

CWP-12331-2023 & connected cases -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

232 (17 cases)+233+234+235+236

CWP-12331-2023
Date of Decision: 20.01.2024

Sukhdev Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

Gurpreet Singh

CWP-12607-2023
...Petitioner

Versus

State of Punjab and others

...Respondents

With

Jagwinder Singh

CWP-14026-2023
...Petitioner

Versus

State of Punjab and others

...Respondents

With

Rahul Dika

CWP-14105-2023
...Petitioner

Versus

State of Punjab and others

...Respondents

CWP-12331-2023 & connected cases

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With

CWP-12827-2023

Kartik Singla

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-14143-2023

Sahil Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-12848-2023

Prabhjeet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-13182-2023

Satpal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP-12331-2023 & connected cases -3-

With

CWP-13213-2023

Harpinder Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-13216-2023

Baljeet Kaur ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-13462-2023

Ravinder Kaur ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-13953-2023

Bakhshish Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

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With

CWP-14464-2023

Yuvraj Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-26513-2023

Anjani Verma

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-17073-2023

Pavan Kamboj

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-123-2024

Tarsem

...Petitioner

Versus

State of Punjab and another

...Respondents

CWP-12331-2023 & connected cases

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With

CWP-14545-2023

Akshay Bharial

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-16363-2023

Gurmeet Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-16527-2023

Gurpreet Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-18985-2023

Bagicha Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-19272-2023

Rikul Chhatwal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Manisha Nehra, Advocate for
Mr. Vijay Pal, Advocate for petitioner
(in CWP-17073-2023)

Mr. Pardeep Singh Mirpur, Advocate for the petitioner
(in CWP-13462-2023)

Mr. Rakesh Sobti, Advocate for the petitioner
(in CWP-19272-2023)

Mr. Deepak Verma, Advocate and
Mr. Kshitiz Goel, Advocate for the petitioner
(in CWP-123-2024)

Mr. Nitish K. Vasudeva, Advocate for the petitioner
(in CWP-13953-2023)

Mr. Kinshu Mittal, Advocate with
Mr. Nitin Verma, Advocate and
Ms. Sidhi Bansal, Advocate for the petitioners
(in CWP-12331-2023, CWP-12607-2023, CWP-14026-2023,
CWP-14105-2023, CWP-12827-2023, CWP-14143-2023, CWP-
12848-2023, CWP-13182-2023, CWP-13213-2023, CWP-13216-
2023, CWP-14464-2023, CWP-26513-2023, CWP-14545-2023,
and CWP-18985-2023)

Mr. Aman Dhir, DAG, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. As the issue involved is common, with the consent of contesting parties, all the captioned petitions are disposed of by this common order. For

the sake of brevity and convenience, facts are borrowed from *CWP No.12331 of 2023*.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of provisional list dated 25.05.2023 (Annexure P-6) of candidates selected for the post of Sub-Inspectors in Technical and Support Services Cadre, 2021.

3. The respondent-State of Punjab vide advertisement dated 09.09.2021 (Annexure P-1) invited applications for 267 posts of Sub-Inspectors. As per advertisement, 110 seats were meant for candidates from general category and 157 seats were meant for reserved category. The reserved category included scheduled castes, backward class, ex-servicemen, wards of police personnel, Economically Weaker Section ('EWS'), freedom fighter and sportspersons. There was horizontal reservation which included 27 seats for SC (M&B). Out of these 27 seats, 16 were meant for men & women whereas 11 seats were exclusively meant for women. All the advertised seats were divided into four domains i.e. (i) Information Technology Services (IT), (ii) Community & Victim Support and Counselling Services, (iii) Forensic Sciences ('FS') and (iv) Human Resource Management. 18 Specialization/ functions were assigned to aforesaid four domains. Nobody was permitted to apply for more than one domain though within same domain he could apply for different functions. Each domain was allocated particular number of vacancies i.e. IT was allocated 161, Community Support 39, FS 27 & Human Resource Management 40 vacancies.

4. The petitioner applied under SC (M&B) Category for the post of Sub-Inspector. He applied for IT Domain and opted three functions i.e. Cyber

Security (Group-I), Wireless Telecommunications (Group-II), Cyber Crime (Group-III). The petitioner was issued admit card and he appeared in the written test held on 28.09.2022. On the basis of result of written test, the petitioner was shortlisted for Phase-II exam. The respondent on 25.05.2023 issued provisional list of selected candidates. The objections were invited from the aggrieved persons. The respondent considering objections of various candidates released final selection list. The selected candidates were subjected to medical examination. The petitioner is not figured in the final list of selected candidates.

5. Learned counsel for the petitioner submits that 27 seats were reserved for SC (M&B) and respondent has selected 17 candidates from the aforesaid category. The respondent had invited applications for different functions and in Paragraph 5.3 of the advertisement, it was specifically mentioned that applying in multiple specializations/functions would increase chances of selection as cut-off for each specialization/function may be different depending upon number of candidates to be selected in that specialization/function. In the advertisement in Paragraph 9.3, it has been mentioned that candidates shall be arranged in descending order for each domain/specialization separately, whereas respondent has prepared combined merit list and many candidates belonging to reserved category have not been selected in their respective category. There are many domains as well as functions where no candidate belonging to reserve category has been appointed. This is totally against the reservation policy as well as Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 as amended (for short '**2006 Act**'). There was one seat meant for SC (Sports-

R&O) category but despite availability of candidates in the said category, no one has been appointed. The entire selection process is contrary to reservation policy of the Government.

6. *Per contra*, Mr. Aman Dhir, learned State counsel submits that petitioners participated in the selection process and after being declared unsuccessful, they are assailing clauses of the advertisement. The State has acted as per advertisement. Para 9.6 of the advertisement, clearly provides that combined merit list would be prepared and reservation roster shall not be applied to the individual domains/specialization. The grievance of the petitioners has erupted because of combined merit list and non-application of reservation on the individual domain/specialization. Para 9.6.2 of the advertisement further provides that as and when a reservation category and/or domain/specialization gets filled up completely, further selection to that reservation category and/or domain/specialization shall be discontinued. It implies that question of reservation and domain would be considered simultaneously. It is because of this clause many candidates belonging to reserved category have not been selected. There were total 157 seats meant for different reserved categories. 12 vacancies could not be filled up and these have been carried forward for next recruitment process. In the advertisement, it was specifically embodied that there would be no waiting list and if any vacancy remains unfilled, it would not be filled up from left over candidates and would be carried forward for next recruitment process.

7. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

8. It is axiomatic in service jurisprudence that Courts must tread warily while adverting with challenge to selection process. The selection process involves multiple stages and there is normally involvement of experts. It must be left to selection committee to select best of candidates as per their need. The Courts should not substitute opinion of selection committee. The Court can interfere if there is *mala fide* on the part of selection committee or there is violation of statutory provisions or fundamental rights.

9. 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:

“65. Before proceeding further, it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board. The law on the scope and extent of judicial review of a selection process and results thereof, may be understood on consideration of the following case law:

i) In Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan, (1990) 1 SCC 305 : AIR 1990 SC 434, this Court clarified the scope of judicial review of a selection process, in the following words:

“9...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has

no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc.....”

ii) *In a similar vein, in Secy. (Health) Deptt. Of Health & F.W. v. Dr. Anita Puri, (1996) 6 SCC 282, this Court observed as under as regards the sanctity of a selection process and the grounds on which the results thereof may be interfered with:*

“9. ... It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation.....”

iii) *This position was reiterated by this Court in M.V. Thimmaiah v. Union Public Service Commission, (2008) 2 SCC 119, in the following words:*

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions.....”

iv) Om Prakash Poplai and Rajesh Kumar Maheshwari v. Delhi Stock Exchange Association Ltd., (1994) 2 SCC 117, was a case where an appeal was filed before this Court challenging the selection of members to the Delhi Stock Exchange on the ground that the Selection Committee formed for the aforesaid purpose, arbitrarily favoured some candidates and was thus, against Article 14. This Court rejected the allegation of favouritism and bias by holding as under:

“5. ...the selection of members by the Expert Committee had to be done on the basis of an objective criteria taking into consideration experience, professional qualifications and similar related factors. In the present cases, we find that certain percentage of marks were allocated for each of these factors, namely, educational qualifications, experience, financial background and knowledge of the relevant laws and procedures pertaining to public issues etc. Of the total marks allocated only 20 per cent were reserved for interviews. Therefore, the process of selection by the Expert Committee was not left entirely to the sweet-will of the members of the Committee. The area of play was limited to 20 per cent and having regard to the fact that the members of the Expert

Committee comprised of two members nominated by the Central Government it is difficult to accept the contention that they acted in an unreasonable or arbitrary fashion.....”

66. *Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.*

67. *Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.*

10. The conceded position emerging from record is that all the petitioners belong to reserved category and primarily SC (M&B) and as per advertisement, 27 seats were reserved for the said category. 17 seats of the said category have been filled up from SC (M&B) and 2 seats have been filled from SC(R&O). 8 seats have been carried forward. There was 1 seat meant for

SC (Sports-R&O) and the said seat has not been filled up. It has also been carried forward. The petitioners participated in the selection process and they have not been selected. The respondent has prepared combined merit list for the purpose of reservation.

11. Paragraph 5.3 of the advertisement permits candidates to apply for more than one specialization/function. Every candidate was supposed to apply for one domain and one function, however, liberty was granted to apply for more than one function/specialization. This facilitated candidates to apply for more than one function/specialization and it increased their possibility of success. The said paragraph has no concern with preparation of merit list and reservation. It simply creates right to apply for different functions.Paragraph 5.3 of the advertisement reads as:

“5.3 Candidates are required to apply in minimum one Specialization/ Function. However, applying in multiple Specializations/ Functions may increase their chances of selection as the cut off for each Specialization/ Function may be different depending upon the number of candidates to be selected in that Specialization/ Function and the number of candidates applying for that Specialization/ Function.”

12. Paragraph 9.6 prescribes procedure for preparation of selection list. It provides that reservation roster shall be applied as per the State Government instructions on the combined merit list and not on the individual domain/specialization. It further provides that reservation category and/or domain/specialization as and when gets filled up, further selection to that reservation category and/or domain specialization shall be discontinued. The

relevant extracts of Paragraph 9.6 of the advertisement read as:

“9.6 Preparation of the Selection List

9.6.1 For preparation of Selection List, the Reservation roster shall be applied as per the State Government instructions on the combined merit list and not on the individual Domains/ Specializations. The candidates shall be selected in their respective Reservation categories and shall be allocated to a particular Domain/ Specialization as per their overall merit prepared on the basis of aggregate marks of Test 1 and Test 2 as prepared in clause 9.5.1 hereinbefore.

9.6.2 As and when a Reservation Category and/ or Domain/ Specialization gets filled up completely, further selection to that Reservation Category and/ or Domain/ Specialization shall be discontinued.”

13. From the pleadings and arguments of learned counsel for the petitioners, nothing sort of favoritism can be culled out. The petitioners could not be selected because of convoluted mechanism adopted by respondent-State. The respondent, at the same moment, advertized different domains as well as functions and granted liberty to applicants to apply for different functions. The respondent has prepared combined merit list for the purpose of reservation. The reservation has not been applied domain-wise or function-wise whereas reservation policy has been applied on the combined merit list. Resultantly, there was possibility that in a particular domain, no candidate belonging to a particular category is selected. The respondent has selected 145 candidates belonging to reserved category against 157 reserved posts. This indicates that respondent-State collectively has followed reservation policy and duly complied with mandate of 2006 Act. The twelve reserved vacancies have been left vacant. These vacancies have not been filled up from

general category candidates and carried forward for next recruitment process. The grievance of the petitioners has primarily emanated on account of their application in a particular domain or particular function. In Para 9.6.2 of the advertisement, it was clearly mentioned that question of reservation and domain/specialization would run simultaneously. The respondent-State at every point of time was supposed to look at reservation as well as domain. In case, a candidate belonging to a reserved category is selected in one particular domain, it may result into depriving another candidate of said category from his seat in another domain/function e.g. if there is one seat for SC (sports) and two candidates apply under different domains, as soon as one candidate is selected in one domain, another would not be selected in another domain. Similarly, in a particular domain, majority candidates may be from a particular category due to non-availability of candidates of other categories.

14. The petitioners have participated in the selection process and there is no illegality or arbitrariness on the part of the respondent-State. In the absence of *prima facie* illegality or arbitrariness, it would not be fair on the part of Court to interfere in the selection process.

15. It is settled proposition of law that a candidate having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful.

16. 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.”

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.

A two Judge Bench of Apex Court in ***Tajvir Singh Sodhi (supra)*** 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

17. The petitioners have participated in the selection process and they have not been selected on account of combined merit list for the purpose of reservation. They, at this belated stage, cannot dispute mode and manner prescribed in the advertisement.

18. In the wake of above facts and findings, all the petitions deserve to be dismissed and accordingly dismissed.

19. Before parting with the judgment, this Court would hasten to advert with Paragraph Nos.11.5 of the advertisement. In the said paragraph, it has been provided that there would be no waiting list and unfilled vacancies shall be carried forward in the respective reservation category to the next recruitment process. The State counsel during the course of arguments further confirmed that unfilled seats meant for open category would not be carried forward. Paragraph 11.5 of the advertisement reads as:

“11.5 No Waiting List shall be prepared and any unfilled vacancy shall be carried forward in the respective reservation category to the next recruitment. It is however clarified that the Domain(s)/ Specialization(s), if any, would be applicable as decided at the time of next recruitment afresh and may differ from the existing Domain(s)/ Specialization(s).”

20. The selection process commences from the advertisement and completes on the joining of candidates. It is well-known fact that every selection process imbibes a quite long time. There are always possibilities especially in Armed Forces that few candidates at the stage of medical examination are found unfit. There are always further possibilities of selection of same candidate against more than one post. In such circumstances, posts may get vacant and if these posts are carried forward despite availability of eligible candidates, it would waste valuable time and energy of the State as well as prejudice those candidates who are not selected on account of minuscule margin.

21. This Court finds that it would be in the interest of justice, equity and fair play if the respondent-State in view of judgment of Apex Court in *Munja Praveen and others v. State of Telangana and others, 2017(14) SCC 797*, qua vacant posts, re-considered claim of eligible candidates.

22. Pending application(s), if any, shall also stand disposed of.

23. It is hereby made clear that above observation of the Court would not create any right in favour of the petitioners.

(JAGMOHAN BANSAL)
JUDGE

20.01.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>