

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

**CWP No. 208 of 2018 (O&M)
Date of Decision: 10.01.2018**

Dinesh Kumar and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Sardavinder Goyal, Advocate
for the petitioners.

JASWANT SINGH, J.

1. The instant petition is filed seeking writ in the nature of mandamus directing the Respondent to consider the case of Petitioners for the appointment to the post of clerk under backward class category against Advertisement No. 2/2013.

2. The admitted facts are that the Respondent No.2-Subordinate Service Election Board in June 2013 invited applications for 1192 posts of clerks. The petitioners applied under the category of backward class. The Respondent after completing all formalities declared result on 26.05.2014 and on its Web Site on 26.06.2014 loaded category wise comprehensive select list, wherein present petitioner did not find mention their name among successful candidates.

3. Few BC candidates filed Civil Writ Petitions before this court assailing the select list on the ground that BC category candidate who had secured more marks than successful general category candidates should be considered in the list of general category whereas Respondents have

considered these candidates in the list of backward class candidates. In

short, the contention of backward class candidate was that meritorious candidate of backward class category should be considered in general category. This court vide order dated 15.12.2017 while allowing Writ Petition No. 12618 of 2014 held that directions are issued to recast the select list but only pertaining to one reserve category i.e. backward class category. It was further directed that benefit of such exercise is not to extent to all BC category candidates but would be confined only qua the petitioners in these bunch of petitions. Relevant paras read as under:-

“ In view of the above, the action of the respondents in having prepared separate category wise select list and having confined consideration of B.C category candidates to their category alone and having not considered B.C. Category candidates against open/General Category posts inspite of securing a higher merit than the General Category candidates, is held to be bad in law.

Relief

*The impugned select list having been prepared in utter disregard of the settled position of law in the subject, this Court ordinarily would have directed the entire select list to be recast. However, in the peculiar facts and circumstances of the case, directions are issued to recast the select list but only pertaining to one reserved category i.e. the Backward Class Category in the light of the observations made in this judgement and by following the dictum laid down by the Hon'ble Apex Court in **R.K. Sabharwal** and **Jitendra Kumar Singh** (supra). Further directed that the benefit of such exercise is not to extend to all B.C category candidates but would be confined only qua the petitioners in these bunch of petitions.*

Such view is being taken for the reason that it is only the present petitioners belonging to the B.C category who have agitated the issue. Any direction to recast the entire select list would entail a large number of selected and

appointed candidates belonging to the General Category including the private respondents being ousted. Concededly, private respondents herein have not secured their appointment by playing any fraud or having misrepresented. They have now been working against the post in question over a period of three long years. Benefit of this judgement, as such, is being confined to the petitioners herein so as to leave some scope for adjustment of the selected and appointed General Category candidates. ”

4. The counsel for the petitioner vehemently contended that benefit of said judgment should be granted to all other backward candidates, however, respondent inspite of representation of Petitioners has not recasted select list. The counsel on being confronted with the findings of this court that benefit of such exercise shall not extent to all BC category candidates but would be confined only qua the Petitioners, failed to give any satisfactory reply.

5. The select list was prepared in June' 2014 and thereafter general category as well as backward class category candidates joined the service. The Petitioners named in CWP No. 12618 of 2014 and connected Petitions successfully assailed select list. This court directed Respondents to recast select list and consider Petitioners therein, however, it was categorically mentioned that benefit of recast select list would be confined to Petitioners. The intention of court was very clear that select list would not be recasted qua candidates who are not Petitioners. If present petition is allowed it would lead to chaos and there would be no end of litigation. The future of selected general candidates would be in dilemma which cannot be permitted by law. The present petitioners are fence sitters who waited for the out come of earlier writ petitions and have come forward at this belated

stage. Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors. Versus Arvind Kumar Srivastava & Ors. 2015 (1) SCC (L&S) 191*** has dealt with this question and summoned up law on this issue in Para 23 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 person. 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.*

There is no explanation for filing petition at this belated stage and it is well settled law that court should come to rescue of vigilant litigants and not those who are waiting for outcome of others. Therefore, the Petitioner is bereft of merits and deserves to be dismissed. Accordingly, petition is **dismissed**.

January 10, 2018
'dk kamra'

(JASWANT SINGH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>