



LPA No. 2695 of 2025(O&M)

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

LPA No. 2695 of 2025(O&M)

Date of Decision :**September 05, 2025**

Sushil Kumar

.....Appellant

Vs

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present : Mr. Surender Pal, Advocate
for the appellant.

Mr. Puneet Gupta, Addl. A.G., Haryana

Mr. Kanwal Goyal, Advocate
for respondent No.2.

ROHIT KAPOOR, J.

1. Challenge in the present Letters Patent Appeal is to the order dated 13.08.2025, passed by the learned Single Judge in CWP-23589-2025, whereby the writ petition filed by the appellant herein, seeking quashing of the instructions dated 09.03.2002, clarification dated 13.04.2022 and clause 11 (ix) of advertisement dated 02.08.2024, has been dismissed.

2. Essential facts required to be noticed are that the appellant retired from the Indian Navy on 28.02.2019 and after retirement he was appointed as a Clerk in the Secretariat Establishment of Government of Haryana on 09.09.2020, after being given the benefit of reservation for Ex-servicemen (hereinafter referred to as 'ESM'). The Government of Haryana issued



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instructions dated 09.03.2022 (Annexure P-10) regarding the manner in which the benefit of reservation would be accorded to ESM and their children. The said instructions were further clarified vide notification dated 13.04.2022 (Annexure P-11). As per the instructions, an ESM of Haryana, who has already secured employment on a regular civil post under the State Government on the basis of ESM reservation, would not be entitled to again avail the said reservation, for any subsequent appointment under the State.

3. An advertisement dated 02.08.2024 was issued by respondent No.2-Haryana Public Service Commission, Panchkula (hereinafter referred to as 'Commission') inter alia inviting applications for 316 posts of Assistant Professor in the subject of Geography, which were further bifurcated in various categories out of which 09 posts were reserved for ESM-General Category candidates.

4. Clause 11 of the advertisement dated 02.08.2024 stipulated the conditions regarding reservations to various categories and under clause (ix) thereof, the specific conditions governing reservations for ESM candidates, were enumerated.

5. Perusal of the conditions under clause 11 (ix), would show that the same are pari materia to the instructions notified on 09.03.2022, as amended vide notification dated 13.04.2022.

6. It is apposite to extract the relevant conditions of Clause 11 (ix), for the facility of reference and understanding:-

“ix) The reservation for Ex-servicemen of Haryana will be given as per instructions issued vide No. 12/15/2019-4GS-II dated



09.03.2022 and further clarified vide letter even No. dated 13.04.2022 by the Chief Secretary to Govt. Haryana. The candidates belonging to DESM/DFE categories are directed to submit a DESM/DFE certificate valid on the closing date for submission of online application form, as the case may be.

(A) An ex-serviceman who herself/himself or her/his family members has already secured employment in civil service on regular basis in any Department/ Board/ Corporation/ University etc. under the State Government with availing the benefit of reservation.

(i) she/he/herself/himself shall not be entitled to avail the benefit of reservation in civil service for any subsequent appointment in any Department / Board / Corporation / University etc. under the State Government. However, the benefit of age relaxation for securing another employment in a higher pay scale or post shall remain continue;

xxx xxx xxx”

7. The appellant claims that he applied under reserved category of ESM-General, for the post of Assistant Professor in Geography. His application form was accepted and he was issued admit card for appearing in screening test, scheduled to be held on 08.06.2025. He appeared in subject screening test, where only 06 candidates appeared, out of which 03 were short listed for the subject knowledge test. The appellant scored 33.0556 marks out a total of 100, which was much higher than the required 25% marks, i.e. the minimum qualifying marks.

8. Aggrieved by not being found entitled for benefit of reservation under ESM-General Category, in view of Clause 11(ix) of the advertisement, which was based upon the instructions dated 09.03.2022 and 13.04.2022, the appellant approached the writ Court, inter alia seeking quashing of the aforementioned clause of the advertisement, as well as the instructions in question.



9. The learned Single judge vide judgment and order dated 13.08.2025, dismissed the petition in view of the findings contained in paragraphs No. 5 to 7, which are extracted as under:

“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 approve 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.”*

10. Learned counsel for the appellant, while assailing the correctness of the impugned judgment passed by the learned Single Judge, contends that the appellant was wrongly considered as General Category candidate, even though in the application form ‘Mark A’, the Sub-Category was duly mentioned as ESM. It is argued that the mark list (Annexure P-5), wherein the category of the appellant was shown as ESM, has also been ignored. It is argued that failure to consider the aspect that ESM is a horizontal reservation and the fact that the vacancies reserved for ESM had been further bifurcated by the respondent under the general unreserved (ESM) category, shows non application of mind. It is also contended that the instructions dated 09.03.2022 and 13.04.2022 cannot be made applicable retrospectively, since the appellant had availed reservation for the post of Clerk, when such instructions had not come into existence. Reliance has been placed upon the

Full Bench judgment of this Court in “Harbhajan Singh v. the State of Punjab and another, 1978 AIR (P&H) 33”, in support of above contentions.

11. Per contra, learned counsel appearing on behalf of respondent No.2-Commission has argued that the appellant was fully aware of the provisions of the advertisement/instructions, and having participated in the selection process, without raising any objection of any kind, he cannot now be permitted to challenge the same. He contends that the law laid down by Hon’ble Supreme Court of India in the case of ‘Tajvir Singh Sodhi and others vs. the State of Jammu and Kashmir and other 2023 SCC Online SC 344’, is fully attracted to the facts and circumstances of the instant case and the appellant cannot be allowed to approbate and reprobate at the same time. He therefore contends that the Appeal merits dismissal.

12. We have heard learned counsel for the parties and have gone through the material available on record, with their able assistance.

13. Crux of the dispute involved in the matter is whether the Appellant can be granted the benefit of reservation as provided for ESM category? Before proceeding further, it would be necessary to examine the relevant columns of the application form filled up by the appellant:

“Category:	General/Un-Reserved	
xxx	xxx	xxx
Are you an regular employee of Govt. Yes		
Of Haryana:		
Sub Category Detail		
Applicable Sub Category:	Ex-Serviceman (ESM)	



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Are You a Disabled Ex-Serviceman: No

Priority Reserved for Ex-serviceman (iii) falling ii) other ex-servicemen who are eligible to get the benefit of reservation under these instructions;

Applicable Category: 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.”

14. Having carefully examined the contents of the application form, we are of the view that there is no room for any doubt, that the appellant was fully aware of the applicable clause of the advertisement, which disentitled him from availing the benefit of reservation available for ex-servicemen of State of Haryana. Despite being aware of the explicit clause of the advertisement, he participated in the selection process and on being unsuccessful, he approached the writ Court for quashing of the applicable advertisement clause as well as the instructions dated 09.03.2022 issued by the State of Haryana vide notification dated 13.04.2022.

15. Therefore, even if the argument of the learned counsel of the appellant regarding a wrong finding of fact having been recorded, with respect to the Category of the appellant, were to be accepted, it would not come to the rescue of the appellant, as he was not entitled for the benefit of reservation in view of the clause 11 (ix) of the advertisement. The primary reason for dismissal of the writ petition by the learned single judge is the



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acquiescence of the Appellant, which duly stands established from a perusal of the materials available on record.

16. It is for the very same reason, that we do deem it necessary to delve into the issue regarding applicability of the instructions dated 09.03.2022 and 13.04.2022, qua the appellant, who alleges that the said instructions were not in vogue, at the time of his initial appointment. Once he was aware that clause 11 (ix) of the advertisement disentitled him for grant of benefit of reservation under the ESM category, it was incumbent upon him to raise a protest regarding the said bar qua him, before participating in the selection process.

17. Having examined the peculiar facts and circumstances involved in the matter, we find force in the argument of the learned counsel for the respondent, that the appellant cannot be permitted to approbate and reprobate at the same time and that the *ratio decidendi* in '**Tajvir Singh Sodhi's' case (supra)** would be fully applicable, in the present matter. Law is well settled, that the advertisement and its conditions are the magna carta for the purpose of selection and the recruitment agency cannot deviate therefrom. It would be gainful to refer to the observations made by the Hon'ble Supreme Court of India in the case of '**Sureshkumar Lalitkumar Patel & Ors. Vs. State of Gujarat & Ors., 2023 SCC Online SC 167:**

“An advertisement, made pursuant to a notification, binds the parties. It has got all the trappings of a statutory prescription, unless it becomes contrary to either a rule or an Act and change, if any, can only be brought forth by way of an amendment and nothing else. ”



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18. The judgment of the Full Bench of this Court in **Harbhajan Singh's case (supra)** would not come to the aid of the appellant, since the facts and circumstances involved therein, were quite distinct.

19. The appellant has also failed to show that the impugned advertisement clause and/or the instructions dated 09.03.2022 and 13.04.2022 are arbitrary; violate any fundamental rights; lack legislative competence; are actuated in malice; and/or are in violation of the provisions of any Act or statutory rules, which may be grounds, on which the same can be set aside.

20. In view thereof, we do not find any merit in the present Letters Patent Appeal and the same is dismissed.

21. Pending application(s), if any, shall also stand disposed of accordingly.

(ASHWANI KUMAR MISHRA)
JUDGE

September 05, 2025

dinesh/ajaysharma

(ROHIT KAPOOR)
JUDGE

Whether speaking/reasoned. : Yes

Whether Reportable. : No