

251 (9)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6748-2021

Date of Decision:21.04.2025

JAGAT PAL

Versus

..... Petitioner

HARYANA STAFF SELECTION COMMISSION AND ANR

..... Respondents

Sr. No.	CASE NUMBER	TITLE
2.	CWP-6913-2021 (O&M)	NAVEEN AND ANR V/S STATE OF HARYANA AND OTHERS
3.	CWP-10002-2021	RAVINDER V/S STATE OF HARYANA AND OTHERS
4.	CWP-4676-2021	JITENDER V/S HARYANA STAFF SELECTION COMMISSION
5.	CWP-4925-2021 (O&M)	MONU V/S STATE OF HARYANA AND ORS
6.	CWP-6205-2021	MOHIT V/S STATE OF HARYANA AND OTHERS
7.	CWP-5057-2021 (O&M)	AMIT AND OTHERS V/S HARYANA STAFF SELECTION COMMISSION AND ANR.
8.	CWP-7062-2021 (O&M)	SANDEEP V/S STATE OF HARYANA AND OTHER
9.	CWP-7987-2021	ANIL KUMAR V/S STATE OF HARYANA AND ANR

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present :
Mr. Rajat Mor, Advocate
for the petitioner in CWP-6478-2021.

Mr. Samrat Malik, Advocate
for the petitioner in CWPs-6913-2021 & 5057-2021.

Mr. Ankur Goyat, Advocate for
Mr. Ramesh Goyat, Advocate
for the petitioner in CWP-10002-2021.

Mr. S.S. Momi, Advocate
for the petitioner in CWP-4676-2021.

Mr. Rajesh Hooda, Advocate
for the petitioner in CWP-4925-2021 & CWP-7062-2021.

Mr. M.S. Gahlawat, Advocate for



Mr. Mohan Singla, Advocate
for the petitioner in CWP-6205-2021.

Mr. Karan Bhardwaj, Advocate
for the petitioner in CWP-7987-2021.

Ms. Rajni Gupta, Addl. AG, Haryana and
for HSSC.

Ms. Nikita Goel, Advocate with
Mr. Aman Bahri, Advocate
for the respondent-Nigam.

Ms. Alka Chatrath, Advocate with
Ms. Shourya Mehra, Advocate
for respondents No.5 to 10
and 12 to 14 in CWP-7062-2021.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-6748-2021.

2. Mr. Rajat Mor, Advocate has put in appearance on behalf of the petitioner (in CWP-6478-2021) and filed his power of attorney. The same is taken on record. Registry is directed to tag the same at an appropriate place.

3. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Advertisement No.11/2019 dated 05.07.2019 (Annexure P-2) to the extent one post was earmarked under EWS quota instead of 10%. He is further seeking direction to respondent to consider him for the post of Assistant Lineman under EWS Category.

4. The petitioner pursuant to advertisement No.11/2019 dated



05.07.2019 (Annexure P-2) applied for the post of Assistant Lineman under EWS Category. The Parliament amended Articles 15 and 16 by Constitution (One Hundred and Third Amendment) Act, 2019. By said amendment 10% posts were reserved in favour of Economically Weaker Section. The respondent-State Government issued notification dated 25.02.2019 (Annexure P-1) whereby aforesaid amendment in Constitution was implemented. It was clearly mentioned in the notification that scheme of reservation will be effective in respect of all direct recruitment vacancies to be notified on or after 01.02.2019. The relevant extracts of notification dated 25.02.2019 are reproduced as below:

“2. QUANTUM OF RESERVATION:

The persons belonging to EWSs who are not covered under the existing scheme of reservation for Scheduled Castes, Backward Classes (Block-A) and Backward Classes (Block-B) shall get 10% reservation in direct recruitment to Group A, B, C and D posts in the Departments/Boards/Corporations/Local Bodies of Government of Haryana and also in admission to Government/Government Aided Educational Institutions in the State of Haryana.

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6. ADJUSTMENT AGAINST UNRESERVED VACANCIES:

A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation.



7. The above scheme of reservation will be effective in respect of all direct recruitment vacancies to be notified on or after 01.02.2019.”

5. The respondent- Haryana Staff Selection Commission issued Advertisement No.11/2019 dated 05.07.2019 (Annexure P-2) inviting applications for the post of Assistant Lineman. One post was earmarked for EWS Category. The petitioner appeared in the written test and secured 85 marks out of 90. 10 marks were earmarked for socio-economic criteria which were to be awarded at the time of scrutiny of documents. The respondent did not consider all the candidates who appeared in written test for socio-economic criteria whereas few candidates i.e. three times of advertised posts were invited for scrutiny of documents. The candidates were invited category wise, meaning thereby, candidates who applied under General Category were considered for scrutiny of documents in General Category whereas candidates who applied under Reserved Category were considered under Reserved Category. On account of said practice many candidates who had applied under EWS Category were not called for scrutiny of documents though they had secured more marks than candidates who applied under General Category. On account of non-inviting for scrutiny of documents, the petitioner despite being eligible was not granted marks under socio-economic criteria. He claims that if he is awarded marks under socio-economic criteria, his total marks would be more than cut off under General Category as well as EWS Category.

6. Learned counsel for the petitioner(s) submit that respondent despite amendment of Constitution and its implementation did not



earmark 10% seats for EWS Category. There was no rationale behind earmarking one seat for EWS Category. The cut off under General Category was 90 and under EWS Category 92 marks. The respondent by not reserving 10% seats under EWS Category violated not only mandate of Constitution of India but also instructions of the State Government.

7. *Per contra*, learned counsel for the respondent(s) submit that requisition was issued to Haryana Staff Selection Commission in January' 2018 and November' 2018 whereas amendment in Constitution was made in January' 2019, thus, there was no question to implement reservation for EWS Category. The petitioners without any protest or demur participated in the selection process and at this belated stage cannot be permitted to doubt advertisement itself. It is a settled proposition of law that a candidate having been declared unsuccessful cannot challenge selection process or advertisement. The cut off marks under General Category are 91 not 90. As per judgment of Supreme Court in ***Tajvir Singh Sodhi and others vs. State of Jammu and Kashmir and others, 2023 SCC OnLine SC 344***, the petitioners cannot assail terms and conditions of the advertisement after participating in the selection process.

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

9. From the perusal of record, it is evident that Anil Kumar (in CWP-7987-2021) secured 51 marks in the written test which are much less than cut off marks under EWS as well as General Category. Similar is case of Shiv Kant and Sanjay Kumar etc (CWP-5057-2021). On being confronted with status of Anil Kumar, Shiv Kant, Rakesh Kumar,



Sandeep Nara, Monu and Sanjay Kumar, learned counsel for the petitioner(s) conceded that these petitioners may not be considered under EWS Category because they have secured lesser marks than cut off under General Category as well as EWS. Pawan Kumar (CWP-6913-2021) already stands selected, thus, his petition has rendered infructuous.

10. The advertisement was issued on 05.07.2019 though Haryana Staff Selection Commission received requisition in November' 2018. In the intervening period, amendment was made in Constitution and State Government issued notification dated 25.02.2019 whereby amendment was made applicable to all recruitments to be notified on or after 01.02.2019. As advertisement in question was issued on 05.07.2019, the Haryana Staff Selection Commission was bound to implement reservation policy *qua* EWS Category. It is interesting to notice that on the one hand respondents are taking stand that requisition was issued prior to amendment of Constitution of India and on the other hand reserved one seat for EWS Category. By reserving one seat under EWS Category, the respondent conceded that there should be reservation for EWS Category, however, committed mistake with respect to number of posts. The respondent in its reply has repeatedly talked about posts reserved for EBPG Category. There was dispute pending before this Court with respect to reservation under said category. A Division Bench of this Court stayed reservation under EBPG Category. The seats reserved for EBPG Category were bound to be transposed to General Category. It appears that on account of litigation with respect to EBPG Category, the respondent earmarked one seat instead of 18 seats for EWS Category.



11. 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.

11.1 In **Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309**, after referring to catena of judgments on the principle of waiver and estoppel, Supreme Court did not entertain 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.”

11.2 The Supreme Court in **Somesh Thapliyal and Another v. Vice Chancellor, H.N.B. Garhwal University and Another (2021) 10 SCC 116** has adverted to challenge to terms and conditions of advertisement or appointment letter by a candidate after his selection. The Court has opined that employer is always in a dominating position, thus,



in case of public employment, terms and conditions are subject to judicial scrutiny. The relevant extracts of the said judgment read as:

“42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”

11.3 A Two Judge Bench of Supreme Court in ***Munindra Kumar and others v. Rajiv Govil and others, (1991) 3 SCC 368*** has held that candidates who have remained unsuccessful in the selection process cannot be estopped from challenging the Rules which are arbitrary and violative of Article 14 of Constitution of India. The relevant extracts of the judgment read as:



“10. It may be noted that Rajeev Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations.”

11.4 A two-Judge Bench of Supreme Court in ***Abhimeet Sinha and others vs. High Court of Judicature at Patna and others, (2024) 7 SCC 262*** has adverted to question of maintainability of writ petition after participating in the selection process. The Court has clearly held that principle of estoppel cannot override the law. To non-suit the writ petitioner at the threshold would hardly be reasonable particularly when the alleged deficiency in the process could be gauged only by participating in the selection process. The relevant extracts of the judgment read as under:-

“IV. MAINTAINABILITY

18. At the outset, it is apposite to address the issue of the maintainability of the writ petitions. It is argued by Mr. Gautam Narayan and Mr. Purvish Jitendra Malkan learned counsel that after having participated in the recruitment process, the writ petitioners having not succeeded, cannot turn around and challenge the recruitment process or the vires of the Recruitment Rules. It is submitted that all candidates knew about the prescription of minimum



marks for viva voce, well before the selection process commenced and the principle of estoppel will operate against the unsuccessful challengers. On the other hand, the learned counsel representing the writ petitioners argued that the principle of estoppel would have no application when there are glaring illegalities in the selection process. Further, estoppel is not applicable when the arbitrariness affects fundamental rights under Articles 14 and 16 of the Constitution of India.

19. *As argued by the learned counsel for the High Courts, the legal position is that after participating in the recruitment process, the unsuccessful candidates cannot turn around and challenge the recruitment process. However, it is also settled that the principle of estoppel cannot override the law. Such legal principle was reiterated by the Supreme Court in **Dr.(Major) Meeta Sahai Vs. Union of India (2019) 20 SCC 17** where it was observed as under:*

“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

20. *Guided by the above ratio, in matters like this, to non-suit the writ petitioners at the threshold would hardly be reasonable particularly when the alleged deficiencies in the process could be gauged only by participation in the selection process.”*



12. As per above-quoted judgments, it is evident that a candidate cannot be estopped from assailing clause(s) of advertisement which are arbitrary and violative of Article 14 of the Constitution of India. The petitioners in the present case are assailing one clause of the advertisement on the ground that it is contrary to Constitution of India as well as notification issued by State Government, meaning thereby, question of validity of the clause is involved. As they are assailing one clause of the advertisement which *prima facie* seems to be contrary to Constitution of India as well as notification, the petitions cannot be rejected at threshold. The matter needs to be examined on merits.

13. It is settled proposition of law that terms and conditions of the advertisement cannot be contrary to Constitution of India, Statutory provisions and Rules. If any clause of the advertisement is contrary to law, it is liable to be ignored or read in the manner as prescribed in the law.

14. The respondent by mistake or otherwise reserved one post for EWS Category whereas there should be 18 posts. The petitioner has secured more marks than last selected candidate under General Category, thus, he needs to be considered under General Category. Similar is case of other petitioners. If the petitioners who have secured marks more than last selected candidate under General Category, are considered for the post, it would disturb appointment of many already selected candidates who have joined service in 2021 and must have settled their family. There is scarcity of job in the country. If the selected candidates, at this stage, are disturbed it may ruin their lives. It would not be in the interest of



justice and fitness of things. 17 petitioners are before this Court and there are 06 candidates who have secured marks less than 90 and have agreed that they cannot be considered under EWS Category or General Category. The remaining candidates need to be considered because they have secured marks more than the last selected candidates in General Category. The respondent has not implemented reservation for EWS Category in true spirit and as per State policy. The advertisement was issued after implementation of reservation policy for EWS, thus, respondent was bound to extend benefit of reservation to EWS candidates.

15. The respondent, at this stage, may or may not be having vacant posts, thus, this Court finds it appropriate to direct the respondent to reconsider all the petitioners who have secured 85 or more marks in the written test. These candidates would be considered for marks under socio-economic criteria. If they are found eligible for marks under socio-economic criteria and their total marks come to more than marks secured by last selected candidate under General Category or EWS Category, they would be selected under EWS Category. If the posts are available they would be adjusted against vacant posts and in the absence of posts, the respondent would create supernumerary posts. The petitioners are pursuing their cause since 2021 and there was certainly lapse on the part of respondent, thus, they cannot be left high and dry.

16. The petitions are hereby disposed of with a direction to respondent to reconsider claim of all the petitioners in above terms except whose claim has been rejected hereinabove.

17. It is hereby made clear that date of joining of petitioners, if selected, would be their date of appointment for all intent and purposes.



18. This order may prompt fence sitters to approach this Court. The benefit of this order shall be available only to present petitioners and it would not be available to any fence sitter otherwise there would be no end of litigation and it may open Pandora's Box.

19. The respondent-Haryana Staff Selection Commission is expected to calculate correct and exact marks of all the candidates. Needful shall be done within a period of three months from today.

20. Petitions *qua* Anil Kumar, Shiv Kant, Rakesh Kumar, Sandeep Nara, Monu and Sanjay Kumar are hereby dismissed. CWP-6913-2021 is hereby dismissed as infructuous.

21. Jitender (CWP-4676-2021) was called for scrutiny of documents, however, he was not awarded marks of socio-economic criteria. He is claiming that by mistake or otherwise, he has not been awarded marks, though he is eligible. The respondent has not assigned reason for not granting marks under said criteria. The respondent while considering claim of other petitioners, may examine claim of Jitender *qua* marks of socio-economic criteria. It is hereby made clear that this Court has not expressed its opinion *qua* Jitender's entitlement to marks under socio-economic criteria.

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

(JAGMOHAN BANSAL)
JUDGE

21.04.2025
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No