

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

**LPA No. 2159 of 2013 (O&M)
Date of Decision: 10.09.2015**

Dr. Davinder Singh Randhawa

.....Appellant

Vs

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. Mohinder Singh Joshi, Advocate
for the appellant.

Mr. Gurinder Pal Singh, Addl. AG, Punjab

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Mahavir S. Chauhan J.

Punjab Public Service Commission, vide advertisement No. 7 dated 05.03.2010 (*Annexure-P/1*), advertised vacancies of Ayurvedic Medical Officer, total numbering 67. Some of the vacancies were shown to be reserved for various categories such as Scheduled Castes, Ex-servicemen etc. and out of those 67 vacancies, 9 posts were allotted to Ex-servicemen/Lineal Descendants of Ex-servicemen Punjab and 11 were allotted to Scheduled Castes Ex-servicemen/Lineal Descendants of Ex-servicemen Punjab. This advertisement was withdrawn and a fresh advertisement dated 29.6.2010 (*Annexure P-2*) alongwith proforma (*Annexure P-3*) was issued. In the advertisement dated

29.06.2010, no vacancy was reserved for lineal descendants of ex-servicemen. Davinder Singh Randhawa, petitioner, applied for one of the afore-stated vacancies under General category and in column No. 6 of the application-form he specifically stated that he does not belong to any reserved category. He even participated in the written test held for selection against the afore-stated vacancies but did not succeed. Thereafter, the appellant filed CWP No. 11102 of 2011 seeking issuance of a writ of mandamus to direct the respondents to consider his candidature under reserved category of lineal descendants of Ex-servicemen instead of General category for his appointment to the post of Ayurvedic Medical Officer.

In the written statement filed on behalf of the respondents, claim of the appellant was contested by stating that the appellant had not only applied for General category but had also stated in column No. 6 of the application that he did not belong to any reserved category and as such candidature of the applicant was considered under General category.

Learned Single Judge after hearing both the sides and on examination of the record, came to the conclusion that appellant having applied for the post under General category, was not entitled to the claimed relief. Accordingly, vide order dated 21.02.2013, the writ petition was dismissed. Appellant then preferred an application seeking review of the order dated 21.02.2013. However, his review application has also been dismissed by the learned Single Judge vide order dated 04.10.2013.

To assail correctness of the orders dated 21.02.2013 and 04.10.2013, the appellant has now invoked Clause X of the Letters Patent by way of the instant intra Court appeal.

We have heard learned counsel for the appellant.

It is vehemently contended on behalf of the appellant that there being no mention of any reservation for lineal descendants of ex-servicemen in the impugned advertisement (Annexure P-2), he could not apply for a vacancy reserved for such category and that being so, right of the appellant to be considered for the vacancy reserved under category of lineal descendants of ex-servicemen has been denied to him and the entire selection process stands vitiated. Learned counsel has also placed reliance upon **"[CWP No. 7222 of 2011] Jaswant Kaur Vs. State of Punjab and another"** decided on 09.05.2012 to contend that in similar circumstances, candidature of the petitioner therein was directed to be considered for the category reserved for the Ex-servicemen (SC)/Lineal Descendants of Ex-servicemen (SC).

It is not in dispute that the appellant not only applied for a vacancy reserved for General category but also stated in the application that he does not belong to any reserved category. It has also been conceded on behalf of the appellant that he participated in the process of selection by appearing in the written test as a general category candidate. In this situation, it is found to be appropriate to refer to the following observations of

the Hon'ble Supreme Court of India in the case of Babulal Badriprasad Varma Vs. Surat Municipal Corporation (2008) 12 SCC 401, at page 415:-

"43. In Halsbury's Laws of England, Vol. 16(2), 4th Edn., Para 907, it is stated:

"The expression 'waiver' may, in law, bear different meanings. The primary meaning has been said to be the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may arise from a party making an election, for example whether or not to exercise a contractual right... Waiver may also be by virtue of equitable or promissory estoppel; unlike waiver arising from an election, no question arises of any particular knowledge on the part of the person making the representation, and the estoppel may be suspensory only... Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it."

44. As early as in 1957, the concept of waiver was articulated in a case involving the late assertion of a claim regarding improper constitution of a Tribunal in Manak Lal

v. Dr. Prem Chand Singhvi in the following terms: (AIR p. 431, para 8)

"8. ... It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R. has observed in Vyvyan v. Vyvyan 9: (Beav p. 75 : ER p. 817)

'Waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and that being so, he neglects to enforce them, or chooses one benefit instead of another, either, but not both, of which he might claim'."

*In **Manish Kumar Shahi v. State of Bihar and others**, (2010) 12 SCC 576, it has been held as under:*

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High

Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K (1995) 3 SCC 486, Marripati Nagaraja v. Govt. of A.P.(2007) 11 SCC 522, Dhananjay Malik v. State of Uttaranchal (2008) 4 SCC 171, Amlan Jyoti Borooah v. State of Assam (2009) 3 SCC 227 and K.A. Nagamani v. Indian Airlines (2009) 5 SCC 515."

In Bareja Automobiles Pvt. Ltd. versus State of Haryana and others, CWP No. 2297 of 2007 decided on 17.08.2012, the writ petitioners had applied for allotment of institutional plots in Sectors 20-A & 20-B, Faridabad, advertised for sale by Haryana Urban Development Authority. Initially, the applications were invited to allot "freehold institutional plots for Corporate Offices, Research & Development Centres, Corporate Towers and Staff Training Institutes" in Sectors 20-A and 20-B, Faridabad, in the year 2004. The allotments were to be made on an on-going "first come first served" basis. Only 16 applications were received. Thereafter, another advertisement was published in respect of the same plots, which were part of the earlier process of advertisement, but with the stipulation that the booking of these plots commences on 10.02.2006 and closes on 10.03.2006. There was marginal increase in the cost of the plots as well. The plots allotted at Faridabad in pursuance of the second advertisement were the subject matter of challenge in the writ petition. The matter was referred to the Full Bench as in some earlier decisions two Division Benches of this Court had expressed divergent opinions on the question of promissory

estoppel. The Full Bench formulated, amongst others, the following question for its disposal:-

*"3. Whether the principle of promissory estoppel can be invoked against the petitioners having participated in the selection process and which of the judgments lays down correct principle of law i.e. **Delhi Assam Roadways Corporation Ltd.** case (supra) on the one hand and **Anil Kumar and U.G. Hospital Pvt. Ltd.** cases (supra) on the other?"*

After an in-depth study of the facts and case law, the Full Bench came out with an answer to the above question, to the following effect:-

"None of the petitioners have disputed the process of allotment at any time before the allotment process was completed. The petitioners have not even submitted a representation disputing such allotment process, as advertised alleging the same to be violative of directions of the Hon'ble Supreme Court in New India Public School case (supra). The petitioners have participated in the allotment process inasmuch as not only they applied, but also appeared before the Selection Committee. Having remained unsuccessful, the petitioners have invoked the jurisdiction of this Court alleging violation of the directions of the Hon'ble Supreme Court. Though we have found while dealing with Question No.1, that there is no violation of the directions of the Supreme Court, but even if it is assumed that there is violation of the directions of the Hon'ble Supreme Court in New India Public School case (supra), we

find that the petitioners are estopped to dispute the allotment process by way of the writ petition.

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Thus, we find that the findings recorded by the Division Bench of this Court in Delhi Assam Roadways Corporation Ltd. case (supra) not only run counter to the view expressed by two other Division Benches, but also against the principles of law enunciated above. We are unable to agree with such findings. Thus, we hold that petitioners are estopped to dispute the allotment for their failure to dispute the allotment process prior to their participation in the interview.”

In view of the above, we are of the considered opinion that the process of selection cannot be challenged by the appellant after having participated therein.

It may also be added that the appellant, in his wisdom, applied for a vacancy belonging to the General category and in column No. 6 of his application form, he specifically stated that he does not belong to any reserved category. In such a situation, the respondents could not consider appellant's candidature for a vacancy reserved for lineal descendants of ex-servicemen or any other category.

Reliance placed by learned counsel for the appellant on the **Jaswant Kaur's case (Supra)**, is misplaced insofar as in that case, the petitioner had protested by making representation to the authorities concerned before the written test was held.

Whereas, the appellant, in the present case, has chosen to challenge the selection process after unsuccessfully participating therein without demur.

However, as observed by the learned Single Judge, no vacancy under the category of lineal descendants of ex-servicemen is available out of the advertised posts and nor any of the candidates, if selected in that category, has been impleaded as party respondent.

In view of the above, we regret our disinclination to interfere with the well reasoned order passed by the learned Single Judge. The appeal, therefore, fails and is dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

September 10, 2015
Suresh Kumar