

Haryana Public Service Commission

Vs

Harinder Singh and Another

Civil Appeal No. 1701 of 1993

(S. P. Bharucha, M. Jagannatha Rao)

05.05.1998

ORDER

1. The respondent applied for employment with the State of Haryana on the basis that he was the dependant of an ex-serviceman. The Haryana Public Service Commission (the appellant) rejected the claim on the ground that he was not dependent upon his ex-serviceman father or his mother. The respondent filed a writ petition in the High Court at Chandigarh for a direction that he should be considered for selection against the reservation quota meant for dependants of ex-servicemen. The High Court's decision upon the writ petition reads, in its entirety, thus :

"HPSC is directed to consider the petitioner eligible for the post he has applied for, as he falls in the expression 'dependant', as his father was killed in INS Khukri during Indo-Pak War of 1971. The writ petition stands disposed of accordingly."

2. Since this order could not be complied with because all the posts had been filled, the respondent moved an application before the High Court in regard to future selections and the High Court directed that the respondent should be considered for the same.

3. The appellants are in appeal by special leave against the order on the writ petition and it has been stayed pending the disposal of the appeal.

4. There is a reservation in regard to recruitment for the State Government for dependants of service personnel killed or disabled. Dependants are defined to include, besides the wife and widow, "dependent sons/daughters". After categorising certain persons, it is stated in the reservation policy :

"None of the persons mentioned at S. Nos. (i), (ii), (v) and (vi) falls within the definition of the word 'dependant' because each of them appears to have some independent source of livelihood and, therefore, none of these can be said to be dependent on his father or mother."

5. Learned counsel for the appellant submitted, therefore, that one who was gainfully employed cannot be termed a dependant of an ex-serviceman. Our attention was invited by learned counsel to the writ petition dated 12-7-1992 in the High Court to show that the respondent was gainfully employed at the relevant times. Para 3 thereof reads thus :

"That the petitioner passed his Bachelor of Engineering in Civil in 1988 from the Engineering College, Chandigarh affiliated with Punjab University, Chandigarh. After passing the said examination, the petitioner worked in Astra Construction

Company, Chandigarh for one year, i.e., November 1988 to November 1989 as Civil Engineer. Thereafter, the petitioner joined the services of V.S. Construction Company as Civil Engineer in November 1989 and has been working as such in the said company."

In this Court the respondent has stated on affidavit that he was employed between November 1988 to 1989 as a Civil Engineer with the Astra Construction Company. The appointment was temporary and on contract basis. Thereafter he joined the service of V.S. Construction Company as Civil Engineer in November 1989 on contract basis for a period of two years, which period had expired. He was, when he made the said affidavit on 7-4-1993, working in Jai Parabolic Springs Ltd. for 18 months on contract basis.

6. Learned counsel for the respondent drew our attention to a certificate which was issued on 18-7-1989 by the Zila Sainik Welfare Officer, Union Territory, Chandigarh. It certifies "Master Harinder Singh" to be the dependant of his late ex-serviceman father and his mother. Learned counsel submitted that the fact that the respondent had accepted some temporary job with a private company did not mean that he had lost the entitlement given by the certificate to be treated as a dependant of his ex-serviceman father and that, therefore, he was entitled to be considered under the reservation available to dependants of ex-servicemen.

7. The said certificate was issued on 18-7-1989. According to his own showing, an affidavit filed in this Court, the respondent was a Civil Engineer working with Astra Construction Company on that day. He was not then or thereafter "dependent" on anyone.

8. The whole idea of the reservation is that those who are dependent for their survival on men who have lost their lives or become disabled in the service of the nation should not suffer. The public purpose of such reservation would be totally lost if it were to be made available to those who are gainfully employed. There is no justification for construing the words "dependants of ex-serviceman" in any manner other than that in which the appellant has construed them. This is in accord with the reservation policy itself, as shown by the quotation therefrom aforesaid.

9. The appeal is allowed. The order under appeal is set aside and the writ petition filed by the respondent is dismissed.

10. No order as to costs.