

(2013) 08 P&H CK 0724
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7274 of 1993 (O and M)

Gurmeet Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0724

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : G.S. Bal, for the Appellant; Sushant Maini, DAG Punjab, for the Respondent

Final Decision : Allowed

Judgement

Ajay Tewari, J.—way of this writ petition, the petitioner has challenged the action of respondent No. 3 in cancelling the certificate of dependent of ex-serviceman, and the action of respondent No. 2 in not considering the petitioner as a dependent of ex-serviceman for the post of Lecturer in Physics. The admitted facts are that the petitioner is the son of an ex-serviceman. By an advertisement dated 13.7.1991, 187 posts of Lecturers in Punjab Education Services (Class II) (College Cadre), were advertised, out of which 17 posts were in the subject of Physics. Out of the total number of posts, 28 posts were reserved for ex-servicemen/dependents of ex-servicemen and in the subject of Physics, 2 posts were reserved for the said category. The petitioner applied for and was granted a certificate of dependent of ex-serviceman dated 9.11.1992 (Annexure P-3). However, that certificate was subsequently cancelled on 3.3.1993 by the issuing authority viz respondent No. 3. No appointment of any ex-servicemen/dependent of ex-serviceman candidate was made to the post of Lecturer in Physics and the petitioner was considered as a general category candidate and was not selected.

2. The relevant rules on the point are the Punjab Recruitment of Ex-Servicemen Rules, 1982 and more particularly rule 4 thereof, a relevant portion of which is quoted herein below :-

4. Reservation of Vacancies-(1) Subject to the provision of rule 3, 14% of vacancies to be filled in by direct appointment in all the State Service and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of ex-servicemen.

Provided that where an ex-servicemen is not available for recruitment against a 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, who has neither been recruited against a reserved vacancy under these rules;

Provided further that the wife or the dependent child of the ex-servicemen shall be recruited against the reserved vacancy subject to the conditions that :-

(i) he or she possesses the prescribed qualifications and is within the prescribed age limits; (ii) he or she is not already in service; (iii) he or she will be eligible to avail the benefit of recruitment against the reserved vacancy only once in life.

3. Counsel for the petitioner has argued that once there was no ex-serviceman candidate available for the post of Lecturer in Physics, the petitioner's certificate could not have been cancelled and he could not have been denied consideration as the dependent of ex-serviceman.

4. In reply, respondent No. 3 has stated that as per the instructions (Annexure R-1), certificate of dependent of ex-serviceman could be issued only in the case when a recruiting authority, in the absence of any eligible ex-serviceman, made a request for the same, and since in the present case, the recruiting authority did not make any such request the certificate was rightly cancelled. The stand of the recruiting authority viz respondent No. 2-Punjab Public Service Commission (PPSC) is that though they admit that there was no eligible ex-serviceman candidate for the post of Lecturer in Physics yet it was for the appointing authority to have made a request in this regard from respondent No. 3.

5. Counsel for the petitioner has pointed out the anomaly in the two stands (with respondent No. 3 claiming that the request had to be made by the recruiting authority and respondent No. 2 claiming that such a request had to be made by the appointing authority) and the fallacy of the stand of respondent No. 2.

6. I have perused the instructions of the State of Punjab

(Annexure R-1), a relevant portion of which states very clearly to the following effect :-

3. The certificate will be issued only when the recruiting authority has sought.....

7. Resultantly, it has to be held that when the recruiting authority i.e. the PPSC found that there was no eligible ex-serviceman candidate for the post of Lecture in Physics, it was incumbent upon it to have made a request for certification of dependent and made the selection thereafter. It is not disputed that the petitioner was otherwise eligible (because if that was not the case, he could not have been considered among the general candidates as pleaded by respondent

No. 2). In the circumstances, the exclusion of the petitioner from the reserved category of dependents of ex-servicemen in which admittedly he was the only candidate has to be held to be illegal. Consequently, the petitioner is entitled to a declaration that he should have been appointed pursuant to that selection. When this writ petition came up for hearing, the following order was passed :-

Notice of motion for September 2, 1993.

In the meantime, one post of Lecturer in Physics shall be kept reserved to accommodate the petitioner, in case his petition succeeds.

8. Counsel for the petitioner has informed the Court that just yesterday when he telephonically contacted the petitioner to tell him that the matter was likely to be heard, the petitioner informed him that he had been appointed in the subsequent selection in the year 1993.

9. In the circumstances, it is directed that the petitioner shall get seniority and all consequential benefits of having been appointed pursuant to the selection of 1991 except arrears of pay for the period he remained out of job. Consequently, this writ petition is allowed. Let necessary exercise of re-fixation of seniority and pay on account of retrospective notional appointment be completed and benefits be released to the petitioner within six months from the date of receipt of a certified copy of this order. No order as to costs.