

(2011) 08 P&H CK 0146
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14137 of 2010

Hoshiar Singh

APPELLANT

Vs

Haryana Vidhut Parsharan Nigam Ltd.

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2011) 08 P&H CK 0146

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Hoshiar Singh has filed the instant writ petition assailing order 28.6.2010, Annexure P/5 passed by Respondent Haryana Vidhut Parsharan Nigam Ltd. (HVPNL) thereby rejecting the claim of the Petitioner for appointment as Shift Attendant (SA).

2. Advertisement was issued on 2.3.1992 for post of Assistant Linemen (ALM) and Shift Attendants (SAs). Selection made pursuant thereto was quashed by this Court and direction was issued to make fresh selection after fresh advertisement. Accordingly, fresh advertisement was issued on 4.3.1996. Selection made pursuant thereto was challenged by filing various writ petitions which were disposed of vide order dated 3.12.2008, Annexure P/1. Operative part thereof is reproduced hereunder:

In the circumstances, I direct the Respondent-Board to consider for appointments atleast 336 reserved category candidates for the posts of Assistant Linemen and 75 reserved category candidates for the posts of Shift Attendants from amongst the candidates of reserved category who may have been ousted as a result of wrongly appointed in reserve category, even those reserved category candidates who were entitled for appointment on the basis of their merit even in the general category, and offer appointments to reserved candidates, as per the merit list prepared at that time, out of the posts, which are admittedly lying

vacant even today. It is further clarified that any such candidates who are appointed as a result of this exercise would not be entitled to receive any back-wages but would be entitled to all other consequential benefits. In view of the admitted fact about the existence of vacancies, I further hold that it would not be in the interest of justice to displace those general category candidates who may have been given appointments because of the illegal ouster of reserved category candidates since they have now been in service for the last 11 years and No. fault can be found with them. The entire exercise will be conducted by the Respondent-Board (or its successors) within a period of four months from the receipt of a certified copy of this order.

3. Pursuant to the aforesaid order, appointment was offered to 336 candidates as ALM and 75 candidates as SA. Out of it, five candidates at Sr. Nos. 55 to 59 of the merit list were offered appointment as SA in SC "B" category. Out of those five candidates, two candidates at Sr. Nos. 56 and 57 did not join. The Petitioner made claim for appointment to one of the said posts being at Sr. No. 60 in the merit list. The said claim has been rejected vide impugned order Annexure P/5 which has been impugned by filing the instant writ petition.

4. I have heard learned Counsel for the parties and perused the case file.

5. Learned Counsel for the Petitioner vehemently contended that pursuant to order Annexure P/1, five candidates in SC "B" category were offered appointment as SA but two of them have not joined and therefore, the Petitioner being next in the merit list is entitled to appointment as such.

6. On the other hand, learned Counsel for the Respondent contended that order Annexure P/1 has been complied with by offering appointment to requisite number of candidates of reserved category and even if some candidates out of them did not join, the next in the merit list would not be entitled to appointment. Reliance in this regard has been placed on judgment of Hon"ble Supreme Court in S.S. Balu and Another Vs. State of Kerala and Others, .

7. I have carefully considered the rival contentions. Admittedly, the Petitioner herein was not party to any of the writ petitions which were disposed of vide order Annexure P/1. In compliance with order Annexure P/1, appointments were offered to 336 candidates as ALM and 75 candidates as SA in the reserved category. If some of the candidates who were offered appointment did not join, the next in the merit list would not automatically get a right of appointment because No. waiting list was prepared. On the other hand, judgment of Hon"ble Supreme Court in the case of S.S. Balu (supra) is fully applicable to the instant case. Appellants in that case were rather on better footing than the Petitioner herein. In that case, selection was made for certain posts pursuant to advertisement but appointments were not made declaring that No. vacancies were available. Some successful candidates (not the Appellants of that case) filed writ petition in the year 2002. The said writ petition was allowed by a Single Judge holding that rank list was prepared on the basis of vacancies which were

already in existence and therefore, legitimate claims of Petitioners could not be denied. State filed writ appeal before Division Bench of the High Court. S.S. Balu and another who were Appellants before the Hon''ble Supreme Court got themselves impleaded in the writ appeal. However, the Division Bench on the basis of concession extended by State granted limited relief for 18 candidates who had filed the original writ petition to give appointment out of the earlier rank list but No. direction was given regarding Appellants S.S. Balu and another. They challenged the said order of the Division Bench in the Hon''ble Supreme Court. The Hon''ble Supreme dismissed the said appeal. S.S. Balu and another Appellants before the Hon''ble Supreme Court were senior in rank list to some of the 18 candidates who had filed writ petition and who were granted appointment. In spite thereof, the Hon''ble Supreme Court dismissed the appeal filed by S.S. Balu and another. Thus, in that case, the Appellants had got themselves impleaded in pending writ appeal in the High Court and they were also senior to some of the candidates who were granted appointment but still these two Appellants were not granted appointment. In the instant case, the Petitioner was not even party to the writ petitions which were disposed of vide order Annexure P/1. Consequently, the Petitioner cannot be granted appointment merely because two of the candidates who were offered appointment pursuant to order Annexure P/1 did not join. Judgment in the case of S.S. Balu (supra) is fully applicable to the facts of the case in hand.

8. For the reasons aforesaid, I find No. merit in the instant writ petition which is accordingly dismissed.