

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(201)	CWP-14063-2022 Date of Decision : October 07, 2023	
Rahul Boora	..	Petitioner
Versus		
State of Haryana and others	..	Respondents
(2)	CWP-12349-2022 (O&M)	
Sonia and others	..	Petitioners
Versus		
State of Haryana and others	..	Respondents
(3)	CWP-12442-2022 (O&M)	
Vicky and others	..	Petitioners
Versus		
State of Haryana and another	..	Respondents
(4)	CWP-14049-2022	
Abhishek Saini and others	..	Petitioners
Versus		
Haryana Staff Selection Commission and others	..	Respondents
(5)	CWP-14091-2022	

Vinit and another

..

Petitioners

Versus

Haryana Staff Selection Commission and others

..

Respondents

(6)

CWP-14092-2022

Punit Kumar and others

..

Petitioners

Versus

Haryana Staff Selection Commission and others

..

Respondents

(7)

CWP-14095-2022

Rahul Pannu and another

..

Petitioners

Versus

Haryana Staff Selection Commission and another

..

Respondents

(8)

CWP-14097-2022

Akshay Kumar and others

..

Petitioners

Versus

HSSC and others

..

Respondents

(9)

CWP-14100-2022

Ankit Attri and others

..

Petitioners

Versus

HSSC and others

..

Respondents

(10)

CWP-14101-2022

Nitish Kumar and others

..

Petitioners

**CWP-14063-2022
& connected cases**

-3-

2023:PHHC:130258

Versus

Haryana Staff Selection Commission and others .. Respondents

(11) CWP-14116-2022

Ritu .. Petitioner

Versus

State of Haryana and others .. Respondents

(12) CWP-14190-2022

Manish Kumar and another .. Petitioners

Versus

State of Haryana and others .. Respondents

(13) CWP-14192-2022

Pooja .. Petitioner

Versus

State of Haryana and others .. Respondents

(14) CWP-14264-2022

Rupali Dubey .. Petitioner

Versus

State of Haryana and others .. Respondents

(15) CWP-14273-2022

Pinky .. Petitioner

**CWP-14063-2022
& connected cases**

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2023:PHHC:130258

Versus

State of Haryana and others

.. Respondents

(16)

CWP-14370-2022

Kuldeep Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(17)

CWP-14384-2022

Renu

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(18)

CWP-14388-2022

Gurmesh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(19)

CWP-14467-2022

Parveen Rawal

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(20)

CWP-14517-2022

Kamesh

.. Petitioner

Versus

Haryana Staff Selection Commission and another

.. Respondents

(21)

CWP-14522-2022

Amrik and others

.. Petitioners

Versus

HSSC others

.. Respondents

(22)

CWP-14570-2022

Bharti

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(23)

CWP-14644-2022

Suman Kumari

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(24)

CWP-14654-2022

Baldev and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

(25)

CWP-14805-2022

Ritu

.. Petitioner

Versus

Haryana Staff Selection Commission and another

.. Respondents

(26)	CWP-14869-2022	
Sachin Kumar		.. Petitioner
	Versus	
Haryana Staff Selection Commission and others		.. Respondents
(27)	CWP-15087-2022	
Sudesh Kumari		.. Petitioner
	Versus	
State of Haryana and others		.. Respondents
(28)	CWP-15134-2022	
Anju and another		.. Petitioners
	Versus	
State of Haryana and others		.. Respondents
(29)	CWP-15161-2022	
Muniya		.. Petitioner
	Versus	
Haryana Staff Selection Commission and others		.. Respondents
(30)	CWP-15421-2022	
Sonika Yadav		.. Petitioner
	Versus	
State of Haryana and others		.. Respondents
(31)	CWP-15518-2022	

2023:PHHC:130258

.. Petitioner

.. Respondents

CWP-1617-2023

.. Petitioner

.. Respondents

CWP-17822-2022

.. Petitioner

.. Respondents

(34)

.. Petitioner

.. Respondents

CWP-19551-2022

.. Petitioner

.. Respondent

CWP-21598-2022

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(37)

CWP-22845-2022

Gautam

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(38)

CWP-22900-2022

Parmod Kumar

.. Petitioner

Versus

Haryana Staff Selection Commission and others

.. Respondents

(39)

CWP-6865-2023 (O&M)

Reshmi

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(40)

CWP-21865-2023

Soniya

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(41)

CWP-11608-2023

Balbir Singh and another

.. Petitioners

Versus

State of Haryana and others

.. Respondents

(42)

CWP-14639-2022

Kuldeep Kumar

.. Petitioner

Versus

State of Haryana and another

.. Respondents

(43)

CWP-19816-2023

Naveen and another

.. Petitioners

Versus

Haryana Staff Selection Commission and others

.. Respondents

(44)

CWP-19822-2023

Rajan Kumar

.. Petitioner

Versus

Haryana Staff Selection Commission and another

.. Respondents

(45)

CWP-19957-2023

Soniya Devi

.. Petitioner

Versus

Haryana Staff Selection Commission and another

.. Respondents

(46)

CWP-21604-2023

Rahul

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(47)

CWP-21607-2023

Pooja

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(48)

CWP-21616-2023

Naresh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(49)

CWP-21624-2023

Satyawan and others

.. Petitioners

Versus

State of Haryana and others
Respondents

..

(50)

CWP-21671-2023

Silak Ram and another

.. Petitioners

Versus

State of Haryana and others

.. Respondents

(51)

CWP-22275-2023

Sukhvinder and others

.. Petitioners

Versus

Haryana Staff Selection Commission and others

.. Respondents

(52)

CWP-22565-2023

Amit .. Petitioner

Versus

State of Haryana and others .. Respondents

(53) CWP-22566-2023

Dinesh Kumar .. Petitioner

Versus

State of Haryana and others .. Respondents

(54) CWP-22681-2023

Natwar Verma .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate and Mr. Sandeep Dhull, Advocate
for the petitioners in CWP-14091, 14092, 14095, 14097, 14100
14101,14805, 14869, 15161, 17822, 19551-2022 &
CWP-19816, 19822 and 19957-2023.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate for the petitioners
in CWP-14049-2022 and CWP-22275-2023.

Mr. Sunil K. Nehra, Advocate and
Mr. Viren Nehra, Advocate for the petitioners
in CWP-14063-2022, CWP-14388-2022 and
CWP-6865-2023.

Ms. Meenu Singla, Advocate for petitioners
in CWP-18178-2022.

Mr. Ramesh Hooda, Advocate, for
Mr. Robin Singh Hooda, Advocate, for the petitioners

in CWP-12349-2022.

Mr. Navnit Sharma, Advocate, for
Mr. Ravinder Hooda, Advocate, for the petitioners
in CWP Nos.21616 and 21624-2023.

Mr. Jasbir Mor, Advocate, for the petitioners
in CWP Nos. 12442, 14192, 14264, 14273, 14384, 14388,
14570, 14639 14644, 14654, 15421, 15518 of 2022.

Mr. Aditya Singh, Advocate for Mr. S.K. Malik, Advocate
for the petitioners in CWP-14570 and 14639 of 2022

Mr. Jai Parkash, Advocate, for
Mr. Vikram Sheoran, Advocate, for the petitioners
in CWP-1617-2023 and CWP-14517-2022.

Mr. Gaurav Mohunta, Advocate, with
Mr. Rishav Jain, Advocate, for the petitioners
in CWP-14190-2022.

Mr. Sanchit Punia, Advocate, for the petitioner
in CWP-22566-2023.

Mr. Amandeep Singh, Advocate for
Mr. Sandeep Kumar Yadav, Advocate for the petitioners
in CWP-22900-2022.

Mr. Rajat Mor, Advocate for the petitioners in
CWP-14522-2022 and CWP-11608-2023.

Mr. R.S. Dhull, Advocate for the petitioner
in CWP-21598-2022 and CWP-21553-2022
CWP-22565-2023 and CWP-21671-2023.

Mr. Vivek Kumar Sangwan and
Ms. Monica Sangwan, Advocate for the petitioners
in CWP-22681-2023.

Mr. Vinod Bhardwaj, Advocate for the petitioners
in CWP-14116-2022.

Ms. Shruti Jain, Senior DAG, Haryana
with Ms. Kamaljeet Kaur, Law Officer.

Mr. Harish Rathee, Senior DAG, Haryana.

Mr. Saurabh Mohunta, DAG, Haryana
Mr. Pankaj Middha, Advocate
for respondent in CWP-22900-2022.

Harsimran Singh Sethi, J. (Oral)

1. By this common order, bunch of writ petitions, detail of which has been given in the headnote are being decided as all the writ petitions relate to the same advertisement qua the same post and are challenging the impugned orders, which have been issued by the respondents in terms of the order passed by a Coordinate Bench of this Court in CWP-15672-2021 and others connected cases decided on 25.04.2022.

2. Certain facts need to be mentioned for the correct appreciation of the issues raised in these bunch of petitions.

3. The respondent-Commission issued an advertisement No.5/2019 dated 20.06.2019 advertising 4858 posts of Clerks. Thereafter, by a corrigendum dated 22.05.2020, number of posts were reduced from 4858 to 4798 by the respondent-Commission. As per the advertisement, posts of 4798 clerks were advertised in various reserved categories, apart from general category and the last date for submission of application form was 13.08.2019. In the advertisement, certain criteria was mentioned to apply in various reserved category and certain instructions have been given to be followed by the candidates to claim benefit of extra marks under the socio-economic criteria or benefit of reservation by attaching the duly issued relevant certificate by the competent authority along with the application form. As per the advertisement, the selection was to be made on the basis of the marks obtained by the candidate in the written examination and maximum of 10 marks were to be given to the candidates who were eligible for the same under the socio-economic criteria.

4. As per the decision taken vide resolution dated 23.11.2018, the respondent-Commission had decided that candidates were to be called for

scrutiny equivalent to three times of the posts advertised in the category concerned and the said shortlisting will be done on the basis of the marks obtained in the written examination only. Keeping in view the said criteria, written examination was held for the post in question on 21.09.2019, 22.09.2018 and 23.09.2019 and, thereafter, result of the written examination was declared. Thereafter, on the basis of the marks obtained by the candidates in the written examination three times of the number of vacancies candidates were called for scrutiny of their documents and after scrutiny of documents, final result was declared on 03.09.2020 and the names of the candidates were recommended by the respondent-commission for appointment to the department concerned.

5. It may be noticed that final result for ESP category was not declared initially but the same was declared on 22.10.2020. Waiting list was also published so as to consider the candidates in case recommended candidates do not join the post in question.

6. The said selection process undertaken by the respondent-Commission in selecting the candidates and recommending them for appointment against the post of Clerk was made subject matter of **CWP No.15672-2021** titled as **Amit Kumar and others vs. State of Haryana and others.** In the said writ petition, the primary grievance made was that candidate who attempted paper Code 'A' were given benefit of marks in three questions whereas, benefit of same marks against same question, to the candidate who attempted the same in paper Code R, U, T, was not given, which caused prejudice to them ousting them from the zone of consideration. Ultimately vide order dated 25.04.2022, the Coordinate Bench of this Court set aside the selection process adopted by the

commission while making selection to the post of clerk and directed the respondent-Commission to re-evaluate the candidates correctly as per the observation made therein by the Court and thereafter declare fresh result of the written examination. Result of written examination declared on 18.12.2019 and the final select list dated 03.09.2020 was quashed. It may be further noticed that in para-18 of the order passed in Amit Kumar (supra), a direction was given that after carrying out the reevaluation of the written examination, the entire exercise of further process of selection including scrutiny of the documents shall also be carried out all over again.

7. It may be noticed that by the time the selection was set aside by the Coordinate Bench of this Court, appointment to the posts of Clerk were already made by the respondent-State keeping in view the initial recommendation of the candidates by the respondent-Commission and keeping in view the said fact, it was directed by the Coordinate Bench of this Court that the candidates who have already been selected and appointed by the respondent-commission, if found meritorious enough to be included in the fresh merit list, keeping in view the number of posts advertised, will be allowed to continue if they clear the scrutiny process and the candidates who do not come within the merit list shall be issued show cause notice before taking any action qua them. Liberty was given to the selected/appointed candidates to avail their appropriate remedy in case any order passed by the respondent-department causes prejudice to them.

8. After the selection process was set aside keeping in view the direction given by the Coordinate Bench of this Court in Amit Kumar (supra), the respondent-Commission declared the fresh result of the written examination on 17.05.2022 keeping in view the marks secured by the

candidates and the candidates three times to the numbers of post advertised were called for scrutiny of documents on the basis of the fresh merit list of the written examination prepared by the respondent-Commission. It was mentioned in the notice dated 17.05.2022 that all the candidates, who come within the zone of consideration irrespective of the fact whether they were earlier called or not for scrutiny are required to appear afresh for the scrutiny of their documents. After scrutiny of documents, the final result of the candidates, who appeared in the scrutiny of documents was declared qua the post of Clerk on 23.06.2022. On the basis of the final selection, list of the selected candidates was prepared by the respondent-Commission following due process as envisaged under the advertisement as well as in compliance of the direction of this Court in Amit Kumar (supra).

9. The candidates, who were selected before and were appointed however, could not make the cut to be part of the fresh final merit list were given due show cause notice by the respondent-Commission as to why their recommendation be not recalled qua the post of Clerk in view the revised final merit list and they be not relieved in terms of the direction given by the Coordinate Bench of this Court in para-11 of the judgment in Amit Kumar (supra). It was further mentioned in the show cause notice that candidates are required to give reply within a period of seven days and in case no reply is received within the prescribed time, it will be assumed that they have nothing to say and appropriate action of relieving them from service will be taken against them.

10. As per the respondent-Commission, the candidates who had submitted their reply, the same was considered and appropriate order was passed giving a reason as to why the said candidate cannot continue in

service before relieving them from service. As per the respondent-Commission, the candidates who had not filed reply, no order with regard to their claim was required to be passed as they had not raised any objection in pursuance to the show cause notice issued to them and they were relieved from service keeping in view the fact that they did not make it to the select list keeping in view the fresh merit list qua number of post advertised in each category.

11. The candidates who were earlier selected and appointed but could not make it in the fresh selection list due to which the respondent-Commission had passed the order withdrawing their recommendation in pursuance of which they were required to be relieved from their service, challenged the said action of the department by filing the present writ petitions. The said action of the department is under challenge in the present bunch of writ petitions raising various grievances.

12. Learned Senior counsel for the petitioners has argued that two different kind of selection process has been adopted by the respondent-Commission while making initial selection and during the subsequent selection process, which was undertaken in pursuance to the direction given by a Coordinate Bench of this Court in Amit Kumar (supra) for selecting the candidates for the post of clerk. Learned Senior Counsel for the petitioners submits that initially the candidates who were called for scrutiny of documents, their marks in the written examination as well as marks obtained by them under the socio-economic criteria was made part of the total marks secured by the candidate to ascertain the merit of the candidate as to whether the said candidate was within three times of the number of post advertised so as to call him/her for scrutiny of documents, whereas in the subsequent

selection process undertaken in terms of the direction given by this Court in Amit Kumar (supra), the candidates have been called for scrutiny of their documents only on the basis of the marks secured by them in written examination hence, the respondent-Commission has changed the criteria while making fresh selection, which is contrary to the advertisement as well as direction given by the Coordinate Bench of this Court in Amit Kumar (supra),

13. Learned Senior counsel for the petitioners further argues that the respondent-commission is under an obligation to prepare a fresh merit list of the candidates by taking into consideration the marks secured by them in the written examination as well as marks for which they are entitled under the socio-economic criteria so as to frame cut list of the candidates called for scrutiny of documents in pursuance to the direction given by the Coordinate Bench of this Court in Amit Kumar (supra).

14. Learned counsel for the respondent-Commission submits that the argument which is being raised by the learned senior counsel for the petitioners that two different sets of criteria have been adopted by the respondent-commission while making selection of the same post is factually incorrect. Learned counsel for the respondent-Commission on instructions from Deputy Secretary of the respondent-Commission submits that the same process which was followed for calling candidates for the purpose of scrutiny of documents for the post of clerk prior to the direction given by Coordinate Bench of this Court in Amit Kumar (supra), was followed again while complying with the direction of this Court in Amit Kumar (supra).

Learned counsel for the respondent-commission submits that for calling the candidates for scrutiny of their documents, the respondent-commission had

framed a process through a resolution dated 23.11.2018, which is being followed in all kinds of selection process undertaken and according to the said resolution of the Commission dated 23.11.2018, which has been passed by the Full Body of the respondent-Commission, the shortlisting of the candidates is to be done on the basis of the marks secured by them in written examination only, which criteria was also followed while undertaking the earlier selection process as well as while undertaking the fresh selection process in pursuance to the direction given by this Court in Amit Kumar (supra) hence, the argument being raised by learned Senior counsel is factually incorrect.

15. Keeping in view the factual position, which has come on record on the basis of the statement of the responsible member of the respondent-Commission which cannot be disputed in the absence of any material brought on record to contend the contrary that the respondent-commission followed two different set of criteria for undertaking the selection process, the argument raised by learned Senior counsel for the petitioner cannot be accepted. Specific resolution dated 23.11.2018 passed by respondent-commission has been cited by learned State counsel as per which candidates are to be shortlisted only on the basis of the marks obtained in written examination for the purpose of calling them for scrutiny whereas no material has been brought on record by the petitioners to contradict the stand taken by the respondent-commission.

16. That being the factual position stated hereinbefore, argument of the learned Senior counsel for the petitioners that two different sets of criteria were adopted by the respondent-Commission for shortlisting the candidates to be called for scrutiny cannot be accepted and is accordingly

rejected.

17. At this stage, learned Senior counsel for the petitioners inter alia submits that in case candidates have been called for the purpose of scrutiny by only taking into consideration the marks secured by them in written examination, the same will stand contrary to the criteria mentioned in advertisement, therefore, the said action of the respondent-commission is liable to be set aside.

18. It may be noticed that in the present petitions, there is no challenge to the criteria and in turn the selection process which was undertaken by the respondent-commission. In case petitioners are aggrieved with the criteria and in turn the selection process followed by the respondent-commission for making selection contrary to the provisions of the advertisement, the only remedy is to challenge the same by impleading all the selected candidates as party to the petition so that the candidates, who have been selected are not condemned unheard. Hence, in the facts and circumstances of the present case, where the selected candidates are not party to the petition, this Court is not to adjudicate the question of law raised qua the criteria and in turn selection process undertaken by the respondent-commission. It is conceded position that in these bunch of petitions the only challenge that is made, is to the order passed by the respondent-State/commission in pursuance to the direction given by the Coordinate Bench of this Court in para-11 of the Amit Kumar (supra) qua the candidates, who were initially selected and appointed as clerk but could not make it to the selection list in pursuance to the fresh merit list prepared keeping in view the direction given by the Coordinate Bench of this Court in Amit Kumar (supra) and their claim to remain in service is only to be

decided in these bunch of petitions.

19. In case the petitioners are aggrieved qua the criteria and in turn the selection process adopted by the respondent-Commission for the purpose of calling for scrutiny of documents, they are free to avail an appropriate remedy before the appropriate forum by impleading all the selected candidates, who are selected in pursuance to the process followed by the respondent-commission while preparing fresh merit list/select list for making appointment against the 4798 posts of clerk.

20. In some of the writ petitions, the candidates i.e. petitioners, who are now being relieved from service have challenged the action of the respondent-commission in ousting them from the merit list of the selected candidates after the fresh scrutiny process on the ground that initially the certificate which was submitted by them to claim the benefit under the EWS category was accepted by the respondent-Commission but in the fresh selection process, the said certificate has not been accepted as valid therefore, respondents are required to be estopped from rejecting the EWS certificate attached by the petitioners along with application form so as to oust them from the zone of selection and they be given due consideration on the basis of the EWS certificate already attached as they had secured more marks than the last selected candidates in the category in which they were competing.

21. Learned counsel for the respondents submits that it is a matter of fact that initially the EWS certificate given by the petitioners was considered as valid certificate, which is why they were appointed however, while making selection in pursuance to the direction given by the Coordinate

Bench of this Court in Amit Kumar (supra) during fresh scrutiny of

documents, it transpired that certain candidates did not had valid EWS certificate so as to give them benefit of the same. Learned counsel for the respondents further submits that there are two type of certificates which were issued by the authorities. One for appointment in the Government department of the State of Haryana and another for getting appointment in the departments of Government of India. Learned counsel for the respondents submits that the criteria for issuance of both sets of EWS certificate is different. For being entitled for consideration under the EWS category in the State of Haryana, the candidate's or his/her family should have less than 06 lacs of income in a particular year whereas, the said limit is of 08 lacs in the case of certificate issued for Government of India and the certificate which the petitioners submitted depicts that their income is less than Rs.08 lacs and not 06 lacs, which is not valid to be given weightage while securing job in the Government of Haryana and the performa for issuing the certificate in question is also different hence, during fresh security process undertaken in accordance with the direction given in Amit Kumar (supra), the certificate which is valid to seek appointment against a post with Government of India has been treated as an invalid certificate for grant of benefit under the EWS category for the post of clerk, which is to be filled in Government of Haryana.

22. Learned counsel for the petitioners submits that in the advertisement no performa of particular certificate was mentioned hence, when the petitioners approached the competent authority for the grant of EWS certificate, they were granted the certificate which was attached by the petitioners with the application form hence, action of the respondent-commission in rejecting the same by treating the same to be invalid

certificate is totally arbitrary and illegal.

23. To rebut the said averment, learned counsel for the respondent-commission submits that EWS certificate is to be issued under the Instructions dated 25.02.2019 issued by the Government of Haryana and under those instructions, a performa had already been annexed hence, in case the petitioners sought EWS certificate under the instructions dated 25.02.2019 for the purpose of appointment with Government of Haryana, the relevant performa was very well available with the concerned authority to grant the required certificate, hence, contention of the learned counsel for the petitioners that no performa was prescribed so as to get the proper EWS certificate for the purpose of seeking appointment against a post in the Government of Haryana is without any basis.

24. Learned counsel for the respondents further submits that keeping in view clause 2.4 (Note 6) of the advertisement itself, wherein, it has been mentioned that whosoever is claiming benefit of reservation under various categories, a certificate duly issued by the competent authority is required to be submitted, which clarifies that certificate as envisaged under instructions dated 25.02.2019 was to be given, which relevant certificate is missing in the case of the petitioners.

25. The argument of the learned counsel for the petitioners that once they were selected on the basis of the certificate submitted by them for claiming the benefit of reservation under the EWS category, the same certificate could not have been treated as invalid subsequently at the time of fresh selection process cannot be accepted. The terms and conditions to claim the benefit of reservation or any other benefit have already been depicted in the advertisement itself. Once, it is mentioned in the

advertisement that certificate duly issued by the competent authority is to be given and the petitioners had approached the competent authority for issuance of the certificate and got issued a certificate which was not admissible qua the post to be filled up by the Government of Haryana but was only admissible qua the post to be filled by the Government of India, no benefit of the said certificate can be extended to the petitioners.

26. It may be noticed that the petitioners should have been vigilant enough at the time of applying for certificate required by them and should have checked the contents of the certificate issued to them by the competent authority to ensure that the competent authority had issued a valid certificate for the purpose of seeking appointment against the post in Government of Haryana hence, the respondent-commission cannot be made liable to accept an invalid EWS certificate being a statutory body itself. Hence, once it is a conceded position that EWS certificate issued to the petitioners which was attached by them with the application form, were not in accordance with what is required for service with the Government of Haryana but was one related for service with Government of India, petitioners did not fulfill the requisite conditions for appointment with the Government of Haryana in the reserved category of EWS.

27. Even if, they were given benefit of the same at the time of initial selection but in light of the direction of the Coordinate Bench to undertake the fresh scrutiny of the documents, respondents-commission was within the jurisdiction to check the documents again and decide the eligibility of a candidate on the basis of record, which action of the respondent-commission cannot be treated as arbitrary and the respondent-Commission cannot be directed to commit the same mistake again as the

Court cannot give a direction contrary to the settled provisions of law and advertisement.

28. Learned counsel for the petitioners further submits that in somewhat similar situation, a Coordinate Bench of this Court in **CWP-21217-2021** titled as **Ajay Bamel vs. State of Haryana and others** decided on 09.05.2022 has already passed the order hence, the benefit of the same should be extended to the petitioners. Learned counsel for the petitioners submits that in the present petitions also while issuing notice of motion, the said fact was noticed by this Court.

29. Learned State counsel submits that order passed by the Coordinate Bench of this Court in Ajay Bamel (supra) has already been stayed by the Division Bench of this Court while passing order in LPA-873-2022 hence, no benefit can be extended to the petitioners.

30. Keeping in view the fact that this Court is also of the view that keeping in view the provisions of law only EWS certificate relating to the Government of Haryana is valid certificate which certificate concededly was not submitted by the petitioners, no benefit of the EWS certificate attached by the petitioners with the application form can be given to the petitioners.

31. Learned counsel for the petitioners argues that some of the petitioners were also given benefit of socio-economic criteria according to which, if none of the family member of the applicant was a Government employee in any department/Board/Corporation/Company/ Statutory Body/Commission/Authority of Government of Haryana or any other State Government or Government of India, the said candidate was entitled for the grant of benefit of 05 marks. The said benefit of 05 marks was given to certain married female candidates by interpreting the clause of the

advertisement to mean that after their marriage the family of in-laws was to be seen for the purpose of grant of 05 marks under the socio-economic criteria and married lady candidate was granted the benefit of 05 marks keeping in view the family status of in-laws family and not parental family.

32. Learned counsel for the petitioners further submits that as per instructions dated 13.12.2021, which were released subsequently by Government of Haryana, in case of married female candidate, the employment in their in-laws family is to be seen and not of their parental family and in light of the same, the female married candidates, who were earlier granted the benefit of 5 marks under the socio-economic criteria keeping in view the working status of their in-laws family, which benefit has been taken back while revising the merit list prepared under the directions given in Amit Kumar (supra).

33. Learned counsel for the petitioners submits that a somersault has been taken by the respondent-Commission in interpreting the Clause 2.3 (iii) (a) of the advertisement while framing fresh select list, which is totally arbitrary and illegal.

34. Learned counsel for the respondents submits that the candidates were to be reevaluated on the basis of the terms and conditions of the advertisement and in the Clause 2.3 (iii) (a), the definition of the family has been given for the grant of the said benefit. Though, learned counsel for the respondents concedes that after the selection process was over, initially fresh instructions dated 13.12.2021 have been issued however, submits that those instructions were prospective in nature and cannot be made applicable retrospectively to a selection process which was in operation prior to 13.12.2021.

35. Learned counsel for the respondent-commission submits that socio-economic criteria framed on the basis of the notification dated 11.06.2019 issued by the Government of Haryana as applicable at the time when the advertisement was published was to be given effect and even if, the said notification was subsequently amended, the benefit of said amendment could only be given prospectively and could not be made applicable retrospectively and the mistake which the Commission did earlier by implementing the amended notification qua socio-economic criteria with retrospective effect was rectified, hence, the petitioners cannot make any grievance qua the said action.

36. It is a settled principle of law that rules and regulations which are applicable on a particular date i.e. last date for consideration of claim of the candidate is to be made applicable. In the present case, it has already come on record that terms and conditions mentioned in the advertisement were framed keeping in view the notification of the Government of Haryana as it existed on the last date of submission of application form qua the criteria mentioned under the socio-economic criteria. Said terms and conditions as also mentioned in the advertisement are as under:-

“(iii) The 10 marks for socio-economic criteria and experience shall be allocated as followed:

(a) if neither the applicant nor any person from among the applicant’s family viz father, mother, spouse, brother and son is , was or has been a regular employee in any department/Board/Corporation/Company/ Statutory Body/Commission/Authority of Government of Haryana or any other State Government or Government of India.”

37. A bare perusal of the above would show that the applicant’s father/mother/spouse/brother/son was also made part of the family while

considering the claim of the candidate for the grant of 05 marks under the socio-economic criteria hence, giving direction to the respondent-commission to exclude the said parental family members is contrary to the advertisement. It is a settled principle of law that terms and conditions of the advertisement are sacrosanct and are to be obeyed. In the present case, the petitioners participated under the terms and conditions of the advertisement, which have been reproduced hereinbefore hence, claim of the petitioners that working status of their in-laws family is to be taken into consideration cannot be accepted. Even if, there was no statutory rule governing the said issue, once the instructions dated 11.06.2019 were issued by the department on the issue concerned on the basis of which the relevant clause was framed in the advertisement for the grant of 05 marks under the socio-economic criteria, the same is to be adhered to under all circumstances.

38. Qua the argument that subsequent to the advertisement respondents themselves had changed the definition of the family so as to grant 05 marks under the socio-economic criteria as per the status of in-laws family of the female candidate, it is a settled principle of law that no instructions can be made operative with retrospective effect and the same can only be made effective prospectively and in present case, by the time the fresh instructions/amendment dated 13.12.2021 were brought into operation, first selection process qua the present advertisement in the present case had already been completed hence, application of Clause 2.3(iii) (a) of the advertisement by respondent-commission for grant of marks under socio-economic criteria cannot be termed to be arbitrary and illegal in any manner.

Hence, claim of the petitioners qua the grant of marks under the socio-economic criteria as per status of the in-law of the married female candidate

cannot be accepted.

39. Learned Senior counsel for the petitioners argues that certain candidates could not appear for the scrutiny of documents though, they had secured enough marks in the written examination to be called for scrutiny of documents even as per fresh merit list. Learned counsel for the petitioners submits that fresh scrutiny does not serve any purpose specifically qua such candidates as they were appointed initially only after due scrutiny of documents, hence no justifiable purpose will be achieved in asking the petitioners to appear for the fresh scrutiny and accordingly the action of the respondent-commission in not including the names of the said candidates in the fresh select list on the ground that they failed to appear in scrutiny, is liable to be set aside.

40. Learned counsel for the respondents rebuts that said arguments of the learned Senior counsel for the petitioners and submits that fresh selection was to be undertaken keeping in view the directions given by the Coordinate Bench of this Court in Amit Kumar (supra) and as per the said order, selection was to be made afresh on all accounts including scrutiny process.

41. Learned counsel for the petitioners has not been able to rebut the said arguments of the learned State counsel.

42. Learned counsel for the respondents further submits that on the same plea, a review petition was also filed by the similarly situated candidates as petitioners so as to review the order dated 25.04.2022 passed in Amit Kumar (supra), which review petition has already been disposed of by the same bench vide order dated 03.10.2023, which has passed the judgment in Amit Kumar (supra).

43. Once, the issue to be called for scrutiny process has already been decided by the bench concerned, which has passed the order in Amit Kumar (supra) and even in review petition has not been able to secure any orders in their favour qua the said plea, the said plea cannot be raised before this Court as the petitioners will be covered by the orders passed by the Coordinate bench.

44. Learned counsel for the respondents further states that even otherwise, keeping in view the facts of the present case, wherein, scrutiny of documents which has been undertaken in pursuance to the order passed by the Coordinate Bench of this Court in Amit Kumar (supra), large numbers of discrepancies have been found in light of which the petitioners cannot be allowed to say that no scrutiny of the documents was needed to be undertaken afresh. Once, it is a matter of fact that large number of irregularities have been found in the earlier scrutiny due to which, status of the candidates have gone under a material change, it cannot be said that action of the department in asking the candidates to undergo same process afresh is illegal or arbitrary.

45. Learned Senior counsel for the petitioners argued that some of the petitioners secured same marks as secured by the last selected candidate in the category in which they were competing however, they have still been ousted from final selection list and have been thrown out of service which is illegal and arbitrary especially, when they are in service for the last more than three years.

46. Learned counsel for the respondents submit that as it was found that large numbers of candidates secured same marks hence, respondent-Commission applied already decided criteria to break the tie and according

to the said criteria, in case the candidates secured the same marks, the tie will be broken keeping in view the age of the candidate concerned. Learned counsel for the respondent-commission submits that the said criteria was already in operation as per the resolution dated 25.09.2015 passed by the respondent-commission.

47. Keeping in view the said fact once the petitioners have been ousted on the basis of the valid resolution passed by the respondent-commission, which resolution was in operation much prior to the advertisement, no grievance can be made by the petitioners qua their non-selection despite securing same marks as secured by the last selected candidate in the category in which they were competing hence, the argument being raised by the learned Senior counsel cannot be accepted.

48. Learned Senior counsel for the petitioners submits that some of the candidates have not been evaluated keeping in view the experience certificate submitted by them. Learned Senior counsel submits that any experience even if, the same is of private company or private corporation was valid experience keeping in view the terms and conditions of the advertisement hence, claim of the petitioners in CWP-14869-2022 has wrongly been rejected by the respondent-commission.

49. Learned counsel for the respondents submits that as per the terms and conditions of the advertisement only the experience with the department of Government of Haryana or any authority within the Government of Haryana description of which was given in advertisement was valid experience and experience of private company cannot be treated as valid experience.

advertisement is reproduced as under:-

“Experience:

Once half (0.5) marks for each year or part thereof exceeding six month of experience, out of a maximum of sixteen years, on the same or a higher post in any Department/Board/Corporation/ Company/Statutory Body/ Commission/Authority of Government of Haryana. No marks shall be awarded for any period less than six months.”

51. A bare perusal of the above reproduction would show that experience with any Department/Board/Corporation/Company/Statutory Body/Commission/Authority of Government of Haryana, where a person worked could have been taken as valid experience for the grant of marks. Argument of the learned Senior counsel that experience with any private institution is to be treated as valid experience, is not borne out of the terms and conditions of the advertisement hence, the said arguments of the learned Senior counsel cannot be accepted.

52. Another argument raised by the learned counsel for the petitioners is that Clause 2.3(iii) (c) of the advertisement has not been interpreted by the respondents in a manner required for so as to grant 05 marks to the petitioners in CWP-14654-2022, CWP-12442-2022 and CWP-14224-2022. Learned counsel for the petitioners argues that clause has been interpreted by the respondent-commission to mean that only Vimukt Jatis and Tapriwas Jatis, which were neither covered under Scheduled castes or Backward class are to be granted benefit of 05 marks and said marks cannot be given to the member of Vimukt Jatis/Tapriwas Jatis which are covered under the reserved category and the said interpretation is not borne out from the reading of the said clause.

53. Learned counsel for the respondents submits that Vimukt Jatis and Tapriwas Jatis, which are not covered either in scheduled caste or

backward class are only to be given benefit of 05 marks whereas, jatis to which petitioners belongs are covered either in scheduled castes or backward class hence, they are only required to get benefit of reservation under the reserved category of scheduled caste or backward class as the case may be and not 05 marks under Clause 2.3 (iii) (c) of the advertisement.

54. To appreciate the arguments of the learned counsel for the petitioners relevant clause is reproduced as under;

“If the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State of Haryana which is neither Scheduled Caste nor a Backward class.”

55. A bare perusal of the above would show that denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State of Haryana which is neither Scheduled Caste nor a Backward class are to be given benefit of 05 marks. The intention behind the said clause is that Vimukt Jatis and Tapriwas Jatis or Nomadic tribe, which cannot get any benefit under the reserved category should be compensated by the grant of 05 marks. Interpretation of the petitioners would mean that even the candidate who belongs to either SC/BC category and getting benefit of reservation will further get benefit of 05 marks, which is not the intention of the respondent-commission while prescribing the criteria in question hence, interpretation being given by the learned counsel for the petitioners is not correct.

56. At this stage, learned counsel for the petitioners submits that in an affidavit which was filed by respondent-Commission in CWP-5219-2022 which relates to the case of a Sub Inspector in Haryana police, respondents have interpreted the same condition in a manner which the petitioner contends hence, giving different interpretation to the same clause by the

respondent-commission in the case of the petitioners herein is arbitrary and illegal.

57. Learned counsel for the respondents submits that it is a matter of fact that initially respondent-commission interpreted the clause in a manner which the petitioner contends but when the subject matter came up for consideration before this Court when the said interpretation was challenged by certain candidates, upon reconsideration, the respondent-Commission was of the view that Vimukt Jatis and Tapriwas Jatis, which are not part of the SC/BC category can only get the benefit of 05 marks as per the criteria mentioned in the advertisement hence, interpretation being given to the said clause of the advertisement by the respondents is perfectly valid.

58. The explanation given by the respondent-commission qua the manner in which the said clause is to interpreted is correct. A bare reading of the clause will suggest that as per it the candidate who is already getting benefit of reservation under the SC/BC category cannot get more premium if he belongs to Vimukt Jatis and Tapriwas Jatis. As per the said clause benefit of socio-economic criteria cannot be taken by the candidate when he/she is already availing the benefit of reservation. Hence, interpretation being given to the clause concerned by the petitioners cannot be accepted and the said argument is accordingly rejected.

59. Another argument has been raised in the case of some of the petitioners that they were selected at the first instance and were given benefit of socio-economic criteria in terms of clause 2.3 (iii) (b) of the advertisement according to which, a widow, or first or second child in case his father had died before attaining the age of 42 or first and second child in

case father of the said child had died before the applicant attained the age of 15 years was given benefit of 05 marks under the socio-economic criteria.

60. Learned counsel for the petitioner submits that in the case of the petitioner in CWP No.15518-2022 initially certificate of orphan submitted by him has been treated to be valid and he has been granted 05 marks under the socio-economic criteria, which certificate has now been rejected on the ground that same is not on performa as specified in clause 2.4 of the terms and conditions of the advertisement. Learned counsel for the petitioner submits that once the benefit of the same certificate has already been extended in his favour, withdrawing the same by misinterpreting the same clause is arbitrary and illegal.

61. Learned counsel for the respondent-commission submits that the petitioner has not given information required to claim the benefit in question as per clause 2.3(iii) (b) for which, there is a due performa given by the authority concerned to give certificate hence, as from the certificate it is not clear whether the petitioner is first or second child, no benefit can be given.

62. Qua the said argument, the facts of the case are needed to be seen rather than the technicalities. As per the clause in question, the candidate can get 05 marks in case he/she fulfills the following conditions:-

“2.3 (iii) (b) if the applicant is:-

(i) a widow:

(ii) the first or the second child and his father had died before attaining the age of 42 years or.

(iii) the first or the second child and his father had died before the applicant had attained the age of 15 years”

63. A bare perusal of the clause would show that benefit of 05

marks under the socio-economic criteria is admissible to a widow or first or second child in case the applicant is first or second child and his/her father died before attaining the age of 42 or the father died before the applicant, who is a first or second child attained the age of 15 years. In the present case, the petitioner had already attached a orphan certificate, which included date of birth of the applicant and date of birth of the father of the applicant concerned. In the application form, the said candidate has duly mentioned that he is first/second child. That being so, all the required information was sufficiently available with the respondent-commission to find out whether the applicant is to be given benefit of 05 marks or not.

64. Object/purpose of the socio-economic criteria should have been seen rather than the technicalities. In case from the information already before the respondent-commission the factum can be ascertained whether the candidate is eligible for the benefit of 05 marks, the respondent-commission should have adopted the method to give benefit which the State intended to give under the said clause. The argument of the learned counsel for the respondent-State that certificate in terms of performa should have been submitted describing that the petitioner as first or second child, which is missing in case of the aggrieved candidate does not have merit. This Court is of the view that once, the petitioner has given a statement of fact in the application form submitted with the respondent-commission that he is first/second child, which statement has not been rebutted to be incorrect by the learned counsel for the respondents, keeping in view the judgment of this Court in **CWP-11894-2021** decided on 30.07.2021 titled as **Nisha vs. Haryana Staff Selection Commission**, claim of the petitioner stand covered in his favour. Hence, the petitioner in CWP-15518-2022 is held entitled for

the benefit of 05 marks under the clause 2.3 (iii) (b) keeping in view the judgment of this Court in Nisha (supra) and respondents are directed to reevaluate his claim qua the post in question.

65. Learned counsel for the petitioner in CWP-14384-2022 submits that daughter of the petitioner was suffering from cancer and was admitted in hospital starting from 24.05.2022 which was the date fixed for scrutiny of documents. Learned counsel for the petitioner submits that the child remained in hospital upto 06.06.2022, which was the last date for the scrutiny of documents, hence keeping in view the fact that child of the petitioner was seriously ill, the respondents were under an obligation to grant one more opportunity to the petitioner to appear in the scrutiny of documents especially, when there is nothing against the petitioner and documents of the petitioner had already been scrutinized in earlier scrutiny of documents and the petitioner only absented keeping in view the serious ailment suffered by her daughter and petitioner being a widow mother could not have left the daughter in pain in the hospital.

66. Learned counsel for the respondents submits that for the scrutiny of documents various opportunities were given starting from 21.5.2022 to 06.06.2022 hence, as the petitioner could not appear in any of the dates, no further opportunity can be granted.

67. Keeping in view the fact that petitioner was already selected, she is meritorious enough and being a widow has to support her family single handedly and that being a single parent could not have left her seriously ill daughter in a hospital so as to attend the scrutiny of documents, it can be sufficiently said that petitioner was prevented by circumstances which were beyond her control for appearing in the scrutiny of her

documents. Further, during the scrutiny period her daughter was in hospital, which is a matter of fact. In the facts and circumstances of the present case, petitioner being a widow lady having no other option but to take care of her ailing daughter needs to be given one more opportunity as a special case. Let the respondents call the petitioner for scrutiny of her documents on a particular date and in case after scrutinizing her documents, the same are found to be in order keeping in view the direction given by a Coordinate Bench of this Court in Amit Kumar (supra) pass appropriate order, also as the petitioner is already working, she should be allowed to continue in service till the appropriate order is passed on her claim by the respondent-commission.

68. Learned counsel for the petitioners submits that in some of the petitions, petitioners are the sports persons, who have been declined the benefit of the gradation certificate attached with the application form or submitted subsequently in the fresh scrutiny on the ground that gradation certificate, which has been produced by them, was obtained after the last date hence, said certificate cannot be taken into account for any purpose much less considering them eligible which action of the respondents is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No.1691-2016 titled as Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and another decided on 24.02.2016 as well as order passed by the Division Bench of this Court in CWP-16893-2015 titled as Union of India and others vs. Dharambir and another decided on 03.11.2016.

69. Learned counsel for the respondents submits that the present is not the case where the petitioners have not submitted the gradation

certificate along with the application form rather the issue is that the gradation certificate submitted by them only entitled them for the benefit against group-D post whereas, selection in question was being made against group-C post hence, the gradation certificate which was attached by the petitioners did not make them eligible for the grant of benefit of appointment to the post of clerk and the gradation certificate on the basis of which, the petitioners are now claiming appointment was issued much after the last date of submission of the application form, hence the said benefit could not be given to the petitioners.

70. It is the conceded view of this Court as per the settled principle of law that claim of the petitioners is to be decided keeping in view the terms and conditions of the advertisement according to which, the candidate who is seeking benefit of reservation under any category is required to submit relevant certificate proving the claim along with the application form. As gradation certificate which the petitioners submitted along with the application form to claim the benefit did not entitle them for the grant of benefit of group-C post but was one which was valid for group-D post therefore, the petitioners could not be granted benefit of appointment against group-C post on the basis of the gradation certificate, which was attached by them along with the application form.

71. The argument that the petitioners submitted the requisite gradation certificate subsequently which should have been taken into account while considering the claim of the petitioners have to be adjudicated keeping in view the terms and conditions of the advertisement only and as per the terms and conditions of the advertisement, no application claiming any benefit of reservation will be considered in the absence of the supporting

documents and any such documents through which benefit is claimed is to be attached along with the application form before the last date of submission of application form hence, the benefit of gradation certificate which is submitted by the petitioners after the last date and not appended with the application form, cannot be accepted.

72. The reliance being placed by the petitioners upon the judgment of the Supreme Court of India in **Ram Kumar Gijroya (supra)** is totally misplaced. In the said case, no certificate was attached by the candidates concerned but in the present case, gradation certificate was attached by the petitioners claiming the benefit in question but the said certificate was not found to be correct to grant the benefit to the petitioners and hence, the law which is being relied upon by the petitioners is without going through the actual facts of the present case as well as the case before the Hon'ble Supreme Court of India. The judgment can only be made applicable keeping in view the facts of each case.

73. Respondents in their reply relied upon the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.7677-2021** titled as **State of Bihar and others vs. Madhu Kant Ranjan and another** decided on 16.12.2021, wherein, in somewhat similar case, the Hon'ble Supreme Court of India held that where the documents are required to be submitted along with the application form to claim certain benefits, the submission of certificate after the last date being contrary to the conditions advertised cannot be accepted. Relevant paragraphs of the said judgment are as under:-

“9.As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless

extended by the recruiting authority. Also, only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent No.1 – original writ petitioner did not produce the photocopy of the NCC ‘B’ certificate alongwith the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC ‘B’ certificate. In these circumstances, the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No.1 – original writ petitioner on the post of Constable considering the select list dated 08.09.2007 and allotting five additional marks of NCC ‘B’ certificate.

10. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the Division Bench of the High Court is hereby quashed and set aside and judgment and order passed by the learned Single Judge dismissing the writ petition is restored. In the facts and circumstances of the case, there shall be no order as to costs.”

74. Keeping in view the said judgment of the Hon’ble Supreme Court of India, claim of the petitioners is covered against them keeping in view the facts and circumstances of the present case hence, no benefit can be granted to the petitioners on the basis of the certificate, which the petitioners never attached with the application form and rather which was even applied by them much after half of the selection process was already over.

75. Learned counsel for the petitioners in CWP-14370-2022 submits that initially while giving benefit to the candidates under Clause 2.3(iii) (a) in case brother/father/son are having separate identity cards and ration cards, they were treated as separate family so as to grant the benefit of

05 marks under the said clause therefore, the respondents were liable to be directed to maintain same view qua the said clause.

76. Learned counsel for the respondent-commission on the other hands submits that in case any interpretation to clause 2.3(iii) was given at the time of first selection, which was not inconsistent with the terms and conditions of the advertisement, the candidate cannot claim the same kind of interpretation so as to claim the said benefit hence, claim of the petitioners that if they are having separate ration card, the benefit can be claimed is not borne out of the interpretation of the said clause and therefore, needs to be rejected.

77. Qua the said issue raised, the intention behind the said clause is that no one from the family of the applicant should be in regular Government service. There is nothing in the said clause which would suggest that if the family members are living separately make the candidate entitle for the benefit of 05 marks under socio-economic criteria. Merely, because the candidate is living separately from his father/mother/brother/son or has separate ration card, as the case may be, will not entitle the candidate for the grant of benefit of 05 marks and 05 marks given to them initially upon such kind of interpretation by the respondent-commission has rightly been withdrawn while making the fresh selection in pursuance to the direction given by the Coordinate Bench of this Court in Amit Kumar (supra).

78. The last argument which has been raised by the learned counsel for the petitioners is that the petitioners are working for the last three years and keeping in view the fact that they have already rendered three years in service, the petitioners are entitled to continue in service even if, the

respondents are to create posts for them as there was no misrepresentation on the part of the petitioners to claim the benefits. In support of the said argument, reliance has been placed on certain case laws by the learned Senior counsel i.e. Civil Appeal No.367-2017 titled as Ran Vijay Singh and others vs. State of U.P. and others decided on 11.12.2017; Civil Appeal No.793-2014 titled as Mohan Lal Kadwasra vs. Rajasthan State Road Transport Corp. and others decided on 08.01.2015; Civil Appeal Nos.2515-2516-2013 titled as Rajesh Kumar and others vs. State of Bihar and others decided on 13.03.2013.

79. Learned counsel for the respondents submits that while passing the order in Amit Kumar (supra), the coordinate bench of this Court has not protected the petitioners in any manner and only a direction has been given that action can be taken against them after giving show cause notice to them, which process has already been followed by the respondents hence, no benefit can be granted to the petitioners.

80. It is a settled principle of law that posts beyond the advertised posts cannot be filled up in any manner. To support the said view reliance is being placed upon the judgments of the Hon'ble Supreme Court in Civil Appeal Nos.1133-1135-2010 titled as Rakhi Ray and others vs. High Court of Delhi and others decided on 01.02.2010 as well as in Civil Appeal No.1433-2006 titled as State of U.P. and others vs. Raj Kumar Sharma and others decided on 03.03.2006. Relevant paragraphs Nos.14 and 12 respectively of the judgments are as under:-

“14. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of

India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.”

“12. Filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution. (See: [Union of India & Ors. v. Ishwar Singh Khatri & Ors.](#) (1992 Supp (3) SCC 84), [Gujrat State Dy. Executive Engineers, Association v. State of Gujarat & Ors.](#) (1994 Supp (2) SCC 591); [State of Bihar & Ors. v. the Secretariat Assistant S.E. Union](#), 1986 & Ors. (AIR 1994 SC 736); [Prem Singh & Ors. v. Haryana State Electricity Board & Ors.](#) (1996 (4) SCC 319); [Surendra Singh & Ors. v. State of Punjab & Anr.](#) (AIR 1998 SC 18), and [Kamlesh Kumar Sharma v. Yogesh Kumar Gupta & Ors.](#) (AIR 1998 SC 1021).”

81. Learned Senior counsel appearing for the petitioners has not been able to rebut the said settled principle of law as per which even if the petitioner has not misrepresented in any manner however, since the appointment can only be made against the advertised posts, the prayer of the petitioners in case accepted, will be violative of the settled principle of law. The judgments being cited by the learned Senior counsel are by taking into account the fact that posts are available but in the present case, learned counsel for the respondents has submitted that after accommodating the candidates, who were to be appointed in place of the petitioners, there remain no vacant post and rather supernumerary posts have been created to give salary to the petitioners who are still continuing under the interim order of this Court. Keeping in view the fact said fact as there are no posts

available, petitioners cannot be accommodated.

82. Prayer of the petitioners that they cannot be ousted from the service now after revised merit list despite the fact that they are not within the selection zone keeping in view the number of posts advertised cannot be accepted. In case the said prayer of the petitioners is accepted not only the posts more than the advertised will be filled up but the said direction is capable of being misused so as to make selection contrary to the provisions and thereafter give a right to the ineligible selected candidates to continue in service, which is not permissible under law. No candidate can be allowed benefit of appointment contrary to the provisions of the advertisement/rules governing the service and the eligibility provided to compete for the selection. Hence, prayer of the petitioners that they be allowed to continue in service despite beyond the zone of selection process cannot be accepted.

83. But in case any post as advertised by the respondent-commission remains vacant and is not filled up under any circumstances even after exhausting the waiting list, the claim of the petitioners on the basis of the merit they had obtained in the selection process subject to their eligibility shall be considered against those posts. In case petitioners come to know that any post remains vacant out of the total advertised 4798 posts, they can raise an appropriate claim in accordance with law under this order before the respondents keeping in view the judgment passed by this Court in **Sahil Aggarwal vs. State of Punjab** decided on 26.04.2014.

84. No other argument has been raised on behalf of the petitioners in these bunch of petitions.

85. Keeping in view the facts and circumstances recorded hereinbefore, all the writ petitions are dismissed except CWP Nos.14384-

2022 & CWP-15518-2022, which are disposed of in terms of the observation made in the present judgment.

86. Civil miscellaneous application pending if any, is also disposed of accordingly.

87. Photocopy of this order be placed on the file of connected cases.

October 07, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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