citation : (2011) 2 ILR (P&H) 132

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of L.P. A. Nos. 555 and 556 of 2010, which have been preferred under Clause X of the Letters Patent against the common judgment dated 5th April, 2010 rendered by the learned Single Judge in a bunch of petitions. The primary question raised in these appeals is "whether the expression "reserved categories" used in the advertisement date 3rd June, 2009 would include, other categories like Ex-servicemen or Physically Handicapped belonging to the State of Haryana apart from Scheduled Castes and the Scheduled Tribes". The learned Single Judge has taken the view that it would not include any of the aforesaid classes except Scheduled Castes/Scheduled Tribes.

2. The undisputed facts as noticed from L.P.A. No. 555 of 2010 are that on 3rd June, 2009 the Haryana Public Service Commission (for brevity, "the Commission" issued an advertisement, advertising various posts of Assistant Engineer (Electrical), Assistant Engineer (Electronics), Assistant Engineer (Mechanical) and Assistant Engineer (Civil), which were lying vacant in the Haryana Power Generation Corporation Limited (HPGCL), Uttar Haryana Bijli Vitran Nigam Limited (UHBVN), Haryana Vidyut Parsaran Nigam Limited (HVPNL), and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL). In the table depicting the number of vacancies, the posts were shown under the

categories of (i) General; (ii) Scheduled Caste of Haryana; (iii) Backward Classes of Haryana; (iv) Ex-servicemen of Haryana; and (v) Physical Handicap of Haryana. The following essential qualifications were prescribed for the posts of Assistant Engineer (Electrical) and Assistant Engineer (Electronics):

1. Assistant Engineer (Electrical):

(i) Bachelor of Engineering Degree in Electrical/Electrical and Electronics or equivalent qualifications from any Indian/ Foreign University/Institution duly recognised by All India Council for Technical Education/Association of Indian Universities with minimum 60% marks (55% marks for SC of Hry).

(ii) Hindi or Sanskrit up to Matric.

2. Assistant Engineer (Electronics):

(i) Bachelor of Engineering Degree in Electronics/Electronics and Communication/ Electronics and Tele-communications/ Electronics and Electrical Communications/ Electronics and Instrumentation or equivalent qualifications from any Indian/ Foreign University/Institution duly recognised by All India Council for Technical Education/Association of Indian Universities with minimum 60% marks (55% marks for SC of Hry).

(ii) Hindi or Sanskrit up to Matric.

3. As per Note-I given in the advertisement the Ex-servicemen candidates were also required to possess Bachelors' degree as specified against each post. Under Note-11 it was stipulated as under:

Note:-II:

The prescribed essential qualifications are minimum and mere possession of the same does not entitle a candidate to be called for the interview. Where the number of applications received in response to advertisement is large and it will not be convenient or possible for Commission to interview all these candidates, the Commission may restrict the number of candidates for interview to a reasonable limit on the basis of qualification and experience higher than the minimum prescribed in the advertisement or by holding screening test or any method devised by the Commission.

4. It is conceded position that all the petitioner-appellants belong to the Ex-servicemen category. They all have secured less than 60% marks in their degree course of AMIE. For Scheduled Caste category there are relaxed standard as per advertisement. If Ex-servicemen are considered in reserved category then they are eligible because they have 55% or more marks. Appellant Nos. 1 and 2 in L.P.A. No. 555 of 2010 possess AMIE degree in Electrical Engineering and Electronics and Communication Engineering with 56% and 57% marks respectively, whereas the appellant in L.P.A. No. 556 of 2010 possess AMIE degree in Electrical Engineering with 57.36% marks. The said degrees are undisputedly equivalent to degree of Bachelor of Engineering.

5. The appellants applied in response to the said advertisement under the category of Ex-serviceman. The grievance of the petitioner-appellants is that their candidature has not been considered against the reserved posts of Ex-serviceman category because they do not possess the degree with 60% marks. Accordingly, the petitioner-appellants filed C.W.P. Nos. 17276 and 17372 of 2009. A number of other petitions were also filed by similarly situated candidates. The learned Single Judge dismissed the writ petitions by a common order dated 5th April, 2010. In para 14 of the judgment, learned Single Judge has observed as under :

14. The petition in C.W.P. No. 17276 of 2009 relates to candidates who had AMIE, which is equivalent to engineering degree but the ineligibility of the petitioners arises by the fact that they did not have minimum marks of 60% necessary in that course. The AMIE candidates have though less than 60% marks, have more than 55% marks and the contention is that by an office order, which was issued by the Haryana Power Generation Corporation on 26th August, 2003, the qualification for direct appointment had been fixed at 60% for General Category and 55% for reserved category candidates. The advertisement, which had been issued subsequently by the Public Service Commission provided for relaxation up to 55% marks only to Scheduled Castes of Haryana and excluded from its purview other reserved categories. Learned Counsel appearing on behalf of the Public Service Commission would contend that the advertisement had been issued as per the requisitions made by the prospective employers and if they had themselves provided for the minimum of 60% marks for General Category and provided for relaxation only for Scheduled Castes category, it shall not be permissible for the Public Service Commission to make unilateral relaxation of such condition by reference to office order issued by the Haryana Power Generation Corporation. While a provision for relaxation of minimum marks for reserved category could be legally permissible (see *Haridas Parsedia Vs. Urmila Shakya and Others*, , in my view, the provision for relaxation relating to educational qualification itself is not in any way an enforceable right unless it is specifically provided by the employer. Hypothetically, if an employer chooses not to provide for any relaxation of marks with reference to even a reserved category, it cannot be said to be arbitrary. The reservation shall be only for number of posts and need not to provide for relaxation of marks, unless there is a specific directive by any government notification. The petitioners cannot have, therefore, the benefit of the office order dated 26th August, 2003 also.

6. Mr. R. K. Malik, learned senior counsel for the petitioner-appellants has made a reference to the advertisement advertising the posts of Assistant Engineers (Electrical/Electronics etc.) and has pointed out that wherever an organisation where the vacancies are being filled, did not intend the inclusion of other classes like the Ex-servicemen they have clarified the position by issuing notification amending the Punjab State Electricity Board Service of Engineers (Electrical) Recruitment Regulations, 1965 (as applicable to organisation like the HPGCL, UHBVNL, HVPNL and DHBVNL). In support of his submission, Learned Counsel

has placed reliance on a notification dated 23rd April, 2007, issued by the HPGCL clarifying that the criteria for benefit of 55% minimums qualifying marks for direct recruitment of Assistant Engineers would be confined only to Scheduled Castes candidates. Accordingly, the aforesaid clause for the HPGCL has to be read in the light of the clarification. Mr. Malik further submitted that wherever they did not intend exclusion of other classes like Ex-servicemen, no clarification was made by issuing notification. In that regard Learned Counsel has placed reliance on the notification dated 7th August, 2009 issued by the DHBVNL, notifications dated 3rd June, 2009 and 9th January, 2006 issued UHBVNL. The argument of Mr. Malik appears to be that there is legislative intendment to include Ex-servicemen in the expression "reserved category" for the purposes of granting benefit of 55% minimum qualifying marks for direct recruitment to the post of Assistant Engineer and, therefore, the petitioner-appellants who have 55% or more than 55% marks but less than 60% marks meant for General category, would qualify and a direction deserves to be issued in their favour. Mr. Malik further argued that six posts are lying vacant i.e. 1 post in DHBVNL, 2 posts in HPGCL and 3 posts in HVPNL and, therefore, by applying the relaxed standard these posts should be offered to the petitioner-appellants.

7. Mr. Narender Hooda, Learned Counsel for the DHBVNL, HPGCL and HVPNL has pointed out that the expression "reservation" has to be interpreted by referring to the provisions of Article 335 of the Constitution especially in terms of providing relaxed standards for the "reserved category". In order to buttress his stand, Learned Counsel has pointed out that Article 16(4) of the Constitution deals with "reservation" in matters of appointment whereas Article 335 deals with matter concerning relaxation in qualifying marks in any examination or lowering the standard of evaluation. Mr. Hooda has drawn our attention to the Statement of Objects and Reasons for which 82nd Amendment was made in the Constitution incorporating proviso to Article 335. A persual of the State of Objects and Reasons shows that the proviso to Article 335 was added on account of the judgment delivered in by Hon"ble the Supreme Court in the case of S. Vinod Kumar and Another Vs. Union of India (UOI) and Others, . The reason which necessiated the amendment in the Constitution was that there was no relaxed standard provided by Article 335 even for the members of the Scheduled Castes/Schedule Tribes and the judgment in S. Vinod Kumar's case (supra) interpreted Article 335 of the Constitution to mean that the State was not competent to provide any relaxed standard for any members of the Scheduled Caste/Scheduled Tribe. By the Constitution (Eighty-second Amendment) Act, 2000, proviso was added to Article 335 enabling the States or the Union of India to provide for relaxation in qualifying marks in any examination or lowering the standard of evaluation for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State. Mr. Hooda has also clarified that he was relying on the proviso for the purposes of showing which categories of candidates could be regarded as "reserved category" candidate although the provision talks of relaxation in

matters of promotion. According to Learned Counsel it would include only members of Scheduled Castes/Scheduled Tribes and it would not include Ex-servicemen. Therefore, he has argued that the expression "reserved categories" would not in any case include the appellants. The proviso reads thus :

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

8. The submission made by Mr. Hooda appears to be that there is no possibility to include the Ex-servicemen in the reserve category of Scheduled Caste for the purpose of providing relaxation in qualifying marks in any examination or lowering the standard of evaluation except as provided in proviso to Article 335 of the Constitution. He has submitted that the proviso if applied to the advertisement as well as the notifications issued by various Nigams/Corporations for the purpose of reservations have to be read to mean that no category other than the members of the Scheduled Caste/Scheduled Tribe would be covered by the expression "reserved category".

9. Mr. H. N. Mehtani, Learned Counsel for the Commission has supported the view adopted by the learned Single Judge in para 14 of the judgment. Learned Counsel has argued that a candidate cannot claim relaxation of educational qualification or percentage of marks as a matter of right unless he is covered by a piece of legislation or by process of interpretation such a conclusion is reached by the Court.

10. We have heard Learned Counsel for the parties and perused the paper book with their able assistance.

11. Having heard Learned Counsel and after persual of the impugned judgment rendered by the learned Single Judge we are of the considered view that in the absence of specific provision made in the statute, no candidate belonging to any category could be extended the benefit of relaxed standards in public appointments. Hon"ble the Supreme Court in S. Vinod Kumar's case (supra) has quoted the judgment of a Constitution Bench of Hon"ble the Supreme Court rendered in Indira Sawhney v. Union of India (1992) Suppl 3 S.C.C 217., to hold that it was permissible to prescribe lesser qualifying marks or evaluation for Other Backward Classes, Scheduled Castes and Scheduled Tribes, if it is consistent with the efficiency of administration and the nature of duties attaching to the office concerned in the matter of direct recruitment. But such a course was not permissible in the matter of promotion because there was no enabling provision in Article 335 of the Constitution etc. Those judgments rendered in S. Vinod Kumar's (supra) and in Indira Sawhney's case (supra) have dealt with reserved categories of Scheduled Castes and Scheduled Tribes only but there is no scope for extending the same benefit for the members of Ex-servicemen like

the appellants before us, either in direct recruitment or in matters concerning promotion. The argument of Mr. Narender Hooda is meritorious and it could be accepted only to this extent that the members of any other categories (except OBC/SC/ST) could not be extended the benefit of relaxed standards because Article 16(4), 16(4A) and 335 after 82nd Amendment only talks of granting such concession to the members of Scheduled Castes/Scheduled Tribes in matters of direct recruitment and promotions. It is doubtful if the legislature could extend any such benefit to any other class like Ex-servicemen or Physically Handicapped candidates. However, in the present case there is no express provision in regard thereto. Even the provisions in Article 16(4) and 16(4A) read with Article 335 are merely enabling provisions which expressly clothed the State to provide for such reservation or relaxation in favour of specified class alone. If the State has not made a provision for reservation then no mandamus could be issued compelling the State to enact any such law. In the absence of any express provision the question to include Ex-serviceman in the reserved category would not even arise. Therefore, the argument of Mr. Malik that the expression "reserve category" used in the advertisement should be interpreted to include Ex-servicemen or Physically Handicapped, cannot be accepted.

12. We further find that on the other aspect that the relaxation cannot be claimed as a matter of right as learned Single Judge has rightly opined, on the basis of judgment of Hon"ble the Supreme Court rendered in the case of Haridas Parsedia Vs. Urmila Shakya and Others, . Therefore, we affirm the view taken by the learned Single Judge.

13. As a sequel to the aforesaid discussion, these appeals fail and are accordingly dismissed. A photocopy of this order be placed on the file of connected case.