

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 6916 of 2015
Date of decision: 17.08.2015

Gurdial Kaur		Petitioner(s)
	Versus	
State of Punjab & others		...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.P.S.Khurana, Advocate, for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

1. Prayer in the present writ petition is for quashing of order dated 14.02.2012 (Annexure P14) whereby the claim of the petitioner for consideration of her candidature in the Freedom Fighter Category, has been declined. Challenge has also been made to the order dated 11.12.2014 (Annexure P16) whereby the request of the petitioner for review of the order dated 14.01.2012 has been declined. Further, the petitioner seeks a writ of mandamus for considering his candidature in the Freedom Fighter Category/Scheduled Caste (R&O) for the post of Punjabi Mistress is sought.
2. It is the case of the petitioner that in view of the orders passed by this Court in CWP No.11809 of 2011 decided on 11.07.2011, the State was to go into the question as to whether the petitioner is further entitled to the preferential right to seek further reservation in the category of Freedom Fighter since she belongs to reserved category of Scheduled Caste.
3. It is to be noticed that this is the third round of litigation initiated by the petitioner on the same cause of action. Admittedly, on 09.10.2009, 1200 posts of Punjabi Mistress were advertised to be filled up. There were 12 seats reserved for the category of Wards of the Freedom Fighter, six seats belonging to male and six to female. The petitioner filled in her application on 25.11.2009

(Annexure P5) on both counts of SC(R&O) and Ward of Freedom Fighter Category, being the grand-child.

4. At that point, no objection was raised as to the lack of reservation within the 12 seats of Ward of Freedom Fighter Category, which has now been sought that there should also be reservation for SC(R&O). The petitioner went through the process of selection and admittedly, has secured 44.78 marks. The last candidate in the Scheduled Caste Category, as noticed by the respondents, has secured 59.2 and 60.20 marks in the Wards of Freedom Fighter Category. Thus, the petitioner is beyond the scope of consideration in both the categories. Now, the petitioner, by virtue of the present litigation, wants a further carving out of reservation within the seats reserved for Wards of Freedom Fighter Category.

5. The petitioner was well aware when she applied for the said post as to the seats and distribution and at no stage, at that point of time, she had agitated for her cause. It is only after the merit-list has been prepared and finding herself unsuccessful, she has raised the grouse. It is settled principle that a person who accepts the selection procedure and the criteria of the advertisement, now cannot, subsequently, turn around and seek for change in the same. Reference can be made to the judgment of the Apex Court in **Madan Lal & others Vs. State of Jammu & Kashmir 1995(3) SCC 486** wherein it was held that a candidate who takes a chance to get selected and ultimately finds himself unsuccessful, cannot challenge the said advertisement. Relevant portion reads as under:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned 298 respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a

chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of [Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.](#), (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, 'the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

6. The said view was followed in *Marripati Nagaraja Vs. The Government of Andhra Pradesh 2007 (11) SCR 506* and *Dhananjay Malik & others Vs. State of Uttaranchal & others 2008 (3) RSJ 223*. A Division Bench of this Court in *Yoginder Singh Yadav Vs. State of Haryana 2002 (2) SCT 281* also

held to the same effect that the principle of estoppel would operate against the petitioner. Even otherwise, it is to be noticed that on an earlier occasion also, the petitioner approached this Court in CWP No.7968 of 2010 wherein her sole grouse was that persons lower in merit had been appointed. She had never, at that stage, raised any issue regarding further reservation in the category of Freedom Fighter. This Court, on 04.05.2010, had directed to pass a speaking order and thus, the said plea, once having not been taken, the principle of constructive *res judicata* would also be applicable and it would not be permissible to rase a fresh issue in a subsequent petition filed.

7. The petitioner, who on being unsuccessful on merit, now, after a period of 5 years since the advertisement was issued and after due process, is trying to reopen the whole issue, which is not permissible and accordingly, this Court does not find any scope of interference in the extraordinary writ jurisdiction.

8. Writ petition is, accordingly, dismissed.

17.08.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE