



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

218

CWP-14300-2023
Date of decision: 27.05.2025

MANENDER SINGH

.....Petitioner

VERSUS

HARYANA STAFF SELECTION COMMISSION AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Anurag Goyal, Advocate
for the petitioner.

Mr. Rahul Dev, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (Oral)

The present writ petition has been filed challenging the order dated 30.06.2022 whereby the Haryana Staff Selection Commission has withdrawn the recommendation of the candidature of the petitioner against Roll No. 1510439964; the consequential order dated 24.08.2022 (Annexure P-10) endorsed on 29.03.2023 whereby a show cause notice had been issued to the petitioner against termination of his service as well as to the final order dated 01/06.06.2023 whereby services of the petitioner have been terminated, the instant writ petition has been filed.

**FACTS**

2. Learned Counsel appearing on behalf of the petitioner submits that the respondent-Haryana Staff Selection Commission had initially invited applications for 4425 posts of Clerk vide advertisement No. 10/2015 dated 24.11.2015 in various departments/Boards and Corporations in the State of Haryana. Out of these, 301 posts were allocated to the ESM (General) category. Vide a corrigendum, the total number of posts were increased from 4425 to 6134 and the posts allocated to the ESM General Category were increased to 455. The petitioner, being a dependent of an Ex-serviceman, applied for the issuance of an eligibility certificate under the DESM category, which was issued by the Zila Sainik Board, Hisar before the cut-off date. The petitioner uploaded his Online Application Form. He submits that as per the advertisement, there were no separate posts in the dependent ESM category and all the applicants were to be considered under the ESM General category only. It was provided in the advertisement itself that the candidates belonging to the DESM category would be considered on merit for the posts reserved for the ESM, to the extent of non-availability of suitable ESM category candidates. The relevant extract of the advertisement is reproduced as under: -

“The dependents of ESM who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates.”



3. Since there was no separate reservation for the DESM, the petitioner applied under the ESM category and appended his certificate issued by the Sainik Board as a dependent of ESM. Undisputedly, the petitioner appeared in the written examination and qualified the same as per the result declared on 09.10.2017. There was no sub-categorisation of the candidates belonging to the ESM/DESM categories in the result declared. He submits that the petitioner thereafter appeared for scrutiny of documents as well as for the interview and was found successful in the final result declared on 14.03.2018 in the category ESM (General). There was a waiting list of candidates in the said category as well. Even in the said final declaration of results, there was no separate classification of the ESM/DESM category. The petitioner was issued the appointment letter by the respondent-Department on 16.03.2018 and he joined immediately. He further contends that the terms and conditions of the letter of appointment stipulated that every candidate would be on probation for a period of two years and he would also be required to clear the State Eligibility Test in Computer Appreciation and Application (SETC) within a period of 01 year. The petitioner undisputedly also satisfied the said conditions imposed in the appointment letter and was thereafter confirmed as a 'Clerk' in the office of the Director General Health Services. It is argued that one Parmod Kumar Lamboria filed a CWP-4115-2019 before this Court, seeking a direction to the respondents to issue him an appointment as he had more marks than the last selected candidate.



4. A specific challenge was raised to the appointment of the petitioner herein (he was respondent No.5 in the said writ petition) to the post of 'Clerk' under the ESM (General) category. The respondent-Haryana Staff Selection Commission filed its reply wherein, while not disputing the aforesaid factual aspects, it was submitted by the Haryana Staff Selection Commission that at the time of issuance of Roll numbers, no scrutiny of documents is undertaken and the same are issued based on the information furnished by an applicant. It was also averred that the petitioner herein (respondent No.5 in the said writ petition) had applied under the ESM category, whereas the documents suggested that he belonged to the DESM category. It was averred that no DESM candidate was selected for the post in question and it had been informed to this Court that the Commission had already initiated a process for withdrawal of the recommendation made by it, on 30.06.2022, as the recommendation was inadvertent and based only upon the self-declaration of the petitioner. Consequently, the writ petition filed by Parmod Kumar Lamboria was dismissed in view of the aforesaid position as the steps undertaken by the Haryana Staff Selection Commission denuded the petitioner therein of the very foundation of his claim.

5. The consequential Show Cause Notice and the final order of termination of service of the petitioner were thereafter issued by the respondents, which is a subject matter of challenge in the present writ petition.

6. Learned Counsel appearing on behalf of the petitioner has vehemently argued as under: -



- i) He submits that the petitioner had elected the ESM category since no separate reservation category was prescribed in the advertisement for the DESM candidates. Since the DESM candidates were to be considered within the ESM category and the certificate appended by the petitioner in support of his claim clearly reflected his status, hence, there was no mis-declaration on the part of the petitioner and the error, if any, was unintentional and due to lack of understanding.
- ii) He submits that ever since 16.03.2018, the petitioner has served diligently with the respondent-Department and without any complaint of any nature whatsoever. He has an unblemished service record and the termination of his service at such an advanced stage would be extremely harsh, given the circumstances that the lapse, if any, was unintentional; *bona fide* and was not intended to avail any unfair advantage.
- iii) It is submitted that the hardship of the petitioner is further compounded by the fact that during the interregnum, i.e. since his appointment and till the order of his termination, the respondent-State of Haryana had initiated two more recruitment processes. Since the petitioner was already working with the respondents, hence, he did not apply under the said advertisements. As a result of the same, the petitioner has lost out on other opportunities that would have otherwise been available to him for consideration of his claim.



- iv) That the petitioner has not committed any intentional fraud or concealment and having appended the requisite documents along with his application form, his unintended act of ignorance should not invite extreme penalty of ouster of the petitioner from his source of livelihood at this stage when he has his family comprising minor daughter to take care of.
- v) He further contends that undisputedly Parmod Kumar Lamboria had more marks than the petitioner and no other person belonging either to the ESM category or to the DESM category, having more marks than the petitioner, has ever approached this Court impugning the selection process. It is contended that there are numerous judicial precedents where the Courts have struck a balance and have exercised equitable jurisdiction by protecting the employees and also extended the benefit to more meritorious persons who were kept out of the process of selection by directing the creation of a supernumerary post. He submits that the balance of convenience and equitable jurisdiction would warrant this Court to exercise its jurisdiction to balance the equities. He fairly concedes that the petitioner in CWP-4115 of 2019, Parmod Kumar Lamboria, was undisputedly higher in merit and was ousted solely because the respondent-Haryana Staff Selection Commission had withdrawn its recommendation of the petitioner and that in the event of any order being passed in favour of the petitioner, his



right may be revived to claim an appointment for himself as well. He submits that he would have no objection to forego his seniority in favour of Parmod Kumar Lamboria and to redraw his seniority with effect from the date when Parmod Kumar Lamboria is offered an appointment by the respondents, although the other consequential benefits would have to be extended notionally in favour of Parmod Kumar Lamboria.

7. He places reliance in support of his arguments on the judgment of this Court in the matter of ***“Mukesh versus State of Haryana and others”*** passed in CWP-30035 of 2017 decided on 03.03.2020. The relevant extract thereof reads thus-

“The eligibility of the petitioner for the post in question and in the category for which he had applied stood crystallized as on the closing date for submission of application form i.e. 15.03.2016. Counsel for the commission has not been able to deny the claim of the petitioner that as on such date i.e. on 15.03.2016 the petitioner held a valid certificate declaring him to be belonging to the EBP (General) category. Admittedly petitioner in the selection process i.e. written test and interview taken together has secured more marks than the last selected candidates in the EBP (General) Category. Under such circumstances, petitioner is vested with the right to be granted appointment to the post in question against one of the advertised post of Assistant Professor (College Cadre) in the subject of Chemistry in the EBP (General) Category pursuant to advertisement dated 16.02.2016. It is accordingly directed that the Commission would recommend the petitioner for



appointment to the post in question against the EBP Category and which in turn would be acted upon by the State Government.

There is, however, one more aspect that would require to be addressed. Issuing appointment letter to the petitioner would normally entail the ouster of the last candidate in merit who had been appointed to the post in question under the EBP (General) Category. However, under the peculiar facts and circumstances of the case such candidate who would now face ouster would be extremely prejudiced as he/she had also participated in the selection process and has not secured appointment on account of any mis-representation. To overcome such piquant situation and while directing the petitioner to be appointed to the post of Assistant Professor (College Cadre) in the subject of Chemistry under the EBP (General) Category, State Government is called upon to explore the possibility of creating a supernumerary post so as to adjust last candidate selected in order of merit under the category in question.

Writ petition is allowed in the aforesaid terms.

The appointment of the petitioner would relate back to the date when other candidates under the same category were issued appointment letters. Petitioner would also be entitled to all consequential benefits but would not be paid actual arrears of salary for the period he has not worked on the post.”

8. He also places reliance on a Division Bench judgment of this Court in Letters Patent Appeal No. 2018 of 2019 titled “**Jyoti Sharma**



versus State of Haryana and others” decided on 22.03.2024. The relevant extract thereof reads thus: -

“15. Having stated so, we find that while the learned Single Judge did notice various judgments, however, failed to take notice of the fixed criteria laid down by the Haryana Public Service Commission for calculating the total marks. We find that the appellant was entitled to award of 1 mark for her publication in international magazine as noticed above and the action of the official respondents in only granting 0.5 marks is found to be arbitrary and unjustified. The appellant would have, therefore, scored higher marks than respondent no.18 and would have been placed in the select list. Denial of selection has resulted in depriving her of valuable right for consideration of employment on the touch stone of principles of equality enshrined under Article 16(1) of the Constitution of India.

16. Faced with the said situation, learned counsel appearing for respondent no.18 has submitted a compendium of judgments in support of his submissions that even if she has secured lesser marks as she has been appointed and there is no misrepresentation or malafide on her part and the sole reason for denial of appointment to the appellant was on account of wrongful allotment of marks by the Recruiting Commission, she should be albeit allowed to continue. In support of her claim, she relies on Chief Engineer, M.S.E.B. vs Suresh Raghunath Bhokare (2005) 10 SCC 465; Vikas Pratap Singh and others vs State of Chhattisgarh and others (2013) 14 SCC 494; Gaurav Pradhan and others vs State of Rajasthan and others (2018) 11 SCC 352; and Civil



Appeal Nos. 429-430 of 2021 *Anmol Kumar Tiwari and others vs The State of Jharkhand and others* 2021 INSC 101.

17. In the recent judgment ***Vivek Kaisth and another vs The State of Himachal Pradesh and others* (2024) 2 SCC 269**, Hon'ble the Supreme Court observed as under: -

"34. The appellants were not entitled for any equitable relief in view of the High Court as they were the beneficiaries of an illegality committed by the Selection/appointing authority. But then it failed to take this question further, which in our opinion, it ought to have done. What the High Court never answered was as to how much of this blame of "illegal" selection and appointment would rest on the High Court (on its administrative side). Undoubtedly, with all intentions of timely filling of the vacancies, the High Court still cannot escape the blame. From the very initiation of adding future 40 vacancies after the select list was published, the High Court has been privy to the selection/appointment process. The decision of the three-member committee which included representatives of the High Court (dated 21.10.2013) to initially add four more posts to the vacancies, and the fact that the High Court never had any objection to the additional appointments, although these appointments were made under its watch, are significant facts. After these appointments were made, it was the High Court which posted these officers in different districts in the State under Article 235 of the Constitution of



India. It then trained them as Judicial Officers. Not one note, letter, or an objection of any kind has been placed before us which can give even the slightest hint that the High Court, at any point of time, had objected to these appointments! The objection has only come for the first time in form of additional affidavits before the High Court in the writ proceedings when the validity of these two appointments was challenged. The additional affidavit filed by the Registrar General of the High Court before the Division Bench of the High Court says that these appointments were not made in consultation with the High Court. This, however, does not reflect the correct position, to say the least. The High Court has placed the entire blame on the 41 post selection exercise undertaken by the State Commission. This is not the correct position, though undoubtedly the Commission as the selecting authority must ultimately bear the brunt, yet the blame must be shared equally by the State Government and the High Court.

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36. What is also important for our consideration at this stage is that the appellants in the present case have been working as Judicial Officers now for nearly 10 years. They are now Civil Judge (Senior Division). These judicial officers now have a rich experience of 10 years of judicial service behind them. Therefore, unseating the present appellants from their posts would not be in public interest. Ordinarily, these factors as we have referred above, would 42 not matter, once the very



*appointment is held to be wrong. But we also cannot fail to consider that the appellants were appointed from the list of candidates who had successfully passed the written examination and viva voce and they were in the merit list. Secondly, it is nobody's case that the appellants have been appointed by way of favouritism, nepotism or due to any act which can even remotely be called as "blameworthy". Finally, they have now been working as judges for ten years. There is hence a special equity which leans in favour of the appellants. In a recent Constitution Bench decision of this Court in **Sivanandan C.T. and Ors. v. High Court of Kerala and Ors.** (2023) SCC OnLine SC 994 though the finding arrived at by this Court was that the Rules of the game were changed by the High Court of Kerala by prescribing minimum marks for the viva voce, which were not existing in the Rules and therefore in essence the appointment itself was in violation of the Rules, yet considering that those persons who had secured appointments under this selection have now been working for more than 6 years it was held that it would not be in public interest to unseat them. It was stated in Para 58 as under: -*

"58. The question which now arises before the Court is in regard to the relief which can be granted to the petitioners. The final list of successful candidates was issued on 6 March 2017. The candidates who have been selected have been working as District and Sessions Judges for about six years. In the meantime, all the petitioners who



are before the Court have not functioned in judicial office. At this lapse of time, it may be difficult to direct either the unseating of the candidates who have performed their duties. Unseating them at this stage would be contrary to public interest since they have gained experience as judicial officers in the service of the State of Kerala. While the grievance of the petitioners is that if the aggregate of marks in the written examination and viva-voce were taken into account, they would rank higher than three candidates who are respondents to these proceedings, equally, we cannot lose sight of the fact that all the selected candidates are otherwise qualified for judicial office and have been working over a length of time. Unseating them would, besides being harsh, result in a situation where the higher judiciary would lose the services of duly qualified candidates who have gained experience over the last six years in the post of District Judge."

And therefore, one of the directions in the said case was as under:

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In terms of relief, we hold that it would be contrary to the public interest to direct 44 the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated. They were all qualified and have been serving the district judiciary of the state. Unseating



them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest."

The case at hand is on a similar footing if not better than the petitioners in the above case."

19. *The post in question is that of a Medical Doctor in Dentistry and respondent no.18 has been performing her duties. It is not a case where she can be said to be in any manner unqualified. The appellant is also found to be higher in merit. The appellant, therefore, would be entitled to consideration for appointment and her appeal deserves to be allowed. The Haryana Public Service Commission is, therefore, directed to accordingly revise her result after allotting her one mark for the publication in terms of the criteria for selection laid down by them and place her in the merit. Since person lower in merit to her has been recommended by the Haryana Public Service Commission for appointment and the State has already appointed the said person, namely, respondent no.18 -Seema Devi, the appellant would be entitled to the same benefit from the same date. The benefit shall be notional. However, she would be entitled to seniority as per her inter-se merit and continuity in service. She would be also entitled for notional pay fixation accordingly.*

20. *As far as respondent no.18-Seema Devi is concerned, keeping in view the law laid down by Hon'ble*



*the Supreme Court in **Vivek Kaisth's** case (supra), it is directed that respondent no.18 shall continue to perform her duties and her appointment shall be treated as against the subsequent future vacancy. She would be entitled for substantive appointment from the date the said post has fallen available. However, no recovery shall be made for the intervening period and her services shall be allowed to continue.”*

9. Referring to the above, it is contended that the Division Bench had specifically placed reliance on the Constitution Bench judgment of the Hon’ble Supreme Court in the matter of “***Sivanandan CT and others versus High Court of Kerala and Ors***” reported as ***2023 SCC Online SC 994*** to extend equity in favour of the appellants therein on the strength of the duration for which they had rendered service.

10. Reliance is also placed on the judgment of the Hon’ble Supreme Court in the matter of “***Vikas Pratap Singh and others versus State of Chhattisgarh and others***” reported as ***(2013) 14 SCC (494)***. The relevant extract thereof read thus :-

23. In Girjesh Shrivastava v. State of M.P, the High Court had invalidated the rule prescribing selection procedure which awarded grace marks of 25 per cent and age relaxation to the candidates with three years' long non-formal teaching experiences as a consequence of which several candidates appointed as teachers at the formal education institutions under the said rule stood ousted. This Court while concurring with the observations made by the High Court kept in view that upon rectification of irregularities in appointment after a



considerable length of time an order for cancellation of appointment would severely affect economic security of a number of candidates and observed as follows: (SCC p. 714, para 31)

"31. Most of them were earlier teaching in non-formal education centres, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three-year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25%. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs as a result of the High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the non-formal education centres, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary rise at the time of quashing of their appointment by the High Court."

Therefore, mindful of the aforesaid circumstances this Court directed non-ouster of the candidates appointed under the invalidated rule.

24. In Union of India v. Narendra Singh this Court considered the age of the employee who was erroneously promoted and the duration of his service on the promoted post and the factor of retiring from service on attaining



the age of superannuation and observed as follows: (SCC p. 758, paras 35-36)

"35. The last prayer on behalf of the respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so that only few days have remained. He will be reaching the age of superannuation by the end of this month i.e. 31-12-2007. In our view, therefore, it would not be appropriate now to revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior Accountant (Functional) till he reaches the age of superannuation i.e. up to 31-12-2007. At the same time, we hold that since the action of the authorities was in accordance with statutory rules, an order passed by the Deputy Accountant General cancelling promotion of the respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral benefits would be fixed accordingly by treating him as Accountant all throughout.

36. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant (Functional) till he reaches the age of retirement i.e. 31-12-2007 and salary paid to him in that



capacity will not be recovered, his retiral benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of case, there shall be no order as to costs."

25. This Court in Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat although recorded a finding that appointments given under the "wait list" were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

26. In Buddhi Nath Chaudhary v. Abahi Kumar even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed: (SCC p. 331, para 6)

"6. ... We have extended equitable considerations to such selected candidates who have worked in the post for a long period...."

(See M.S. Mudhol v. S.D. Halegkar and Tridip Kumar Dingal v. State of W.B.)

27. Admittedly, in the instant case the error committed by the respondent Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.



28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

29. Accordingly, we direct the respondent State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.

(Emphasis Supplied)

11. He submits that taking note of the circumstances where the candidate crossed the minimum statutory age for fresh appointment, such benefit has been extended. The petitioner, having lost out on material opportunities that had fallen his way in the interregnum, cannot now be compensated as the loss of opportunity is permanent and irreparable.

12. Referring to the above, he prays that a lenient view be taken and that his future and that of his family and children be suitably safeguarded.

**ARGUMENTS BY STATE**

13. Responding to the above, learned State Counsel contends that the petitioner cannot take advantage of his own mistakes. It was expected of him to have made a correct declaration when submitting his application form. Having applied under the ESM category, he cannot say that the mistake was on the part of the respondent-authorities. It is contended that extending any undue indulgence at this stage would amount to giving a premium to the petitioner for his own mistakes. He has further argued that in fact Parmod Kumar Lamboria was higher in the order of merit and that, in the event the appointment of the petitioner is protected, it would be an unjust deprivation of the person, who is higher in the order of merit, to claim appointment against the post. It is, however, not disputed that in the event the petitioner fails to succeed in the writ petition, the said post would continue to remain vacant, as there was no other person in the waiting list who could have been offered appointment against the said post. He also does not dispute that no other claimant has filed any writ petition challenging the final result claiming appointment either as an ESM category candidate or as DESM category candidate. Thus, other persons, if any, were at best fence sitters and that law does not keep vigil for the rights of fence sitters who have not approached the Court of law for protection of their rights.

14. He emphatically submits that once the factual aspect is not being disputed by the petitioners about the category having wrongly been filled up, the decision of the Haryana Staff Selection Commission withdrawing the recommendation and the consequent decision of the



respondent department in terminating the service of the petitioner cannot be said to be illegal, perverse or in violation of law.

15. No judgment has, however, been cited by the Counsel for the State in response to the judgments cited by the Counsel for the petitioner to substantiate his arguments, or as to why the said judgments ought not to be looked into for extending an equity.

16. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.

CONSIDERATION AND DECISION

17. Even though the position of facts remain undisputed that the petitioner had applied under the ESM category despite being a dependent ESM, however, it also remains undisputed that the eligibility certificate appended by him with the application specifically mentioned the petitioner to be a dependent. The law enjoins the appointing authority to verify the certificates and the category under which a recommendation has to be made. It is also not in dispute that the respondents did allow the petitioner to join duties and he also completed the probation as well as the condition of qualifying the SETC as mandated under the appointment order. Hence, even the respondent department initially accepted the recommendation of the petitioner to be in accordance with the advertisement and noticed no lapse. It is also not in dispute that the DESM were to be considered against the vacancies meant for the ESM category only and no segregation of categories was done while declaring result. No person other than Parmod Kumar Lamboria has ever approached this Court claiming his consideration or



appointment under the DESM category on the strength of his marks obtained.

18. The Hon'ble Supreme Court of India has laid down a settled position in law in the matter of ***U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464***, that the Court does not come to the rescue of the fence sitters. A person who has not been vigilant in pursuing his rights cannot come at any later stage and claim his rights. The relevant part of the judgment of the Hon'ble Supreme Court is extracted hereunder:

“8. Our attention was also invited to a decision of this Court in State of Karnataka v. S.M. Kotrayya [(1996) 6 SCC 267]. In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under: (SCC p. 268)

“Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by



the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay.”

9. *Similarly in Jagdish Lal v. State of Haryana [(1997) 6 SCC 538] this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542)*

“The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Virpal Singh Chauhan case [(1995) 6 SCC 684]. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.”

10. *In Union of India v. C.K. Dharagupta [(1997) 3 SCC 395] it was observed as follows: (SCC p. 398, para 9)*

“9. We, however, clarify that in view of our finding that the judgment of the Tribunal in



R.P. Joshi [OA No. 497 of 1986 decided on 17-3-1987] gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.”

11. *In Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347] their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34)*

“34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar [1991 Supp (1) SCC 138]. The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before



appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law.”

12. *The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows:*

“In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time



and delay are most material. Upon these considerations rests the doctrine of laches.”

13. *In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?*

(Emphasis supplied)



19. Although this Court notices that *prima-facie* the action of the respondents may not be labeled as wholly illegal, however, there is also a possibility of lack of human understanding. The facts do not suggest or reflect that there was an actual intent of fraud or to unlawfully avail the benefit of the fruits meant for others. The position may have been different if any other ESM candidate would have claimed a better right to appointment. The position occupied by the petitioner has remained vacant during the period of his removal for want of a candidate from the ESM category. Besides, the petitioner served for nearly 05 years before being removed and the advertisement itself is nearly a decade old. Two other selection processes had been completed in the meanwhile to which the petitioner had no need to apply then, being already in job. He thus lost out on vital career option and now has a grown up child (girl), the scope of judgments cited in defence needs a sympathetic consideration of his claim.

20. Undisputedly, only Parmod Kumar Lamboria had approached this Court for seeking his consideration and appointment, having secured more marks than the petitioner, albeit belonging to the DESM category. The stand of the respondent- Haryana Staff Selection Commission, back then, was that they had not recommended any candidate belonging to the DESM category. The proposition well settled as above, is that if the candidates have chosen not to pursue any of their rights, the Court would not take upon itself the responsibility of going an extra step in extending remedy or relief to a fence sitting candidate.



21. The precedents cited by the petitioner all arose under circumstances, where a person who was lower in the order of merit had been able to secure employment on account of certain mistakes that either occurred on the part of the selecting/appointing agency or on the part of the applicant himself, however, the Courts still chose to exercise their equitable jurisdiction to protect such appointments while extending the benefit to those persons, who remained out of the zone of consideration as a result of the same.

22. Under the given circumstances, it would undisputedly be a case of extreme hardship if the petitioner's plea were rejected at this stage. It would also be impracticable to assume that the petitioner, being married and with children, would be full of same zeal, enthusiasm and academic competence in competing with fresh graduates/pass outs, who might also be vying and competing for the posts in the advertisements that might be issued henceforth. Having missed two earlier opportunities to apply for the advertisements that had been issued in the interregnum period and when it cannot be conclusively said as to when next advertisement or selection process would be initiated and there may be a strong possibility that such an opportunity may not come his way even till he reaches his maximum age bar, the matter needs a more practical approach rather than a text book enforcement.

23. At the same time, this Court is also conscious of the fact that solely on account of the order dated 30.06.2022, whereby the Haryana Staff Selection Commission passed an order withdrawing the earlier



recommendation made by them in favour of the petitioner, this Court had earlier dismissed the writ petition filed by Parmod Kumar Lamboria's. Invariably, if by an act of the Court, the founding reason, in the writ petition that has been dismissed, is restored, the factual aspects as were noticed by the Court in the said writ petition before dismissal would cease to exist, reviving his right to claim appointment on the strength of his merit. Although Parmod Kumar Lamboria is not a party-respondent or the petitioner in the present case, however, turning a blind eye to him would tantamount to a denial of a fair consideration of his right and such deprivation would be an act attributable to the judicial process. A Court of law that imparts justice cannot be a source of injustice. The Counsel for the petitioner as well as the petitioner himself, who were present in the Court during hearing, concede that they would have no objection to grant of benefits in favour of Parmod Kumar Lamboria, over and above them. Hence, while balancing the equities and considering the judgments of the Hon'ble Supreme Court, the Division Bench as well as the Single Bench passed by this Court, I deem it appropriate to allow the instant writ petition with certain directions. The impugned order dated 30.06.2022, withdrawing the recommendation made by the respondent- Haryana Staff Selection Commission, the subsequent orders dated 29.03.2023 and 01/06.06.2023, issuing a Show Cause Notice and terminating the petitioner's services respectively, are hereby set aside. The respondents are directed to reinstate the petitioner herein in service and adjust the petitioner by creating a supernumerary post. Let the same be done by creating a supernumerary post, if the post is not available, against future vacancies. It is further directed

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that since Parmod Kumar Lamboria, i.e. the petitioner in CWP-4115-2019, was undisputedly higher in merit than the petitioner herein, the respondent department shall also offer an appointment to the said writ petitioner, if he is still interested and so desirous against the post held by the petitioner herein.

24. It is further directed that the petitioner herein, i.e. Manender, shall forego his seniority which he may have claimed based on length of service and as per his consent given in Court today, he would have no objection to being placed in seniority below Parmod Kumar Lamboria. Further, Parmod Kumar Lamboria would be given all notional benefits of seniority and appointment (without experience) w.e.f the date when the letter of appointment was issued in favour of the petitioner, i.e. 16.03.2018. The respondents are further directed to do necessary compliance within a period of two months of receipt of a certified copy of this order.

25. It is made clear that the period from the date of the petitioner's termination till his reinstatement would not be treated as a gap period, however, the petitioner shall not be entitled to any actual/notional promotion or financial benefits for the aforesaid period.

MAY 27, 2025
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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