
(2016) 01 P&H CK 0152
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24503 of 2015 (O&M)

Dharambir Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 2 RSJ 473 : (2016) 2 SCT 159

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Samarvir Singh, DAG, Haryana, for the Respondent

Final Decision : Disposed off

Judgement

Ritu Bahri, J. - The petitioners have filed present writ petition seeking a writ of certiorari to quash the order dated 9.10.2015 (Annexure P-9) by which the claim of the petitioners, for appointment as Constables, who have been selected in the waiting list of SC and BCA Category qua the posts of Ex-Servicemen SC Category and BCA category remained vacant due to non availability of the candidates of Ex- Servicmen SC Category and BCA Category has been rejected.

2. The Police Department, Haryana had advertised 5456 post of Constables. Pursuant to the said advertisement, petitioners no. 1 and 2 belonging to SC category and petitioners no. 3 to 8 belonging to BCA Category applied for the said posts. After interview of the candidates, the result was declared in the month of January 2012 and appointment of the candidates were made from April 2012 onwards. The petitioners belonged to District Jind and the total post of Ex-servicemen category were as under:

Ex-servicemen SC -

14 posts

Ex-servicemen BC-A -

14 posts

Ex-servicemen BC-B -

21 posts

Ex-servicemen General -

54 posts

After declaration of the result, 12 posts of Ex-servicemen SC category and 12 posts of Ex-servicemen BC category remained vacant due to non-availability of the candidates.

3. As per Instructions dated 20.7.1995 (Annexure P-1), in Haryana, the posts meant for Ex-servicemen and sports persons are horizontal in nature. As per instructions dated 7.10.2008 (Annexure P-2), Chief Secretary has clarified that if the candidates of horizontal reservation are not available then the posts will go to the main category. As per instructions dated 2.7.2010 (Annexure P-3), the Haryana Govt. had issued instructions on 2.7.2010 that if posts meant for Ex-servicemen SC or BCA category remained vacant due to non-availability of the candidates, the same may be filled up from the candidates of the waiting list of the main category i.e SC or BCA. A further clarification was issued by the Chief Secretary that posts meant for ESM, SC/BC/General category be filled up from the main category of SC/BC/General Category. The copy of the clarification dated 4.4.2014 to this effect is attached as Annexure P-4

"2. It is intimated that the General Administration Department has decided in principle to amend the instructions dated 2.7.2010 to the extent that in case no suitable candidate is found for appointment against the vacancies reserved for ESM (SC/BC/General) there is no need to re-advertise the vacancy and the same will be filled up from the main category i.e SC BC or General category respectively. Administrative Department is further advised that the appointments in question be made after the Model Code of Conduct is over."

4. The petitioners approached respondents in the month of February 2012 and thereafter filed CWP No.18061 of 2014 which was heard along with CWP No. 16426 of 2013 and both the writ petitions were disposed of on 3.8.2015 (Annexure P-8) by giving directions to the respondents to consider the claim of the petitioners in the light of the judgment of this Court in the case of Garima Jindal v. Haryana Vidyut Parsaran Nigam Ltd. and another (CWP No. 13384 of 2011 decided on 6.8.2012). The respondents rejected the claim of the petitioners vide order dated 9.10.2015 (Annexure P-9).

5. On notice, the respondents have filed a written statement. Reference has been made to Haryana Govt. Instructions issued vide letter No. 22/10/2013-1 GS-III dated 15.7.2014 (Annexure R-1) wherein it has been mentioned that "in case of the class-II, III, and IV posts of scheduled caste category, no de-reservation is allowed and all unfilled vacancies will be carried forward to be filled up in future

recruitment. In case of all others reserved categories, if attempt of recruitment failed to get eligible candidates, these posts shall be dereserved and will be filled up in the subsequent recruitment process from General Category on merit, if no eligible candidate from these reserved categories is available in the subsequent recruitment process also. Such de-reservation will be permanent and no recouping of posts will be done in case of such de-reservation". Pursuant to Instructions (Annexure R-1), the Director General of Police, Haryana has decided to sent fresh requisition for filling up the remaining unfilled posts of ESM category. After the recruitment process of the petitioners the vacancies of ESM category left vacant due to non-availability of candidates, were again sent to Haryana Police Recruitment Board by sending requisition of 1347 posts against which 1111 candidates of ESM categories were recommended by the Board have been offered appointment letter and all the selected ESM candidates have been appointed. Thereafter a revised requisition for filling up 1000 posts of male constables exclusively under the ESM categories has been sent to Haryana Staff Selection Commission which has been advertised by the Commission on 19.7.2015 (Annexure R-2) and the recruitment process is going on. No post for ESM category remained left behind after recruitment of 1111 candidates and sending requisition for filling up 1000 posts. As per the stand taken in the written statement by the respondents, the claim of the petitioners is not covered under the Government Instructions and is liable to be dismissed. It was further stated in the written statement that the order dated 9.10.2015 (Annexure P-9) was passed after giving a personal hearing to the petitioners. The claim of the petitioners is not covered under the Government Instructions as well as Garima Jindal's case (supra).

6. I have heard counsel for the parties at length.

7. In Garima Jindal's case (supra), petitioner was a General Category candidate, and had participated in the selection process for the post of Junior Accountant. She was at no.1 in the waiting list and all the General category candidates in the merit above the petitioner had been appointed. Three posts of ESM General Category on the basis of horizontal reservation were still lying vacant and the petitioner was at Sr. No.1 of the waiting list in General Category. The writ petition was allowed vide order dated 6.8.2012 and the petitioner Garima Jindal was held entitled to be considered for appointment as Junior Accountant in the General Category for the post which could not be filled which was reserved for ESM category. An LPA against this order was dismissed by this Court vide its order dated 9.11.2012(Annexure P-6) and the SLP against the order dated 9.11.2012 was also dismissed by Hon"ble the Supreme Court vide its order dated 23.9.2013 (Annexure P-7).

8. The ratio of the above said judgment is directly applicable to the facts of the present case. The petitioners belonging to SC and BCA categories had a right to be appointed on the posts which were reserved for ESM, SC and BCA category which remained unfilled due to non availability of candidates. As per clarification

issued by the Chief Secretary dated 4.4.2014 (Annexure P-4), posts meant for ESM, SC/BC/General category be filled up from the main category of SC/BC/General Category. There was no need to re-advertise the vacancies and the same were to be filled from the SC/BC/General Category candidates respectively. The benefit of clarification (Annexure P-4) cannot be denied to the petitioners.

9. The respondents in the written statement have not denied that after the selection process was completed, 12 posts of Ex servicemen SC category and 12 posts of Ex-servicemen BC category remained vacant due to non-availability of the candidates. Hence, even if the Director General of Police has filled up subsequently 1111 post of ESM category by initiating recruitment process, the claim of the petitioners which was covered by the Instructions (Annexures P-3 and P-4) could not have been rejected by the impugned order dated 9.10.2015 (Annexure P-9).

10. The case of the petitioners is squarely covered by the decision of this Court in Garima Jindal's case (supra), wherein it has been held that the vacant posts are to be filled up from the candidates kept in the waiting list of General Category or from BCA category because of horizontal reservation. The ratio laid down in Garima Jindal's case (supra) has been applied by a Co-ordinate Bench of this Court in CWP No. 14823 of 2011 (Mukesh Kumar and others v. State of Haryana and others) decided on 26.5.2014.

11. In view of the facts as mentioned above, the present petition is disposed of with a direction to the respondents to consider the claim of the petitioners in view of the decision of this Court in Garima Jindal's case (supra) keeping in view their respective merit in the waiting list and necessary orders be passed within a period of two months from the date of receipt of certified copy of this order.