

“i Have Considered the Submissions Made by the Vs. Versus

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Court : Punjab and Haryana

Decided On : May-07-2014

Appellant : “i Have Considered the Submissions Made by the

Respondent : Versus

Judgement :

LPA No.1911 of 2013(O&M) --1-- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH LPA No.1911 of 2013 (O&M) Date of Decision : 07.05.2014 Jaspal Singh ..Appellant Versus State of Haryana and ors...Respondents CORAM:HON'BLE Mr.JUSTICE JASBIR SINGH HON'BLE MR.JUSTICE HARINDER SINGH SIDHU Present: Mr.Ravi Sharma, Advocate for the appellant.

-- JASBIR SINGH, J.(Oral) Cms No.4873 and 4874 of 2013 For the reasons given in the applications, which are duly supported by affidavits, delay of 99 days in re-filing and 153 days in filing the appeal, is condoned.

Miscellaneous applications stand disposed of.

LPA No.1911 of 2013 Jaspal Singh, the appellant was a candidate for the post of Lecturer (School Cadre) HES-II (Group-B) in the subject of Political Science against advertisement No.3, issued by Haryana Public Service Commission, Panchkula (Annexure P-1).The appellant though applied under Dependent of Ex-servicemen category, but after screening test he was shown successful in general

category.

He was called for interview on 24.12.2010.

However, result could not be declared on account of pending litigation before this Court.

After Kumar Dinesh 2014.05.21 11:07 I attest to the accuracy and integrity of this document High Court, Chandigarh LPA No.1911 of 2013(O&M) --2-- conclusion of that litigation, result of screening test was declared.

The appellant was again called for interview but his name did not figure in the selection list.

The appellant came to this Court by filing Civil Writ Petition No.9540 of 2012 with a grievance that respondent No.4 had not passed the written test and she had been wrongly called for interview and then selected without any justification.

That Writ petition was disposed of on 21.05.2012 with a direction to the Commission to consider and decide the representations dated 19.04.2012 and 01.05.2012, moved by the appellant.

His claim was rejected on 21.06.2012 by Secretary, Haryana Public Service Commission, Panchkula, wherein it has been observed as under:- The Findings of the Commission to your representation dated 19.04.2012 are as under:- (i) That as per requisition received from the State Government, 216 posts were earmarked for Lecturers (School Cadre) in the subject of Political Science.

Out of which 11 posts were earmarked for ESM/DESM which were further earmarked viz 7 male and 4 for female category of ESM/DESM respectively.

Though you applied under DESM category but your name was considered under general category in screening test as no DESM was considered eligible in the screening test as sufficient number of Male ESM were available.

Accordingly, your name was considered for interview in General Category but your name did not come within the selection zone.

(ii) As per final merit list 6 candidates have been selected in order of merit in Male category of ESM/DESM and 1 post of ESM/DESM category has been kept reserved as per direction of Hon'ble Punjab & Haryana High Court in CWP No.3164 of 2012.

The 4 posts which were reserved for female ESM/DESM (8-11 posts) could not be filled on account of non-availability of suitable female candidates.

The 4 posts reserved for female candidates in ESM/DESM category cannot be filled up from Male ESM/DESM category candidates as Kumar Dinesh 2014.05.21 11:07 I attest to the accuracy and integrity of this document High Court, Chandigarh LPA No.1911 of 2013(O&M) --3-- claimed by you in your representation dated 19.04.2012.

In view of this factual position the Commission do not find any merit in your representation dated 19.04.2012.

and accordingly the same is dismissed.

5.

In your representation dated 1.5.2012 you have alleged that the cut of marks in the screening test held for the purpose of calling the candidate for interview was 43 marks and one candidate having Roll No.1822 who has secured 39 marks was declared unqualified in screening test result declared in ESM/DESM Male category but has been selected by way of back door entry in ESM/DESM category.

The findings of Commission to your representation dated 1.5.2012 are as under:-

(i) That as per announcement dated 14.12.2010, it was announced for the general information that on the basis of marks obtained in the screening test, candidates thrice the number of advertised posts will be called for interview in order of merit.

In case a candidate out of the three time-zone is adjudged ineligible before or at the time of interview, in such a case the candidate next in order of merit and otherwise eligible in all respects from among those who are not in three time zone will be called for interview in lieu of the candidates adjudged ineligible.

(ii) 21 candidates were declared qualified in the aforesaid screening test in Male ESM category with cut off of 43 marks.

One female candidate in ESM category was declared qualified in the screening test with cut off 51 marks.

Further 5 DESM female were declared qualified with cut off 26 marks.

Thus, total 27 candidates were short-listed for interview against total 11 posts Lecturer (School Cadre) in ESM/DESM category in the subject of Lecturer Political Science.

(iii) Out of these 27 candidates, 6 candidates though have qualified in the screening test and whose names were within the three time zone were adjudged ineligible before or at the time of interview and accordingly in lieu of those 6 candidates who were adjudged ineligible before or at the time of interview, 7 candidates (with bracketed) including Roll No.1822 though secured less than cut off marks viz 43 marks were next in order of merit and otherwise eligible in all respect were called for interview.

Thus calling the candidates bearing Roll No.1822 along with other candidates as mentioned above as per aforesaid announcement dated 14.12.2010 is in order.

All the candidates have been selected on merit and merit alone on the basis of their performance at the time of interview including the candidate bearing Roll No.Kumar Dinesh 2014.05.21 11:07 I attest to the accuracy and integrity of this document High Court,Chandigarh LPA No.1911 of 2013(O&M) --4-- 1822.

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It is stated that 7 posts were earmarked for male candidates in the category of ESM/DESM.

The appellant was considered in general category.

It was further stated that against the seats, referred to above, 6 male candidates were selected, as per merit list and one post was kept reserved under the orders

of this Court.

The appellant came to this Court by filing Civil Writ Petition No.20052 of 2012, which was dismissed on 08.10.2012 by learned Single Judge.

The appellant went in appeal by filing LPA No.74 of 2013, which was allowed by a Division Bench of this Court, vide order dated 30.01.2013, primarily on the ground of eligibility of respondent No.4 against the post in question.

Thereafter, the appellant filed review application before this Court, which was dismissed by learned Single Judge vide order dated 22.04.2013.

Hence, this appeal.

We have heard counsel for the appellant at length and gone through the paper-book.

While dismissing CWP No.20052 of 2012 on 08.10.2012, it was specifically noticed by learned Single Judge that all the seats meant for ESM(Male) category were filled up as per merit list, and no seat for ESM(Male) was available.

However, some seats were kept reserved for female category of ESM.

Against those posts, it was rightly said that the appellant cannot be appointed.

While rejecting the review application, filed by the appellant, vide order dated 22.04.

2013, observations of learned Kumar Dinesh 2014.05.21 11:07 I attest to the accuracy and integrity of this document High Court, Chandigarh LPA No.1911 of 2013(O&M) --5-- Single Judge of this Court, are as under:- I have considered the submissions made by the counsel for the applicant-petitioner and have gone through the records of the case.

Firstly, there is no evidence on record which would suggest that the six candidates, who have been found to be ineligible out of the shortlisted candidates, belong to which category-Male or Female?.

In any case, it would not make any difference especially when the number of candidates who have been finally selected against the post of Lecturers in Political Science reserved for the ESM category has not exceeded the post reserved for the said category.

That apart, perusal of the result of shortlisted candidates as published by the Commission (Annexure P-3) would clearly show that large number of ESM (Male) candidates were available, apart from respondent No.4, who has been selected and appointed.

The grouse, if any, would have been of a person who belongs to the ESM category with regard to the candidature and selection of respondent No.4, who admittedly belongs to the ESM category, whereas the petitioner belongs to the DESM category.

He, therefore, has no precedent right over the ESM category.

His right would flow only if no ESM category eligible candidate is available for appointment to the post of Lecturer in Political Science.

Even if the selection and appointment of respondent No.4 is set aside, no effective relief can be granted to the petitioner and the Court would, therefore, not exercise its writ jurisdiction when it has come to the conclusion that the petitioner has no right for consideration for appointment to the post of Lecturer in Political Science when other candidates under the ESM category are available for consideration for appointment.

Even on facts, as have been specified in the impugned order, six candidates were found to be ineligible who had been shortlisted and in the public notice dated 14.12.2010 it was mentioned that candidates thrice the number of advertised posts will be called for interview in order of merit.

A candidate, if out of the three times the number of candidates called, is found to be ineligible before or at the time of interview, candidate next in order of merit and otherwise eligible in all aspects will be called for interview in lieu of the candidates ineligible.

Admittedly, name of respondent No.4 Kumar Dinesh 2014.05.21 11:07 I attest to the accuracy and integrity of this document High Court, Chandigarh LPA No.1911 of 2013(O&M) --6-- figures at Sr.No.6 of the candidates who were earlier not shortlisted for consideration for appointment and, therefore, has rightly been called for interview.

The allegation of the appellant that six candidates were wrongly selected, was not correct.

To controvert the above said finding, nothing has been shown to this Court at the time of the arguments.

It was also observed that candidates in the category of ESM were selected equal to the number of posts, reserved for that category.

It has also come on record that respondent No.4 belongs to the ESM category, whereas the appellant is claiming benefit under the category of DESM.

As per instructions, benefit would accrue to the appellant only in case ESM candidate is not available.

No case is made out to cause interference by this Court in the present appeal.

Dismissed.

(JASBIR SINGH) JUDGE (HARINDER SINGH SIDHU) JUDGE0705.2014
dinesh Kumar Dinesh 2014.05.21 11:07 I attest to the accuracy and integrity of this document High Court, Chandigarh

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