
(2016) 07 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16214 of 2015

Kailash Chand

APPELLANT

Vs

Haryana Vidyut Parsaran Nigam Ltd. & others

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2016) 3 SCT 736

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : R.K. Malik, Senior Advocate, with Ms. Rimple Kadyan, Advocates, for the Appellant; R.S. Longia, Advocate, R.D. Bawa, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—The petitioner is seeking quashing of the action of respondents to appoint the candidates lower in merit. A further direction is sought to be issued to the respondents to consider his claim for appointment as ALM from the date the candidates lower in merit to the petitioner had been appointed.

2. The Haryana Staff Selection Commission advertised 2329 posts of Assistant Lineman. The petitioner participated in the selection process and was issued Roll No.008764. The result was declared on 22.04.2010 and the petitioner's name was at serial No. 65 in the merit list (General Category). While declaring the result, a notice was given in the newspaper, which is reproduced as under:-

"Note: ESM (General)-108, ESM (SC)-41, ESM (BC-A)-44, ESM (BCB)- 52, PHC (Partially deaf)-97 and PHC (Orthopeadically Handicapped)- 13 posts remained vacant due to non-availability of candidates in these categories."

3. As per instructions issued by the State of Haryana on 20.07.1995, 07.10.2008, 02.07.2010 and 23.05.2014 (Annexures P-1 to P-4), if the candidates from horizontal reservation are not available, then the posts will go to

the main category i.e. the general category. These instructions have been considered by this Court in *Garima Jindal v. Haryana Vidyut Parsaran Nigam Ltd. & another*, CWP No.13384 of 2011, decided on 06.08.2012 (Annexure P-5). This petition was allowed by giving direction to the respondents to appoint the candidates of the general category on the unfilled posts in the category of Ex-serviceman (ESM). The said judgment has been upheld by the LPA Bench vide judgment dated 09.11.2012 (Annexure P-6). SLP against the said judgment was dismissed by the Hon"ble Supreme Court on 23.09.2013 (Annexure P-7). Similar relief has been granted to the Assistant Linemen, who approached this Court by filing CWP No.14823 of 2011, titled *Mukesh Kumar and others v. State of Haryana and others*, which was allowed vide order dated 26.05.2014 (Annexure P-8).

4. Grievance of the petitioner, in the present petition, is that the persons who had approached this Court, have been given appointment and some candidates lower in merit than the petitioner, have also been given appointment.

5. Upon notice, written statement on behalf of respondent Nos. 1 o 3 has been filed, wherein it has been stated that the petitioner is claiming appointment to the post(s) of ALM, which were advertised in the year 2008 and final result was declared on 29.04.2010 (Annexue R-1/1). The validity of the waiting list, as per Haryana Government instructions dated 20.01.1988 (Annexure R-1/2), was for a period of one year. This list was valid upto 28.04.2011. The petitioner has filed the present petition in 2015 after a gap of four years. Reference has been made to the judgments passed in *Jasvir Kaur v. State of Punjab and others*, 2015 (2) SCT 166, *Dhirinder Chopra v. State of Haryana and others*, 2014 (2) SCT 725 and *Rajvir Singh v. State of Haryana and others*, 2009 (4) SCT 165. It has been further stated that pursuant to the decision given in *Garima Jindal's* case (supra), offer of appointment from the waiting list in general category was issued to 21 candidates well before the expiry of waiting list and the petitioner's name was at Sr. No.65.

6. Vide order dated 21.04.2016, a direction was given to respondent No.4 to file a better affidavit explaining the steps taken for implementing the judgment passed in *Garima Jindal's* case (supra) for filling up 108 posts of Ex-servicemen and 44 posts of Ex-serviceman (BC) category. In compliance of the aforesaid order, affidavit dated 24.05.2015 of Deputy Secretary, HR & SR, HVPNL, Panchkula, has been filed, wherein it has been stated that the judgments passed in *Garima Jindal*, (supra) and *Mukesh Kumar and others v. State of Haryana and others*, CWP No.23554 of 2012, have attained finality. The Haryana Staff Selection Commission vide letter dated 29.04.2010, sent a joint waiting list (HVPNL, UHBVNL and DHBVNL) to HVPNL for supplying the names of the candidates to UHBVNL and DHBVNL from the joint waiting list, if any candidate had not joined in any category i.e. General, SC & BC. As per instructions dated 20.01.1988, it has been decided that the main list as well as waiting list would remain valid for a period of one year from the recommendation. The waiting list

was issued vide letter dated 29.04.2010 and was valid up to 28.04.2011. Details of the writ petitions and validity of the waiting list(s) have been given as under:-

Sr. No.

CWP No.

Title

Date of filing of writ petition

Expiry of waiting list as per Haryana Government Instructions.

1.

14823/2011

Mukesh Kumar & others v. State of Haryana & others

03/08/11

28.04.2011

2.

23554/2012

Kuldeep Singh & others v. State of Haryana & others

27.11.2012

28.04.2011

3.

8709/2013

Jagmal v. State of Haryana & others

20.04.2013

28.04.2011

4.

17221/2014

Manoj Kumar and others v. HVPNL & others

17.08.2014

28.04.2011

5.

15285/2014

Sonu and others v. HVPNL and others

01/08/14

28.04.2011

7. Keeping in view that validity of the waiting list had expired, offers of appointment were issued only to 32 candidates, who had approached this Court by filing aforesaid writ petitions and in compliance of the order(s) passed by this Court which had become final.

8. A perusal of the aforesaid affidavit shows that even after expiry of the waiting list, appointments have been given to those candidates, who had approached this Court. This Court in *Prem Chand and others v. State of Haryana and others*, CWP No.17706 of 2013 (decided on 18.05.2016) was considering the recruitment for the posts of Assistant Lineman pursuant to an advertisement issued on 19.03.2011. In the said selection process, more than 100 vacancies of Ex-serviceman were not filled up due to non availability Ex-servicemen. In this case, reference was made to a clarification dated 02.07.2010, which had been issued with regard to filling up of unfilled posts of reserved categories. It was clarified that horizontal reservation was a smaller compartment within the bigger compartment of vertical reservation. It was decided that if no candidate was found suitable for appointment even on re-advertisement, the vacancies reserved for ESM of a particular category would be filled up from amongst the same category candidates. For example, if suitable candidate belonging to Scheduled Caste of ESM category was not available, then the post could be filled up from amongst the candidates of Scheduled Caste. The same position would be followed in other categories. The said petition was allowed and a direction was given to the respondents to fill up the vacant posts reserved for Ex-servicemen (ESM) of a particular category from the waiting list of same category candidates.

9. Even without approaching this Court, the respondents were bound to give appointment to the petitioner as per the clarification dated 02.07.2010. The respondents cannot deny appointment to the petitioner on the ground that validity of the waiting list has now been expired on 28.04.2011, as these instructions had already been issued much before this date.

10. In view of the above discussion, this petition is allowed and a direction is given to the respondents to appoint the petitioner on the vacant post from the date, his other batchmates have been appointed. However, it is made clear that the petitioner will be entitled to remuneration from the date he is offered appointment. Such date of appointment shall be reckoned for all service benefits such as seniority etc. This exercise be carried out within two months from the date of receipt of certified copy of this order.