

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113 (12 cases)

1.

CWP-24742-2015 (O&M)
Date of Decision : 31.10.2023

KRISHNA DEVI

..... PETITIONER

V/S

UNION OF INDIA AND ORS

..... RESPONDENTS

2.

CWP-9243-2016

HARPAL SINGH

..... PETITIONER

V/S

UNION OF INDIA & ORS

..... RESPONDENTS

3.

CWP-25037-2015

RAJESH KUMAR

..... PETITIONER

V/S

UNION OF INDIA & ORS

..... RESPONDENTS

4.

CWP-25038-2015

VIJAY KUMAR

..... PETITIONER

V/S

UNION OF INDIA & ORS

..... RESPONDENTS

5.

CWP-7194-2016

MANISH KUMAR

..... PETITIONER

CWP-24742-2015 and other connected matters	-2-	2023:PHHC:139130
V/S		
UNION OF INDIA & ORS		 RESPONDENTS
6.		CWP-2880-2016
KULDEEP SINGH		 PETITIONER
V/S		
UNION OF INDIA & ORS		 RESPONDENTS
7.		CWP-25856-2015
RAKESH KUMAR		 PETITIONER
V/S		
UNION OF INDIA AND ORS		 RESPONDENTS
8.		CWP-25677-2015
DAVINDER PAL SINGH		 PETITIONER
V/S		
UNION OF INDIA AND ORS		 RESPONDENTS
9.		CWP-24997-2015
GURINDER SINGH		 PETITIONER
V/S		
UNION OF INDIA & ORS		 RESPONDENTS
10.		CWP-25000-2015
DUPINDER KUMAR		 PETITIONER
V/S		
UNION OF INDIA & ORS		 RESPONDENTS

11.

CWP-25624-2015

ANIL KUMAR

..... PETITIONER

V/S

UNION OF INDIA AND ORS

..... RESPONDENTS

12.

CWP-24225-2015 (O&M)

DARSHAN SINGH

..... PETITIONERS

V/S

BANK OF INDIA AND ORS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Jasbir Singh, Advocate
for the petitioner (s).

Mr. Jai Bhagwan, Advocate
for the petitioner in CWP-9243-2016.

Mr. Ranjan Lohan, Advocate
for respondents-bank.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the abovesaid petitions are disposed of since facts and issues involved are analogous. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-24742-2015.

2. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of final merit list of selection of Sepoy on the basis of interview held from 09.09.2014 to 12.09.2014 (Annexure P-7) and consequent appointment of respondents

No.4 to 63.

3. This is 2nd round of litigation. The petitioner prior to filing of present writ petition, filed CWP No.23581 of 2015 which was dismissed as withdrawn vide order dated 29.02.2016. No liberty was granted to the petitioner to file fresh petition, however, petitioner filed present writ petition assailing appointment of private respondents. This Court vide order dated 10.03.2017 dismissed petition on the ground that earlier petition has been dismissed without liberty. The petitioner preferred intra court appeal before Division Bench of this Court which came to be allowed vide order dated 01.02.2023. The Division Bench has set aside order dated 10.03.2017 passed by this Court and directed to list the matter before Single Judge.

4. The petitioner on temporary basis joined respondent-bank as Peon. A memorandum of settlement dated 25.06.2013 came to be executed between management of the bank and representatives of Federation of Bank of India Staff Unions. The respondent-bank issued policy dated 02.07.2013 with respect to recruitment of sub staff cadre i.e. Sepoy & Safai Karmchari-cum-sepoy. The respondent-bank invited application for the post of Sepoy & Safai Karmchari-cum-sepoy. The petitioner like other candidates applied for the post. The respondent-bank granted relaxation with respect to age and eligibility criteria to persons already working on contract/casual basis. The respondent conducted interview of aspirants and selected 60 candidates. The candidates were selected against regular post. The petitioner's name did not figure in the merit list.

5. The grievance of the petitioner is that she was working with the respondent-bank since 2001 as casual worker, thus, services of the

petitioner could not be terminated. The respondent-bank was supposed to continue service of the petitioner.

6. Mr. Jasbir Singh, learned counsel for the petitioner contends that the petitioner has turned 47 years, thus, at this stage of life, it is difficult to get any other job. The petitioner belongs to poor strata of the society. The respondent being instrumentality of the State is supposed to consider directive principles of the Constitution and as per directive principles, the State is supposed to protect livelihood of the citizens. The Union of the employees has entered into an agreement with respondent-bank and as per said agreement, the bank was supposed to absorb petitioner as regular employee.

7. Per contra, Mr. Ranjan Lohan, learned counsel for respondents-bank submits that the respondent-bank has made appointment of 60 employees on regular basis. The petitioner was working on casual/contract basis and it is settled proposition of law that contractual employee cannot be replaced by contractual employee, however, a contractual employee can be replaced by regular employee. The bank has made appointment of regular employees after following due procedure. The petitioner participated in the appointment process so she can not challenge appointment process.

8. I have heard the arguments of learned counsel for the parties and perused the record.

9. From the perusal of record, it comes out that the petitioner worked with respondent-bank from 2001 to 2015. The petitioner was working as Peon. The bank entered into memorandum of settlement with

Union of employees. In terms of the memorandum, the casual workers were extended relaxation in age and qualification. The respondent-bank invited applications for regular appointment of 60 Peons. The petitioner participated in the selection process, however, she was not selected.

10. From the perusal of agreement executed between employees' Union and respondent-bank, this Court is unable to find out any clause which enjoins that bank would absorb casual workers on permanent basis, thus, claim of the petitioner that bank was supposed to absorb petitioner as regular employee cannot be countenanced. The petitioner indubitably had worked for a quite long time with respondent-bank, however, it does not create vested or absolute right in her favour. The petitioner had participated in the selection process and bank had made appointment of 60 regular employees. It is settled proposition of law that a candidate after participating in the selection process cannot challenge advertisement or selection process. The petitioner was eligible for age and qualification relaxation, however, she was bound to compete with other candidates. It is not a case that against 60 posts, 60 or less than 60 candidates participated. The selection committee as per its wisdom, after granting age and qualification relaxation to the petitioner, in terms of memorandum of settlement, has selected 60 candidates. There is nothing on record disclosing that unfair or unreasonable means have been adopted or there was bias on the part of selection committee.

11. A two Judge Bench of Apex Court in **Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others 2023 SCC OnLine SC 344** has held that candidates, having taken part in the selection process

without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate.

In **Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309**, after referring to a catena of judgments on the principle of waiver and estoppel, Supreme Court did not entertain the challenge to the advertisement for the reason that the same would not be maintainable after participating in the selection process. The relevant extracts of the judgment read as:

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

In **Ashok Kumar v. State of Bihar, (2017) 4 SCC 357**, the Apex Court after referring to catena of judgments made an observation that having participated in the selection process without objection, precludes the candidate to challenge the process at a later stage.

In **Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100**, the Apex Court held that it is well settled principle that those candidates who had taken part in the selection process knowing fully well the procedure

laid down therein were not entitled to question the same.

The Apex Court in **Sadananda Halo v. Momtaz Ali Sheikh, (2008) 4 SCC 619** has noted that the only exception to the rule of waiver is the existence of *mala fides* on the part of the Selection Board.

A two Judge Bench of Supreme Court in **State of Uttar Pradesh v. Karunesh Kumar and Others 2022 SCC Online SC 1706** has clearly held that a candidate who has participated in the selection process is estopped and cannot challenge the selection process.

The Apex Court in **Madan Lal v. State of Jammu and Kashmir AIR 1995 SC 1088** has held that if a candidate takes a calculated chance and participates in the selection process, he cannot challenge selection process on being found unsuccessful.

12. In the wake of above discussion and findings, this Court is of the considered opinion that the petitioner has no vested or absolute right to claim absorption or appointment as regular employee with respondent-bank. The petitioner has been replaced by regular set of employees. There is no infirmity in the selection process warranting interference of this Court, thus, claim of the petitioner is not sustainable.

13. On the asking of the Court, learned counsel for the respondents agrees to the arrangement that if at any point of time, contractual employees are appointed by any branch within city where the petitioner was working, the petitioner would be given preference and relaxation in age and qualification would be extended.

14. It is made clear that in case of appointment of regular employee, the petitioner would be considered in terms of advertisement and

selection criteria.

CWP-24225-2015

15. The other writ petitioners were removed from service, however, the petitioner on account of interim order passed by this Court is indubitably working with respondent-bank. In the wake of peculiar facts, the respondent-bank shall continue to engage petitioner till the appointment of some regular employee after following recruitment process. The petitioner shall not be replaced by a contractual employee. The petitioner shall be paid wages as permissible by rules and regulations.

16. The petitions stand disposed of in above terms.

17. Pending applications, if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

31.10.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>