



CWP-16663-2004(O&M)

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

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CWP-16663-2004 (O&M)

Date of decision: 11.09.2024

Sunil Kumar

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. RK Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

Mr. Tapan Kumar, DAG Haryana.

AMAN CHAUDHARY, J. (ORAL)

1. The prayer made in the present petition is for quashing the order dated 07.10.2004, whereby the services of petitioner were terminated.
2. Learned Senior counsel submits that petitioner was appointed as Multipurpose Health Worker (Male) in the category of dependent of ex-servicemen on 22.01.1999, however, his services were ordered to be terminated vide order dated 07.10.2004 on the ground that he could not have availed the said benefit as his father after having served in the Army got appointed as a Driver in the Delhi Transport Corporation, which though he submits was as a General category candidate. Be that as it may even otherwise, also belongs to BCB category and his marks are more than last selected candidate therein, which remains undisputed thus he had a rightful claim to the post.
3. Further still, the operation of the impugned order was stayed by the



Division Bench on 26.10.2004 and for the last more than 2 decades, he is continuing in service, in which regard, reliance can be placed on the judgment of Hon'ble the Supreme Court in **Sivanandan C.T. vs. High Court of Kerala**¹, where the Constitution Bench while deciding the petition for induction of the petitioners therein after 6 years of the final list, observed and held that unseating the appointed candidates would be contrary to public interest, they having worked for a considerable length of time and gained experience on the post. In **MS Mudhol (Dr.) and another vs. SD Halegkar and others**², wherein the petition for removal of the respondent-Principal sought on the ground of not possessing the requisite qualifications was dismissed holding that the infraction of the statutory rule was not grave to the point of considering the case after elapsing of 13 years since the appointment.

4. In **Gujarat State Dy. Executive Engineers Association vs. State of Gujarat**³, it was held that “The entire appointment of direct recruits, therefore, from the waiting list was not proper. But these persons have been appointed and are working now at least for five years. It would, therefore, be unjust and harsh to quash their selection at this stage. Therefore, while refraining from quashing the appointment made in pursuance of the direction issued by the High Court, we are of the opinion that the waiting list for one year cannot furnish source of recruitment for future years, except in very exceptional cases...”. Even in **Buddhi Nath Chaudhary and others vs. Akhil Kumar and others**⁴, the appointments

¹ (2024) 3 SCC 799

² 1993 (4) SCT 226

³ 1994 (3) SCT 325

⁴ 2001 (3) SCC 328



made were, though, held to be improper but still by extending equitable consideration to such selected candidates it was decided not to disturb the same, the incumbents having worked for several years and gained good experience.

5. In **Md. Zamil Ahmed vs. State of Bihar**⁵, while quashing the action of terminating the services of the appellant, it was observed that the State by their own conduct had condoned the lapse due to passage of 15 years and thus could not take advantage of their mistake.

6. Learned State counsel despite his best efforts has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

7. In wake of the aforesaid, the present petition is disposed of in terms of **Md. Zamil Ahmed** (supra).

(AMAN CHAUDHARY)
JUDGE

11.09.2024
ashok

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

⁵ 2016 (12) SCC 342