

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. Date of decision: 09.10.2018
CWP No.14326 of 2017 (O&M)

Sombir and othersPetitioners
Versus

State of Haryana and othersRespondents

2. CWP No.13461 of 2017 (O&M)

Ajmer and anotherPetitioners
Versus

State of Haryana and othersRespondents

3. CWP No.15418 of 2017 (O&M)

Rajesh KumarPetitioner
Versus

State of Haryana and othersRespondents

4. CWP No.15013 of 2017 (O&M)

Jogender and othersPetitioners
Versus

The State of Haryana and othersRespondents

5. CWP No.14082 of 2017 (O&M)

Sanjay KumarPetitioner
Versus

State of Haryana and othersRespondents

6. CWP No.14235 of 2017 (O&M)

Devender and others
Versus
State of Haryana and others

.....Petitioners
.....Respondents

7. CWP No.14081 of 2017 (O&M)

Anil Kumar
Versus
State of Haryana and others

.....Petitioner
.....Respondents

8. CWP No.14080 of 2017 (O&M)

Mahesh Kumar
Versus
State of Haryana and others

.....Petitioner
.....Respondents

9. CWP No.16394 of 2017 (O&M)

Vipin and others
Versus
State of Haryana and others

.....Petitioners
.....Respondents

10. CWP No.27488 of 2017 (O&M)

Kapoor Singh
Versus
The State of Haryana and others

.....Petitioner
.....Respondents

11.

CWP No.12705 of 2018 (O&M)

Suresh Kumar and others

.....Petitioners

Versus

The State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mazlish Khan, Advocate,
and Mr. Vikas Lochab, Advocate,
for the petitioner(s) (in CWP Nos.13461 of 2017).

Mr. Abhishek Sethi, Advocate,
for the petitioner (in CWP No.15418 of 2017).

Mr. S.K. Hooda, Advocate,
for the petitioners (in CWP No.14235 of 2017).

Mr. S.S. Mor, Advocate,
for the petitioner(s) (in CWP Nos.14080, 14081 & 14082 of
2017).

Mr. B.S. Brar, Advocate,
and Mr. J.S. Saneta, Advocate,
for the petitioners (in CWP-16394-2017).

Mr. Ajay Vijarania, Advocate,
for the petitioner (in CWP-27488-2017).

Mr. Sachin Dhull, Advocate,
for Mr. Vijay Pal, Advocate,
for the petitioner(s) (in CWP Nos.15013 of 2017, 12705-2018).

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Kanwal Goyal, Advocate,
for respondent-Haryana Staff Selection Commission.

Ritu Bahri, J.

This order will dispose of CWP Nos.14326, 13461, 15418, 15013,
14082, 14235, 14081, 14080, 16394, 27488 of 2017 and 12705 of 2018
together as common questions of law and facts are involved in all the

petitions. For reference, facts are being taken up from CWP No. 14326 of 2017.

Petitioners are seeking quashing of the order dated 29.05.2017 (Annexure P-15), vide which, the respondent authorities had selected respondent Nos.4 to 28 from the waiting list of general category candidates and appointed them as Conductors.

Facts not in dispute between the parties are that pursuant to the advertisement dated 28.02.2009 (Annexure P-1), process for recruiting 2480 posts of Conductors was started. Thereafter, a corrigendum was issued, whereby number of posts was increased to 3837, out of which, 267 posts were reserved for ESM General category. After the selection process was complete, only 93 candidates were appointed in ESM General category and 174 posts remained vacant. Some of the candidates approached this Court by filing CWP No.18044 of 2014, titled as **Sunil Kumar and others vs. State of Haryana and others** seeking direction to the respondents to appoint them on 174 posts, which remained vacant out of ESM General category candidates. The said writ petition was allowed by referring to the judgment passed by this Court in CWP No.13384 of 2011, titled as **Garima Jindal vs. HVPNL and another**, decided on 06.08.2012. Against the said judgment, LPA No.1775 of 2012 was filed, which was dismissed on 09.11.2012 and even SLP filed before the Hon'ble Supreme Court has been dismissed. In that case, it was laid down that all the posts, which fell into the category of Ex-serviceman would be filled-up from amongst the candidates belonging to the General Category. While allowing the writ petition, a direction was given to the respondents to appoint the petitioners as Conductors as per their merit in the waiting list after replacing the conductors, who were

appointed on contract basis on the principle of 'last come first go'.

Grievance of the present petitioners is that while implementing the judgment passed by this Court in **Sunil Kumar's** case (supra), the respondent-department ought to have considered the claim of the petitioners, who were seniors to some of the petitioners (in that petition) in whose favour, order dated 19.05.2016 (Annexure P-14) has been implemented. Merit of the petitioners (in the judgment Annexure P-14) and that of the present petitioners has been given in the misc. application i.e. CM-3876-CWP- 2018. Para no.4 of the said application reads as under:-

“4. That the names of the petitioners stand in the waiting list at serial No.68, 75, 33, 12, 69, 91, 54, 97, 65, 51, 60, 21, 78, 66, 81, 14, 67, 47, 86, 34, 53, 94, 61 and 50 respectively and the candidates who were offered appointments on 29.05.2017 (Annexure P-15), their merit position in the waiting list is 32, 11, 36, 39, 13, 15, 20, 23, 25, 35, 40, 72, 96, 30, 48, 6, 24, 63, 29, 99, 76, 7, 52, 17 and 9. So, this clearly demonstrate that juniors to the petitioners whose names stand at Sr. No.99 have been appointed vide order dated 29.05.2017 (Annexure P-15) and the petitioners, who were higher in merit have been arbitrarily left.”

Learned State counsel has vehemently argued that after the selection process was over, CWP No.6492 of 2013 filed by Subhash and others was disposed of vide judgment dated 25.03.2013 by giving direction to respondent No.2 (therein) i.e. Director General, State Transport, Haryana to consider the claim of the petitioners and to take final decision on the legal notice dated 23.01.2013. Pursuant to the said order passed by this Court, claim of the petitioners was rejected vide order dated 15.07.2014 (Annexure P-13). Once their claim was rejected in 2014, the writ petitions filed in the year 2017 suffers from delay and laches and the petitioners have no right for appointment on the posts, which fell vacant on account of non availability of candidates in ESM category. Learned State counsel has referred to the

judgment passed by Hon'ble the Supreme Court in **State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.**, 2015 (1) RSJ 704, wherein while considering the concept of delay in approaching the Court with regard to identically situated persons, following guidelines have been laid down:-

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summoned up as under:-

- (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
- (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
- (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see ***K.C. Sharma & Ors. v. Union of India*** (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an

intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

In the written statement filed by the respondents, it has been clarified that when recommendation vide list dated 01.02.2012 was sent, there were 644 conductors in excess and audit party had already made objection against the excess number of conductors. It has been clarified that those 644 conductors were working on contract basis and had been given salaries as per the judgment dated 31.01.2017 passed by Hon'ble the Supreme Court in **State of Haryana vs. Mohinder Singh and others**, Civil Appeal No.7391-7395 of 2013.

As per the order dated 19.05.2016 passed by this Court in **Sunil Kumar's** case (supra), direction was given to appoint the petitioners (therein) as Conductors as per their merit in the waiting list after replacing the Conductors, who were appointed on contract basis on the principle of 'last come first go'. The said direction was not to give appointments over and above the merit list. It was the duty of the official respondents not to ignore the seniors while giving appointments to the junior petitioners. However, case of the petitioners had been rejected on 15.07.2014 (Annexure P-13). While making appointments, case of similarly situated employees was required to be taken into consideration by the respondent-State.

Learned State counsel has handed over copy of instructions dated 02.07.2010 issued by the Chief Secretary to Government of Haryana, a perusal of which shows that the matter has been considered by the

Government and it has been held that horizontal reservation is a smaller

compartment within the bigger compartment of vertical reservation. It has, therefore, been decided that in case, no candidate is found suitable for appointment even on re-advertisement, the vacancies reserved for ESM of a particular category, will be filled up from amongst the same category candidates. These instructions were further modified on 23.05.2014, whereby words “even on re-advertisement” have been deleted. Hence, a conjoint reading of the instructions dated 02.07.2010 & 23.05.2014 makes out that the respondent-departments were bound to full up vacant posts reserved for ESM of a particular category, from amongst the same category candidates. Hence, even without filing of the present petitions, the respondent-State was bound to follow those instructions. Accordingly, as per instructions dated 02.07.2010 & 23.05.2014, respondent-State was bound to fill up these posts. Instead of following these instructions, they have compelled the petitioners to file the writ petitions. A perusal of the order dated 15.07.2014 (Annexure P-13) shows that the petitioners had approached this Court by filing CWP No.6492 of 2013, which was disposed of vide order dated 25.03.2013 by giving direction to the Director General, State Transport, Haryana to pass a speaking order on the legal notice. Vide this order, their legal notice has been rejected by the respondents without following the instructions dated 02.07.2010 and 23.05.2014. Had the respondent-State followed their own instruction, they would have allowed the legal notice of the petitioners and given them appointments in their respective categories. Thereafter, CWP No.18044 of 2014 filed by Sunil Kumar and others was allowed vide order dated 19.05.2016 (Annexure P-14) and a direction was given to the respondents to appoint the petitioners (therein) as Conductors as per their merit in the waiting list. Even while

implementing this judgment, the respondent-department had chosen not to follow the instructions dated 02.07.2010 & 23.05.2014. In these circumstances, the writ petitions filed by the present petitioners deserve to be allowed.

In view of the above discussion, the impugned rejection order dated 15.07.2014 (Annexure P-13) is set aside and the official respondents i.e. Director General, Transport Department, Haryana & Staff Selection Commission, Haryana, are directed to appoint the petitioners as conductors notionally from the date when the petitioners in **Sunil Kumar's** case (supra) have been appointed as Conductors, as per their merit in the waiting list keeping in view the judgments passed in **Garima Jindal's** case (supra) as well as instructions dated 02.07.2010 & 23.05.2014.

All the petitions i.e. CWP Nos.14326, 13461, 15418, 15013, 14082, 14235, 14081, 14080, 16394, 27488 of 2017 and 12705 of 2018 are allowed accordingly.

09.10.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No