

(2012) 05 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9168 of 2012

Gurjinder Singh Gill and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 168 PLR 483

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : Sunil Kumar Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

T.P.S. Mann, J.—In this writ petition filed under Article 226 of the Constitution of India, the petitioners have challenged the notification dated 2.2.1982 (Annexure P-3) issued by respondent No. 1 on the basis of which the respondent-Commission has declared the petitioners not qualified in the main examination being conducted by the Commission for filling up different posts by way of Punjab State Civil Services Combined Competitive Examination, 2009. Directions have also been sought to the respondent-Commission to modify/correct the result of Ex-serviceman (Lineal Descendent Ex-servicemen Category Code 73) declared on 27.4.2012 vide which the candidates who are lineal descendants of Ex-servicemen have been totally ignored. Vide advertisement dated 26.11.2009 (Annexure P-1), the respondent-Commission invited applications for the posts of PCS(Executive Branch), DSP, ETO, Tehsildar, Food Supply and Consumer Affairs Officer, BDPO, Assistant Registrar Cooperative Societies, Labour and Reconciliation Officer and Employment Generation and Training Officer in the Government of Punjab. The advertisement initially provided for conducting of examination in two stages; firstly by preliminary competitive examination and thereafter main competitive examination (written and viva-voce). As per notification dated 2.2.1982 (Annexure P-3) issued earlier by the Government of

Punjab, 13% of vacancies to be filled in by direct appointment in all the State Civil Services have to be reserved for being filled in by recruitment of Ex-serviceman and where an Ex-serviceman is not available for recruitment against a reserved vacancy, such a vacancy has to be filled in by recruitment of the wife or one dependent child of an Ex-serviceman.

2. The plea of the petitioners is that while declaring the result of the preliminary competitive examination, the respondent- Commission prepared two lists, one of Ex-serviceman (ESM), Punjab, Category 72 which list included 119 candidates whereas the second list of Lineal Descendent Ex-servicemen, Punjab Category 73 contained the roll numbers of only 48 candidates. As a result of the preliminary examination, petitioner No. 1 secured 224 marks while petitioner No. 2 secured 302 marks. Both of them being eligible were issued roll numbers for the main competitive examination and they appeared in the same which was held from 14.9.2011 to 10.10.2011. When the result of the main examination was declared on 27.4.2012, the petitioners were surprised to find that only the result of Ex-servicemen Category Code 72 was declared whereas no result of Lineal Descendent Ex-servicemen Category Code 73 was declared. The petitioners thereafter, learnt that as per the terms and the conditions laid down in the brochure, candidates belonging to Lineal Descendent Ex-servicemen Category were to be considered for appointment only if the candidates from the Ex-servicemen category were not available. According to the petitioners, once the respondents had made separate categories for Ex-servicemen and Lineal Descendent Ex-servicemen, then the candidates belonging to Lineal Descendent Ex-servicemen Category could not have been ignored especially when the candidates from their category as well as the candidates from the category of Ex-servicemen had reached that stage by participating in a tough competition. The requirement of the candidates applying under the Lineal Descendent Ex-servicemen Category to be considered for filling up vacancy only in the event of the candidates from the Ex-servicemen category being not available as laid down in Annexure P-3 is discriminatory and arbitrary in nature.

3. Having heard the learned counsel for the petitioners, we do not find any merit in the writ petition.

4. While framing the Punjab Recruitment Ex-servicemen Rules, 1982 vide notification dated 2.2.1982 (Annexure P-3), 13% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab were reserved for being filled in by recruitment of Ex-servicemen. It was also provided that where an Ex-servicemen is not available for recruitment against the reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependent child of an Ex-serviceman. It is, thus, clear that the preference had to be given to an Ex-serviceman, who had actually served the nation by joining the Armed Forces of the Union. Only in the event of an Ex-serviceman being not available, the unfilled vacancies were to be filled in by recruitment of either the wife or one dependent

child of an Ex-serviceman. Knowing fully well that for filling up of 13% of vacancies by direct recruitment, preference had to be given to the Ex-servicemen, the petitioners had filled in their respective forms. Though they had cleared the preliminary competitive examination and had, accordingly, appeared in the main examination as well yet after the main examination there were already sufficient numbers of candidates belonging to Ex-servicemen Category, who could be called by the Commission for filling of the vacancies reserved for them. In such a situation, if no Lineal Descendent Ex-servicemen candidate is called for appointment, he or she cannot have a valid grouse. Rather, the recruitment by giving preference to Ex-servicemen Category is in line with the Constitutional scheme of reserving adequate numbers of seats for them in various civil services. Only in the event of the candidates from Ex-servicemen Category being not available that the candidates belonging to Lineal Descendent Ex-servicemen Category have to be called. In view of the above, there is no merit in the writ petition which is, accordingly, dismissed.

Sd/- Satish Kumar Mittal, J.