
(2006) 08 P&H CK 0333
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10869 of 2006

Sushil Kumar

APPELLANT

Vs

Staff Selection Commission Haryana and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 16(4B), 226

Citation : (2007) 1 RCR(Criminal) 557 : (2007) 1 SLJ 326

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Rajesh Chaudhry, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for issuance of direction to the respondents to select and appoint the petitioner on the post of Radiographer in the Department of Health, which is under the control of Financial Commissioner & Principal Secretary to Govt. of Haryana (Respondent No. 2) and Director General of Health Services Haryana (Respondent No. 3). It has further been prayed that a writ of certiorari quashing appointment of respondent No. 5 as Radiographer in the Department of Ayurveda be issued which has been subsequently made by by ignoring and superseding the waiting list prepared by Haryana Staff Selection Commission (Respondent No. 1).

2. Brief facts of the case are that on 11.01.2006, the Haryana Staff Selection Commission, respondent No. 1 on the requisition made by respondent No. 2, issued an advertisement (Annexure P-1) inviting applications for 47 posts of Radiographers in the Health Department. Out of 47 posts, 20 posts were allocated to General Category and rest of the posts were reserved for ESM (BC-A), ESM (BC-B) and for Sports person. The petitioner belongs to General Category. The petitioner has asserted that he was eligible in every respect for the post and duly applied. The criteria of selection was academic qualification 50 marks and viva-voce 25 marks. The petitioner appeared under Roll No. 53. The

result was declared on 20.04.2006 (Annexure P-2) . However, the name of the petitioner was kept in the waiting list of General Category at Sr.No. 2. In respect of reserved category, 5 posts were kept vacant on account of non-availability of eligible candidates belonging to reserved category. The petitioner has alleged that those 5 posts could not be kept vacant once eligible candidate belonging to General Category were available albeit their names were kept in waiting list. The Haryana Staff Selection Commission (Respondent No. 1) on the requisition received from Director, Ayurveda, Respondent No. 4 had issued another advertisement on 08.02.2006 for one post of Radiographer. The qualifications and eligibility conditions were the same. The petitioner as well as respondent No. 5 applied again. The petitioner was allocated Roll No. 1 and respondent No. 5 was allocated Roll No. 3. The result in respect of second advertisement was declared on 27.05.2006. The respondent No. 5 was selected and appointed as Radiographer in the Ayurvedic Department. It is pertinent to mention that in the earlier selection process when 47 posts were advertised, respondent No. 5 had failed to make a mark. His name did not figure even in the waiting list, whereas the petitioner had secured 44.12 marks. In the second selection process, the marks of the petitioner had crashed to 36.12 . The petitioner has alleged that the aforementioned position had arisen on account of political influence enjoyed by respondent No. 5. He has claimed that selection of respondent No. 5 is liable to be quashed especially when the waiting list candidate belonging to General Category in the first selection were available and the select list has remained valid for a period of six months.

3. Mr. Rajesh Chaudhry, learned Counsel for the petitioner has argued that the advertisement dated 11.01.2006 (Annexure P-1) itself suffers from violation of Article 14 & 16(1) of the Constitution because out of 47 posts of Radiographers advertised, only 20 posts were allocated to General Category, whereas minimum 50% of the posts namely 23 posts should have been kept for General Category. According to the learned counsel, the principle of 50% reservation has been followed and applied by a catena of judgments of Hon"ble the Supreme Court and, therefore, the advertisement is liable to be quashed. In the alternative, learned Counsel has submitted that 5 posts of Radiographers out of 47 belonging to reserve category have not been filled up and if 3 posts are de-reserved and allocated to General Category to make up the total number of posts to meet the figure of 50% then the petitioner being at Sr. No. 2 in the merit list is entitled to be appointed against 3 posts which has become available by conversion/deresrvation. In support of his submission, learned Counsel has placed reliance on a judgment of Hon"ble the Supreme Court in the case of Nair Service Society v. Dist. Officer, Kerla Public Service Commission and Ors. 2004 (1) SLR 335 and argued that even in respect of reserved categories which are in carry forward position, the principle of 50% has to be followed.

4. We have thoughtfully considered the submission made by the learned Counsel and are of the view that this petition is devoid of any merit. There is no assertion in the petition as to whether the reserved posts were in carry forward position or

those posts were advertised for the first time. However, an indication is available from the perusal of advertisement, dated 11.01.2006 (P-1), from the column "Health Department, Category No. 4, 47 Posts of Radiographer (re-advertised)". It is thus evident that the reserved vacancy were in carry forward position which could not be controverted by learned Counsel for petitioner. Therefore, the question which arises for determination is whether the principle of 50% reservation of the post and leaving 50% for General Category, is applicable to those posts which have been in carry forward position. Article 16(4-B) of the Constitution has placed the controversy beyond any entertainable doubt and the provision is re-produced hereunder for facility of reference:

4-B:- Nothing in this Article shall prevent the State from considering any un-filled vacancies of a year, which are reserved for being filled up in that year in accordance with any provision for reservation made under Clause (4) or Clause (4-A) as a separate class vacancies to be filled up in any succeeding year or years and such clauses of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% reservation on total number of vacancies of that year.

5. A perusal of the aforementioned clause makes it evident that the ceiling of 50% reservation on total number of vacancies of a particular year is not to be applied to the vacancies which might have arisen in the previous year merely because such vacancies were sought to be filled up in any succeeding year or years.

6. A careful perusal of the judgment in the case of Nair Service Society (supra) on which reliance has been placed by petitioner, in fact would show that the judgment primarily deals with a general proposition of law as to whether the ceiling of 50% reservation has to be maintained. The answer obviously given is in the affirmative. However, in respect of vacancies which are in carry forward position, it has been recognized in para 35 by referring to Article 16(4B) of Constitution that the aforementioned ceiling of 50% would not apply to those vacancies. The relevant portion of para 35 is re-produced hereunder for facility of reference:

This Court in a large number of decisions has clearly held that for the purpose of making the reservation policy a reasonable one the extent thereof should not exceed 50% save in exceptional situation. The statutory rules also contain such a prohibition. Article 16(4B) of the Constitution of India is also a pointer to the said fact in terms whereof an enabling provision has been created whereby and whereunder the State may consider to fill up the unfilled vacancies of a year which are reserved for being filled up in that year in accordance with the provisions made under Clause (4) or (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% reservation on total number of that year.

7. A perusal of the aforementioned proposition of law as laid down by the Hon"ble Supreme Court clearly shows that Article 16(4B) has recognized that the vacancy which are of earlier years and are to be filled up in any succeeding year or years then such class of vacancies are not to be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% reservation on total number of vacancies of that year. In the present case, it is evident that the vacancies have been re-advertised and those vacancies are of previous years which were sought to be filled up in the year 2006. The reservation of 27 posts out of 47 total posts would not thus be hit by ceiling of 50% reservation as exgrated by numerous judgments of Hon"ble the Supreme Court including Constitution Bench judgment in case of *Indra Sawhney v. Union of India* 1992 (6) SLR 321 and that of *State Bank of India Scheduled Caste/Tribes Employees' Welfare Association v. State Bank of India* 1996 (2) SLR 682. Therefore, the argument raised by the learned Counsel that 27 posts out of 47 posts/vacancies of Radiographer in the Department of Health (respondent No. 2) could not have been reserved for the members of reserved category is liable to be rejected being without any substance. Accordingly, we reject the argument raised by the learned Counsel. Once the vacancies are in carry forward position and could be permitted by law to exceed the principle of 50% ceiling, then the question of converting 3 vacancies to General Category would not at all arise and, therefore, the second argument, which is the off shoot of the first submission would also fall to the ground.

8. No other arguments has been raised either with regard to criteria or with regard to advertising one post for Ayurveda Department, where respondent No. 5 has succeeded in securing appointment. In view of the above, this petition fails and the same is dismissed.