

DILWAN SINGH AND ORS. ETC. ETC.

v.

STATE OF HARYANA AND ORS ETC. ETC.

MARCH 25, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

*Appointment under State Government of Haryana—Reservation for ex-servicemen—Government instructions to consider dependent children of ex-servicemen in absence of availability of ex-servicemen—Selection Board calling ex-servicemen and dependent children of ex-servicemen together for consideration according to merit—For identification whether candidates are dependents of ex-servicemen, Selection Board relying on the certificates issued by Sainik Board—Held, Selection Board should first consider independently the eligibility of ex-servicemen and for the balance unfilled post selection should be made from amongst dependent children of ex-servicemen—Selection Board being the recruiting agency has a duty to verify whether a candidate is a dependent son/daughter of an ex-serviceman and it cannot abdicate its function merely relying on the certificate issued by the Sainik Board.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6887 of 1996 Etc.

From the Judgment and Order dated 16.12.93 of the Punjab & Haryana High Court in C.W.P. No. 7412 of 1993.

Mahabir Singh for the Appellants.

Pradeep Gupta, K.K. Mohan and Ms. Naresh Bakshi for the Respondents.

The following Order of the Court was delivered :

Though the respondents were served in SLP (C) No. 21297-99/94, respondents 1 and 4 appear through counsel. In respect of respondents 2 and 3, neither A.D. Card nor unserved original notice have been received back. Under those circumstances, they must be deemed to have been served.

Leave granted.

It is contended by Shri Mahabir Singh, learned counsel for the appellants that the Selection Board has adopted a policy of calling the ex-servicemen and the dependent children of the ex-servicemen together to consider their cases for recruitment according to merit which would stand an impediment to the ex-servicemen. We find force in the contention. The object of reservation of the ex-servicemen is to rehabilitate them after their discharge from the defence services. As per the instructions issued by the State Government, in the absence of availability of the ex-servicemen instead of keeping those posts unfilled, the dependent children, namely, son or daughter of ex-servicemen would also to be considered. The object thereby would be that the Selection Board should first consider the claims of the ex-servicemen and have their eligibility considered independently in the first instance before the claims of the dependent children of the ex-servicemen are considered. If they are found eligible and selected, for the balance unfilled posts, the selection be done from among the dependent children of the ex-servicemen.

The other question that arises in this case is : whether the contesting respondents have satisfied the requirement as dependents of the ex-servicemen ? The Government of Haryana have clarified in their letter dated November 21, 1980 bearing No. 12/37/79/GSII that the Government have taken a policy decision on July 1, 1980 and given instructions to recruit the children, i.e. dependent sons or daughters of ex-servicemen who fulfill all the conditions of qualifications, age and other criteria prescribed for the post; they may be considered on merits for the posts reserved for the ex-servicemen to the unfilled posts. It was confined initially only to dependent children. When clarification was sought for, various criteria have been suggested to identify the dependants. The Government have examined the matter and found that only an unemployed person who is a member of the joint family and contributes to the pool of the family income by the lending help or a person who has already done his graduation or is doing post-graduation and getting merit scholarship for the studies is also eligible to be considered for appointment. In appeals @ SLP (C) No. 21297-99/94, it is specifically averred that the contesting respondents have not fulfilled the criteria referred to hereinbefore and that, therefore, they are not eligible to be considered.

Counter-affidavit has been filed on behalf of the respondent- Selection Board contending that the Sainik Board had issued a certificate stating that they are the dependants of the ex-servicemen. On that basis, they had become eligible for consideration. The Board had accepted the same. It did not have any source for independent verification and, therefore, they have accepted them as dependents. We are of the view that the Board is not justified in law to take such a stand. The Board being the recruiting agency, it is its duty to verify and find out whether a candidate who has laid his claim as a dependant son or daughter of the deceased ex-servicemen, fulfilled the criteria referred to earlier for recruitment to the vacancies reserved for unfilled posts of ex-servicemen. On being satisfied, the other consideration has to be looked into and selection process could be made and candidates are selected according to prescribed procedure. It being the primary duty of the Selection Board, it cannot abdicate its function by merely relying on certificate issued by the Sainik Board which is only a recommending authority certifying that the candidate as a dependant of the ex-servicemen. It may be accepted only a *prima facie* evidence. The certificate does not *ipso facto* become conclusive nor would it entitle the candidate to be considered as a dependant of the ex-servicemen. It would be for the Board to examine and in case of any doubt, it should call upon the candidate to satisfy the Board that the candidate is dependant and fulfills the requirements prescribed in the guidelines. That was not done in these cases.

Under these circumstances, the appeals are allowed. There shall be a direction to the first respondent to call upon the candidates to satisfy the requirements referred to hereinbefore and then process their applications according to law and consider their cases against the unfilled posts reserved for the ex-servicemen within a period of six weeks from the date of the receipt of this order. No costs.

Appeals allowed.