



CWP-23589-2025

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

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CWP-23589-2025

Date of Decision: 13.08.2025

Sushil Kumar

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: - Mr. Surender Pal, Advocate for the petitioner
Mr. Amit Sahni, Additional Advocate General, Haryana
Mr. Kanwal Goyal, Advocate for respondent No.2/Commission

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed *inter alia* seeking a writ of *certiorari* quashing the instructions dated 09.03.2022, Annexure P-10, as also its clarification dated 13.04.2022, Annexure P-11, which make Ex-servicemen (ESM) like the petitioner, who are in service on the basis of reservation, ineligible for subsequent appointment as reserved category candidate. Further, the petitioner has also sought quashing of clause 11(ix) of advertisement 42 to 67 of 2024, dated 02.08.2024, issued by the respondent-Commission to the extent it makes the aforementioned instructions applicable to selection process for the post of Assistant Professor (College cadre) Geography and disentitles the petitioner to claim benefit of reservation under ESM category for the same.



2. Learned counsel contends that the petitioner has applied for the post aforementioned as ESM General category candidate. He is presently working as Clerk in the Secretariat Establishment of Government of Haryana since 09.09.2020, and has been issued 'No Objection Certificate' dated 06.09.2024, Annexure P-3, to apply for the post. The respondents advertised nine posts of ESM General category, against which only six candidates appeared in the Screening Test, and out of them only three have been shortlisted for the Subject Knowledge Test. The petitioner is an Ex-servicemen and is required to be considered for appointment against the post advertised for the category. Despite his high score in the Screening Test, i.e., 33.0556 marks, the respondents have not considered him under the category on account of impugned clause 11(ix) of the advertisement, which is to the effect that an Ex-servicemen who has himself secured employment in civil service on regular basis in any Department/Board/Corporation/University etc. under the State Government by availing the benefit of reservation, shall not be entitled to avail the benefit of reservation in civil service for any subsequent appointment under the Government. It is contended that this clause is illegal as it is in terms of instructions dated 09.03.2022 and 13.04.2022, which have been issued much after the petitioner's joining as Clerk in the Secretariat Establishment. The instructions cannot be made applicable retrospectively so as to deny the benefit of reservation to the petitioner against the post of ESM category remaining vacant. In support of the contentions, he has also relied upon the Full Bench judgment of this Court in *Harbhajan Singh v. The State of Punjab and another*, 1978 AIR (P & H) 33.

3. *Per contra*, learned counsel for the Commission has shown a photocopy of the petitioner's application form for the post in question which



is retained on the case file as Annexure 'A'. Referring to the same, he contends that the petitioner applied under General/Unreserved category, and against the column Applicable Category (AC) in the application form it was clearly mentioned that he was, '*An ESM who has already secured employment in civil service on regular basis in any Department/ Board/ Corporation/ University etc. under the State Government by availing the benefit of reservation*'. Accordingly, the petitioner was well aware that he was being considered as a General category candidate on account of the benefit of reservation under ESM having already been availed by him. He appeared for the Screening Test as General category candidate, but could not be selected for next stage of selection/Subject Knowledge Test vide result dated 11.07.2025. Only thereafter, the instant petition has been filed which is not maintainable as he never challenged that impugned clause or instructions earlier.

4. Submissions made by learned counsel for the parties have been considered.

5. It remains undisputed that the petitioner has been employed as Clerk in the Secretariat Establishment after availing the benefit of reservation under ESM category on 09.09.2020. He applied for the post in question as a General/Unreserved category candidate and appeared for the Screening Test being well aware of the fact that having already secured employment in civil service on regular basis under the Government, he was not entitled to the benefit of reservation as per the impugned clause. He knowingly participated in the Screening Test as a General category candidate and could not be shortlisted for the Subject Knowledge Test being lower in merit. After remaining unsuccessful, he has filed the instant petition challenging clause



11(ix) of the advertisement which renders him ineligible for the benefit of reservation under ESM category on account of having availed the same benefit earlier while getting employment as Clerk. This is in line with the instructions, dated 09.03.2022 and 13.04.2022, issued by the Government. Having participated in the selection process as a General category candidate without objecting to the impugned clause and/or the instructions and remaining unsuccessful, the petitioner cannot be allowed to turn around and challenge the same. No objection of any kind, at any stage prior to filing the instant petition, was ever raised by him with regard to the condition. He, accordingly, assented to the impugned clause which is based upon the impugned instructions, and cannot be permitted to challenge the same at this stage.

6. The view being taken is in line with the settled law laid down by the Supreme Court in *Tajvir Singh Sodhi and others v. State of Jammu and Kashmir and others*, 2023 SCC (Online) SC 344; relevant paragraph whereof reads as under:

39. It is therefore trite 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. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection

process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

7. Since the petitioner has been held not entitled to maintain the petition on the principle of acquiescence, the grounds to challenge validity of the impugned clause as well as the instructions are not being examined.
8. In view thereof, no ground to entertain the petition is made out, and it stands dismissed.

(TRIBHUVAN DAHIYA)

JUDGE

13.08.2025

Payal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No