

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:064886-DB



(105) LPA-1347-2023 (O&M)
Kanchan LataAppellant(s)
Versus
State of Haryana and othersRespondent(s)

(2) LPA-1924-2023 (O&M)
Vikas JakharAppellant(s)
Versus
State of Haryana and othersRespondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI
Present:- Mr. Ravinder Malik (Ravi), Advocate for the appellants.
Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)
CM-3449-LPA-2023 in LPA-1347-2023&
CM-4822-LPA-2023 in LPA-1924-2023

Applications for condonation of delay of 273 and 299 days in re-filing the appeals, are allowed, in view of the averments made in the applications, duly supported by affidavit. Delay of 273 and 299 days in re-filing the appeals is condoned.

CMs stand disposed of.



CM-3448-LPA-2023 in LPA-1347-2023 &
CM-4821-LPA-2023 in LPA-1924-2023

Applications for condonation of delay of 47 filing the appeals, are allowed, in view of the averments made in the applications, duly supported by affidavit. Delay of 47 days in filing the appeals is condoned.

CMs stand disposed of.

LPA-1347 & 1924-2023 (O&M)

1. Consideration in the present letters patent appeals is sought of the order of the learned Single Judge dated 24.08.2022 whereby three writ petitions were disposed of, lead case of which was **CWP-18290-2022 ‘Vikas Jakhar Vs. State of Haryana and others’**. By virtue of the said order, the claim for higher merit and quashing of the service allocation in the final result and the select list dated 12.09.2016 (Annexure P-5) was rejected.
2. The claim was based on the fact that the appellants as such had obtained higher marks in the screening test, whereas the private respondent Nos.3 & 4 had less marks in the preliminary examination. However, since the said respondents were belonging to reserved category, they had been given the benefit of clearing the screening test at a lower threshold. In the main examination, however, they had secured more marks and then allocated HCS (Executive) Service and in such circumstances challenge had been raised.
3. The learned Single Judge had relied upon judgments of two Division Benches passed in **CWP-3144-2019 ‘Naveen Rao Vs. State of Haryana and others’** and **CWP-3093-2022 ‘Ajit Singh Vs. State of Haryana and others’** that the preliminary examination round for the HCS examination is merely a short-listing process and the marks obtained in the same could not taken into consideration. The fact that another candidate had



made the representation and in view of the said representation the Chief Secretary had issued directions, permission to change the category was rejected on the ground that it could not have precedence over the law what has been held by this Court. Even otherwise we are of the considered opinion that if there is any wrongful reference, it would not give any legal or vested right as it is settled principle that Article 14 of the Constitution of India does not operate in the negative and if a wrong benefit is given, it cannot enure to others to claim the same, as the Writ Court will not perpetuate the illegalities. Reliance can be placed upon the judgment of the Apex Court passed in **R. Muthukumar & others Vs. The Chairman and Managing Director TANGEDCO and others, 2022 Live Law (SC) 140.**

4. The terms of the advertisement in question (Annexure P-1) are crystal clear, whereby the scheme of examination is laid out. The preliminary examination was of objective type/multiple choice for screening only and the main examination was conducted in the form of conventional/essay type. As per the condition, 15 times the number of advertised posts in the preliminary examination were to be admitted to the main examination and those who qualified for the main examination would have to apply again, for which they were informed separately. Three times the candidates in the order of merit of main examination were called for personal test/viva voce, as per Note-4. Thus, apparently, the sole consideration was the merit in the main examination as per the terms of the advertisement itself. Relevant terms and conditions of the advertisement read as under:-

“4. SCHEME OF EXAMINATION: The examination will be Combined Competitive Examination (CCE) comprising of the following stages;



(i) Preliminary Examination (Objective Type/Multiple Choice) for screening only

(ii) Main Examination (Conventional/Essay Type)

(iii) Personality Test (Viva-voce)

Note 1: Candidates fifteen times the number of advertised posts including bracketed candidates, if any, in their respective categories in order of merit of the Preliminary Examination will be admitted to the Main Examination.

Note 2: The question paper will be got printed bilingual i.e. Hindi (being regional language) & English except language paper;

Note 3: Candidates who qualify for the Main Examination will have to apply again for which they will be informed separately.

Note 4: Candidates thrice the number of advertised posts including bracketed candidates, if any, in their respective categories in order of merit of Main Examination will be called for Personally Test (Viva-Voce).”

5. The appellants having sat in the said examination were well aware about the terms of the examination. Having been selected but lower in the merit they have been pushed out by the reserved category candidates and they now chose to challenge the merit list on this ground being well aware of the terms of the advertisement which are binding on them. The law is settled in this regard once the candidates have gone through the selection process, cannot then question the same, having accepted the terms and conditions of the advertisement. Reliance can be placed upon the judgment of the Apex Court passed in **Madan Lal and others Vs. State of Jammu & Kashmir and others, (1995) 3 SCC 486; K.A. Nagamani Vs. Indian Airlines and others (2009) 5 SCC 515; Manish Kumar Shahi Vs. State of Bihar and others, (2010) 12 SCC 576; Madras Institute of Development Studies and another Vs. Sivasubramaniyan and others, (2016) 1 SCC 454** and **Ashok Kumar**



and another Vs. State of Bihar and others, (2017) 4 SCC 357. The learned Single Judge was, thus, also bound by the law which has already been laid down by the Division Benches, to which necessary reference has been made. The preliminary test is only a screening test to assess the candidates at the initial level and to reduce the number. The argument that the benefit of reservation has been taken twice is not liable to be accepted, since in as much as it was only on sheer merit having secured more marks the reserved candidates have come in the general category and pushed out the appellants. As per the terms of the advertisement itself, the merit is to be counted on the basis of the marks obtained in the main examination.

6. Resultantly, we do not find any valid reason to interfere in the order of the learned Single Judge. Accordingly, the present letters patent appeals are hereby dismissed in *limine*.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

09.05.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes