

Before Augustine George Masih & Meenakshi I. Mehta, JJ.

DHEER ANUSH SINGH BHATTI—Appellant

versus

STATE OF PUNJAB AND OTHERS—Respondents

LPA No.339 of 2021

March 31, 2021

Constitution of India, 1950—Art. 226—Writ petition—Punjab State Civil Services Combined Competitive Examination, 2020 — Reservation—Lineal Dependents of Ex-servicemen (LDESM) category—Punjab Recruitment of Ex-servicemen Rules, 1982 — Grievance that only Ex-servicemen (ESM) category candidates were shortlisted for mains examination, whereas posts were reserved for both ESM and LDESM categories—Held, Clause 11 of the Advertisement clearly provides that LDESM category of candidates shall be considered only against vacancies of ESM category, if no ESM are available—In case sufficient number of ESM candidates are available, the LDESM will be considered as General category candidates—On facts, it was found as sufficient number of ESM candidates were available, there was no scope for LDESM category, and the appellant had no right to be considered—Further held, it cannot be argued that there is nothing in the advertisement which would curtail the appellant’s right as LDESM—Rule 4 of the 1982 Rules makes it clear that 13% of the vacancies to be filled by direct appointment in all the State Civil Services and posts connected with affairs of the State shall be reserved for being filled by recruitment of ESM—It means posts have been reserved for the ESM category—It is by operation of proviso to sub-rule 1 of Rule 4 that the lineal descendants of ESM came into picture for filling up such reserved vacancies, and that too when ESM being not available for recruitment—Appeal dismissed.

Held that, Clause 11 of Advertisement No.14 (Annexure P-2) deals with the categories and category codes. Note (1 b) is the governing clause with regard to the Ex-servicemen category, which reads as follows:-

“Note: (1b) Only Resident of Punjab Exservicemen/Lineal Descendent of Ex-Servicemen (LDESM) are eligible for reservation under the Ex-

servicemen category. LDESM shall be considered against the vacancies for Ex-servicemen only if no Ex-servicemen are available. **In case sufficient numbers of Ex-servicemen are available, then LDESM shall be treated as General Category candidates.”**

(Para 9)

Further held that, a perusal of the above note would show that LDESM category candidates shall be considered against the vacancies of Ex-servicemen only if no Ex-servicemen are available. In case sufficient number of Ex-servicemen are available, then LDESM category candidates shall be treated as General category candidates. This makes it amply clear that the category of LDESM would only be called into operation in case sufficient number of Ex-servicemen are not available for filling up the vacancies and the candidates are not available as per Note 8 of Clause 5.

(Para 10)

Further held that, in the present case, 143 Ex-servicemen candidates being available for 11 posts advertised, leaves no scope for the dependents of LDESM category. Appellant, therefore, does not have a right for being considered for the posts reserved for the Ex-servicemen category, however, he will be considered as a General category candidate.

(Para 11)

Further held that, the plea of the counsel for the appellant that there is nothing in the advertisement, which would curtail the right of the appellant as a lineal descendant of an Ex-servicemen would not hold the fort nor would his contention that Rule 4 of the 1982 Rules would come into operation only at the stage of final selection and not at the stage of short listing i.e. preliminary examination.

Rule 4 of the 1982 Rules reads as follows:-

“4. Reservation of Vacancies. (1) Subject to the provision of rule 3, 13% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen;

(Note : As per Pb Govt. Letter No. 15/25/2001-4DW/1591 dated 21.05.2002, an Ex-serviceman is allowed the benefit of Reservation for the second time and even thereafter in

subsequent recruitments in accordance with the provisions of these Rules).

"Provided that where an Ex-serviceman 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 recruitment against a reserved vacancy under these rules;

"Provided further that the wife or the dependent child of the ex-serviceman 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 only once in life:"

"Provided further that one grand Child of the Gallantry Award Winner shall be recruited against the reserved vacancy, in case the benefit or reservation has not been availed of by any of the children or dependents such winner or by the winner himself subject to the conditions specified in the second proviso;

Explanation: For the purpose of this proviso, Gallantry Award Winner includes the winner of the Paramvir Chakra, the Mahavir Chakra, the Vir Chakra, the Sena or Nao Sena or Vayu Sena Medal and Mentionin- Despatches."

"Provided further that the total number of reserved vacancies including those reserved for the candidates belonging to the SCs, STs and BCs shall not exceed fifty of the posts to be filled in a particular year."

(2) Where a reserved vacancy remains unfilled for non availability of a (person eligible for recruitment under these rules) such vacancy may be filled in, temporarily from any other source in accordance with the rules.-

regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved;

Provided that the reserved vacancies filled in shall be carried forward for the subsequent occasions (arising during at least 2 years in each of which such occasion arises for recruitment) where after the vacancy in question shall be treated as un-reserved.”

(Para 12)

Further held that, this argument of the counsel for the appellant also, in the light of the above, cannot be accepted. Rule 4 (1) of the 1982 Rules is very clear and specific, which makes it amply clear that 13% of the vacancies to be filled by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled by recruitment of Ex-servicemen. Meaning thereby that the posts are reserved for being filled by recruitment of Ex-servicemen. It is by operation of the first proviso to sub-rule 1 of Rule 4 that the lineal descendants of the Ex-servicemen come into picture for filling up of such reserved vacancies for Ex-servicemen and that too in case of Ex-servicemen being not available for recruitment.

(Para 13)

Chanchal K. Singla, Advocate
for the petitioner.

Anju Arora, A.A.G., Punjab.

AUGUSTINE GEORGE MASIH, J.

(1) Appellant had filed a writ petition challenging the action of the respondent-Punjab Public Service Commission (hereinafter referred to as 'Commission') for not extending the benefit of reservation under Ex-servicemen category to the Lineal Descendants of Ex-servicemen (hereinafter referred to as 'LDESM') despite the fact that the requisite number of candidates in the said category as per the advertisement and the rules have not qualified for shortlisting by the Ex-servicemen. It was further asserted that this action of the respondent-Commission being in gross violation of the terms and conditions stipulated in the advertisement as well as the Punjab Recruitment of Ex-servicemen Rules, 1982 (hereinafter referred to as '1982 Rules') cannot sustain and deserves to be set aside, which writ petition stands dismissed by learned Single Judge vide judgment dated 25.03.2021.

(2) Briefly the facts are that the Commission, in pursuance to

the requisition received from the Government of Punjab, Department of Personnel, issued advertisement bearing No.14 on 08.12.2020 for conducting Punjab State Civil Services Combined Competitive Examination-2020 to fill up 75 posts of various officers in the Government of Punjab. Appellant applied under the LDESM category and was issued Roll No.30614. He appeared in the preliminary examination held on 13.02.2021 result whereof was released on 13.03.2021, wherein appellant scored a total of 180.5 marks out of total 400 marks.

(3) Commission released list of roll numbers provisionally shortlisted for the mains examination on 12.03.2021 mentioning therein the cut off marks for different categories. The cut off marks for the ESM category was mentioned as 160.5.. As regards the LDESM category is concerned, no cut off marks were fixed nor was any list of roll numbers issued for shortlisting for the mains examination. Appellant approached this Court aggrieved because of the non-inclusion of the roll numbers of the LDESM category despite the fact that the appellant had scored 180.5 marks, which is much higher than the cut off marks fixed for the Ex-servicemen category. The assertion on the part of the appellant is that the LDESM category candidates have been denied the right of consideration for the mains examination despite the fact that 11 posts were reserved for the Ex-servicemen/LDESM category and the number of candidates, who were to be shortlisted for participation in the mains examination had to be 13 times the number of posts to be filled up, therefore, the said number would come to 143 candidates. The action of respondents being violative of 1982 Rules cannot sustain.

(4) Counsel for the appellant has asserted two aspects before this Court. The first being that the number of candidates, who have been shortlisted for the mains examination being Ex-servicemen themselves, are less than the required number of 143 candidates to be called for participation in the mains examination. This contention of learned counsel for the appellant cannot be accepted in the light of the fact that the learned Additional Advocate General, Punjab, has on instructions, informed the Court that 143 candidates, who are Ex-servicemen themselves, have been shortlisted for the mains examination, which comes to 13 times the number of posts reserved for the Ex-servicemen/LDESM category.

(5) Second issue which has been raised by the counsel for the appellant is that only the Ex-servicemen category candidates have been

shortlisted for the mains examination, whereas the posts were reserved for ESM/LDESM category. He asserts that once the posts are reserved for both these categories, their joint merit as has been obtained in the preliminary examination, should have been taken into consideration for shortlisting the candidates for the mains examination. His further assertion is that Rule 4 of the 1982 Rules actually comes into play at the stage of final selection of the candidates and not at the preliminary examination stage and, therefore, preference has to be given as per the said rule for recruitment of Ex-servicemen over the LDESM category at that stage and not at the stage of preliminary examination. He thus submits that the exclusion of the LDESM category at this initial stage being violative of the statutory rules cannot sustain, especially when there is no specific clause excluding the consideration of the LDESM category, when the Ex-servicemen category is available. Prayer has thus been made for setting aside the impugned judgment dated 25.03.2021 passed by learned Single Judge and for allowing the writ petition of the appellant-petitioner.

(6) On the other hand, learned counsel for the State of Punjab has submitted that the language of the statutory Rule 4 of 1982 Rules makes it amply clear that the reservation is for the Ex-servicemen. Proviso to the said rule makes the things clear that where an Ex-servicemen is not available for recruitment against a reserved vacancy, it is then and only then that the reserved vacancy shall be filled by the category of lineal descendent of ex-servicemen. That apart, it is asserted by learned Additional Advocate General, with reference to Clause 11, Note (1 b) of the Advertisement No.14 (Annexure P-2) that LDESM category candidate would be considered against the vacancy of Ex-servicemen only if no Ex-servicemen is available. It has further been clarified in that note itself that in case sufficient number of Ex-servicemen are available, then LDESM shall be treated as General category candidates. She on this basis asserts that once the Ex-servicemen category candidates, sufficient in number as per the requirement Note 8 of Clause 5 of the advertisement, are available, the reservation as claimed for LDESM Punjab would not operate irrespective of the merit obtained by a candidate. The said candidate would in any case be treated in the General category. Prayer has thus been made for dismissal of the present appeal.

(7) Having considered the submissions made by counsel for the parties, we are afraid the contention as raised by the counsel for the

appellant cannot be accepted and the appeal deserves dismissal.

(8) According to the admitted facts, there are 11 posts, which have been earmarked for the ESM/LDESM category out of which two posts have been earmarked for women. Clause 5 of Advertisement No.14 (Annexure P-2) deals with the Scheme of the Punjab State Civil Services Combined Competitive Examination-2020. Note 8 thereof mentions that candidates equal to 13 times of the vacancies advertised would qualify in each category from amongst those appearing in the preliminary examination for the mains examination. Provided such number of candidates are available and are eligible for admission to the mains examination. Meaning thereby that for 11 posts, 143 candidates would qualify for the mains examination in the category of ESM/LDESM.

(9) Clause 11 of Advertisement No.14 (Annexure P-2) deals with the categories and category codes. Note (1 b) is the governing clause with regard to the Ex-servicemen category, which reads as follows:-

“Note: (1b) Only Resident of Punjab Ex-servicemen /Lineal Descendent of Ex-Servicemen (LDESM) are eligible for reservation under the Ex-servicemen category. LDESM shall be considered against the vacancies for Ex- servicemen only if no Ex-servicemen are available. In case sufficient numbers of Ex-servicemen are available, then LDESM shall be treated as General Category candidates.”

(10) A perusal of the above note would show that LDESM category candidates shall be considered against the vacancies of Ex-servicemen only if no Ex-servicemen are available. In case sufficient number of Ex-servicemen are available, then LDESM category candidates shall be treated as General category candidates. This makes it amply clear that the category of LDESM would only be called into operation in case sufficient number of Ex-servicemen are not available for filling up the vacancies and the candidates are not available as per Note 8 of Clause 5.

(11) In the present case, 143 Ex-servicemen candidates being available for 11 posts advertised, leaves no scope for the dependents of LDESM category. Appellant, therefore, does not have a right for being considered for the posts reserved for the Ex-servicemen category, however, he will be considered as a General category

candidate.

(12) The plea of the counsel for the appellant that there is nothing in the advertisement, which would curtail the right of the appellant as a lineal descendant of an Ex-servicemen would not hold the fort nor would his contention that Rule 4 of the 1982 Rules would come into operation only at the stage of final selection and not at the stage of shortlisting i.e. preliminary examination.

Rule 4 of the 1982 Rules reads as follows:-

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“Provided further that the wife or the dependent child of the ex-serviceman 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 only once in life:"

"Provided further that one grand Child of the Gallantry Award Winner shall be recruited against the reserved vacancy, in case the benefit or reservation has not been availed of by any of the children or dependents such

winner or by the winner himself subject to the conditions specified in the second proviso;

Explanation: For the purpose of this proviso, Gallantry Award Winner includes the winner of the Paramvir Chakra, the Mahavir Chakra, the Vir Chakra, the Sena or Nao Sena or Vayu Sena Medal and Mention-in-Despatches."

"Provided further that the total number of reserved vacancies including those reserved for the candidates belonging to the SCs, STs and BCs shall not exceed fifty of the posts to be filled in a particular year."

(2) Where a reserved vacancy remains unfilled for non availability of a (person eligible for recruitment under these rules) such vacancy may be filled in, temporarily from any other source in accordance with the rules.-

regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved;

Provided that the reserved vacancies filled in shall be carried forward for the subsequent occasions (arising during at least 2 years in each of which such occasion arises for recruitment) where after the vacancy in question shall be treated as un-reserved."

(13) This argument of the counsel for the appellant also, in the light of the above, cannot be accepted. Rule 4 (1) of the 1982 Rules is very clear and specific, which makes it amply clear that 13% of the vacancies to be filled by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled by recruitment of Ex-servicemen. Meaning thereby that the posts are reserved for being filled by recruitment of Ex-servicemen. It is by operation of the first proviso to sub-rule 1 of Rule 4 that the lineal descendants of the Ex-servicemen come into picture for filling up of such reserved vacancies for Ex-servicemen and that too in case of Ex-servicemen being not available for recruitment.

(14) In the present case, since the posts are reserved for the Ex-servicemen category and 143 candidates belonging to the Ex-servicemen category are available qualified for the mains examination,

proviso to the main rule would not come into play and, therefore, the contention of the counsel for the appellant cannot be accepted.

(15) In view of the above, finding no merit in the present appeal, the same stands dismissed.

(16) Since the main appeal has been dismissed, no order is required to be passed in CM No.894-LPA of 2021.

Tribhuvan Dahiya