

**CWP-4732-2025****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****126****CWP-4732-2025****Date of decision :20.02.2025**

Gurpreet Singh

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL*********Present: Mr. Prateek Rathee, Advocate
for the petitioner.

Mr.Aman Dhir, DAG, Punjab.

***********JAGMOHAN BANSAL, J. (ORAL)**

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking setting aside of Clause 9.3 of Recruitment Advertisement No.5 dated 17.08.2021 whereby respondent has restricted waiting list to 20% of available vacancies for each post. He is further seeking direction to respondent to issue him appointment letter.

2. The petitioner pursuant to advertisement No.5 dated 17.08.2021 applied for the post of Information Technology Assistant (Software) under General Category. He participated in written test held on 21.09.2021. He secured 175 marks out of 400 marks. His name did not figure in the revised waiting list. Mr. Prateek Rathee, Advocate submits that respondent acting in an arbitrary manner has confined waiting list to 20% of vacancies. There are many candidates who have not joined and if candidates beyond 20% of total vacancies are considered, the petitioner would be selected. He has cleared the exam and is a

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qualified candidate.

3. Mr. Aman Dhir, DAG, Punjab who on advance notice is present in Court submits that it is not a case of non-maintaining of waiting list whereas it is a case of regulating of waiting list. The respondent found it appropriate to confine waiting list to the extent of 20% of advertised posts. There is nothing arbitrary or whimsical in the condition in the impugned clause.

4. From the perusal of impugned clause, it is evident that respondent has restricted the waiting list to 20 % of advertised posts. It is prerogative of the State to fix terms and conditions of the advertisement. The petitioner with open eyes participated in the selection process and after having been declared unsuccessful is assailing terms and conditions of the advertisement. The process stands completed.

5. 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 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. The relevant extracts of the judgment read as:

“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.

68. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

i) In Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.

ii) In Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent



observations of this Court are as under:

“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.”

iii) Similarly, in Ashok Kumar v. State of Bihar, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twentyseven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90 : 10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the



interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

“13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100, this Court held that: “18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724)”. ”

6. In any case, it is not a case of non-maintaining of waiting list. The respondent as per its wisdom has restricted the waiting list to 20 % of advertised post. There seems no arbitrariness on the part of respondent. It appears that respondent has considered that candidates beyond 20% of advertised vacancies may not be as qualified/competent as required for the post.



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7. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

20.02.2025
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>