

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.37537 of 2018 (O&M)

Date of Decision.17.01.2023

Dalel Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mohnish Sharma, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. R.N. Lohan, Advocate
for respondents No.2 and 3.

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JAISHREE THAKUR J. (ORAL)

The instant writ petition has been filed under Article 226 of the Constitution of India with the prayer for issuance of a writ in the nature of Mandamus, directing the respondents to issue letter of appointment to the petitioner on the post of Assistant, since his name figures at Sr. No.1 in the waiting list of the SC category.

In brief, facts are that an advertisement was issued by the University seeking to fill up 10 posts of Assistant, out of which 3 posts were to be filled from General Category and 2 posts from SC category and 1 post each from EBC (Gen), ESM (Gen), ESM (SC), BCB and SBC category. It is urged in the pleadings that after having participated in the selection process, the petitioner was kept at Sr. No.1 in the waiting list of the SC category. Both the posts from SC category were filled up, however, 1 post, which had been kept reserved for ESM (SC) category remained unfilled and therefore, that post ought to have been filled up by considering the candidature of the petitioner, who was at Sr. No.1 on the waiting list of the S.C.category. It is

further urged that in fact, on 02.07.2010 instructions were issued that in case posts remain unfilled in ESM category belonging to General/Scheduled Caste/BCA/BCB, they could be filled up amongst the candidates of respective categories. Therefore, the petitioner, who belonged to SC category and had been kept at Sr. No.1 on the waiting list of the said category, ought to have been adjusted since there was no candidate available in the ESM category belonging to SC.

Learned counsel appearing for the petitioner would rely upon the judgment rendered in CWP No.17706 of 2013 titled as *Prem Chand and others Vs. State of Haryana and others* decided on 18.05.2016 and other connected matters to contend that this Court by taking note of the instructions had allowed the said bunch of writ petitions with the direction to fill up the vacant posts reserved for ESM category from the waiting list of candidates belong to the same category. It is further submitted that in fact, the petitioner obtained information under the RTI Act that post of ESM (SC) category still remains unfilled, and therefore, he would be entitled to be appointed against the said post.

Pursuant to notice of motion having been issued, the respondent-University has put in appearance and filed its written statement.

Learned counsel appearing for the respondent-University would raise a preliminary objection that the writ petition is not maintainable on account of delay and laches. It is submitted that the selection process was over as far back as 2014 itself when the vacancies were filled up. It is further submitted that the writ petition has been filed after an ordinate delay of approximately four years and therefore, the same ought not to have been entertained. Apart from that, counsel appearing for the respondent-

University would submit that a written statement has been filed on 10.08.2019 wherein a categorical stand has been taken that Resolution No.31 dated 22.02.2015 (Annexure R2-3/4) was passed wherein it was decided to revise the promotion policy of non-teaching staff with the ratio of 75:25. 75% posts were to be filled up by promotion and 25% by direct recruitment. A fresh roster was then prepared and after working out the revised vacancy position, the respondent-University chose to divert the unfilled posts of Assistant, earlier reserved for ESM (SC) category, and filled up the same by promotion under the General Category. It is also submitted that pursuant to decision taken, the posts which remained unfilled pursuant to the advertisement were converted as posts to be filled up by direct recruitment from the General Category and therefore, as on date, there is no vacancy, which is required to be filled up.

I have heard learned counsel for the parties and have perused the paper book. In view of the aforesaid facts and circumstances, this Court finds that the writ petition is devoid of merit and therefore, deserves to be dismissed. Admittedly, the writ petition has been filed after an inordinate delay of 4 years, even though the delay is sought to be covered by stating that the information was being sought under the Right to Information Act, which was supplied only in the year 2018, consequent to which the writ petition has been filed. However, a perusal of the application seeking information under the Right to Information Act would show that the same has been filed in the year 2018 itself and therefore, that would not condone the period of limitation and cannot become a ground for filing writ petition at a belated stage. At best, writ petition ought to have been filed within a period of three years from the date when the cause of action arose i.e. when the vacancy was

not filled up. Reference is made to the judgment rendered by this Court in CWP No.13208 of 2003 titled as *Lakhbir Singh and others Vs. State of Punjab and others* decided on 28.04.2009. Moreover, this Court is not inclined to interfere in the matter since the written statement categorically states that there is no vacancy as on date. The post that had been reserved to be filled up from ESM (SC) category has now been treated as a post to be filled up by direct recruitment from the General Category. This has not been challenged by the petitioner nor has the selected candidate been impleaded as a party. The ratio of judgment as relied upon by the counsel appearing for the petitioner in *Prem Chand's case* (supra) would not be applicable to the facts and circumstances of the present case.

Consequently, the instant petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

January 17, 2023
Pankaj*

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