

LPA-636-2022

LAWCHAKRA.IN

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-636-2022(O&M)

Reserved on: 31.01.2024

Pronounced on: 03.02.2024

Captain Gurpreet Kaur

...Appellant

Versus

Punjab Public Service Commission, Patiala and others

...Respondents

**CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Mr. Navdeep Singh, Advocate,
Ms. Roopan Atwal, Advocate,
for the appellant.

Mr. Saurav Verma, Additional Advocate General, Punjab,
for respondents No. 1 and 2.

Mr. Shivoy Dhir, Senior Panel Counsel,
for respondent No. 3-Union of India.

Mr. M.S. Doabia, Advocate,
for respondent No. 4.

AMAN CHAUDHARY, J.

1. The present intra-court appeal, under Clause X of the Letters Patent has been filed challenging the judgment dated 09.05.2022, whereby the civil writ petition preferred by the appellant came to be dismissed.

2. Having heard learned counsel on either side, we find merit in the appeal.

3. In essence, what arises for our consideration is that whether the appellant, who was a Commissioned Officer of the Military Nursing Service, governed by the Military Nursing Service Ordinance, 1943 (for short, 'Ordinance'), Annexure P-1, fell within the definition of 'ex-serviceman' in terms of Punjab Recruitment of Ex-servicemen Rules, 1982, (for short '1982 Rules') Annexure P-6.

4. As is evident from the above Ordinance dated 15.09.1943, an emergency had arisen making it necessary for constituting a force called the 'Indian Military Nursing Service'. It would be raised and maintained as a part of the Armed Forces of the Union and for service with Military Forces. The members of the service shall be commissioned rank, appointed by the Central Government and liable for service only with forces and persons subject to the Army Act, 1950. They shall be bound to undergo training and in such a manner, so as to perform the duties in connection with Indian Military Forces, as laid down by the Regulations.

5. Indisputedly, the appellant having participated in the selection process was granted Short Service Commission as a Nursing Officer in the Military Nursing Service for a period of five years as per the appointment letter dated 12.08.2013, Annexure P-2. A Notification regarding the appellant, as also that of similarly situated appointed as Nursing Officers, was published in the official Gazette July, 25-July 31, 2015, Annexure P-16, with the heading 'REGULAR ARMY'. After completion of five years of service, she was released on 04.09.2018 and paid her gratuity as per the entitlement.

6. It was only thereafter, pursuant to an advertisement, issued by the Punjab Public Service Commission for appointment of various posts under in Punjab State Civil Services Combined Competitive Examination-2020, she applied in the category of 'ex-servicemen', and took the preliminary and main examinations, however, vide impugned Public Notice dated 20.05.2021, her candidature was cancelled, on the premise of she not being covered under the definition of the said category. On her grievance having been brought before the learned Single Judge, she by way of interim orders was allowed to participate in the interview process, a post was directed to be kept vacant and her result in a sealed cover.

7. The submission raised by the learned State counsel as regards reliance on a communication received from Kendriya Sainik Board, Ministry of

Defence, Government of India, New Delhi to Director, Rajya Sainik Board, Punjab, Chandigarh is concerned, cannot be countenanced by us, for the sole reason that pertinently, the eligibility conditions and the benefits to be granted regarding reservations etc. is the prerogative of the employer, which in the present case is not the Central Government but the Government of Punjab, which has notified its own 1982 Rules framed in exercise of powers conferred under proviso to Article 309 read with Articles 234 and 318 of the Constitution of India. The same cannot, as per settled law, be overridden by way of administrative instructions of Punjab Government, much less by those of the Central Government. A fact of the matter is also that, the query of the Court contained in the order dated 10.02.2022, passed by the learned Single Judge was responded by the Secretary (Examinations), Punjab Public Service Commission, Patiala, in an affidavit dated 14.02.2022, affirming that it follows the 1982 Rules, as amended from time to time, for granting benefits of reservation to the ex-serviceman and that this was also mentioned in clause 15.3 of General Information for candidates in the advertisement dated 12.12.2020, issued for recruitment against 75 posts through Punjab State Civil Services Combined Competitive Examination 2020.

8. It would be apposite to refer to the Clause 2(c)(iv) of 1982 Rules, framed for regulating the recruitment of ex-servicemen to State Civil Services and Posts connected with the affairs of the State of Punjab, which reads thus:

“2. Definitions – xx

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(c) “Ex-serviceman” means a person who has served in any rank, whether as a combatant or a non-combatant, in the Naval, Military and Air Forces of the Union of India (hereinafter referred to as the Armed Forces of the Union of India), and who has,-

(i) to (iii)

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(iv) been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity;”

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9. Bare reading of the aforesaid provision *expressis verbis* reveals that, the sole criterion to fall within the definition being in receipt of gratuity upon release from service, which the appellant did, a fact that remained incontrovertible. This coupled with her appointment having been made under the Ordinance; service being governed by the Army Act, 1950 and the Gazette Notification depicting 'Military Nursing Service' under the heading of 'Regular Army' leaves no manner of doubt that she would be covered under the category of 'ex-serviceman' and thus, entitled to be considered in the said recruitment.

10. On a conspectus evaluation, the State of Punjab, having framed the beneficial Rules, for granting benefit to the ex-serviceman in the recruitment to State Civil Service, the definition of which, applied to the appellant on all fours, we are unable to concur with the judgement of the learned Single Judge.

11. Ex-consequenti, the present appeal is hereby allowed. The candidature of the appellant, if found to be in merit, appointment be granted to her forthwith. However, she will be entitled only to the notional benefits of service.

12. Pending applications, if any shall stand, disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

03.02.2024

Amodh Sharma/Mkk

Whether speaking / reasoned: YES / NO

Whether Reportable: YES / NO