



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

115

CWP-31866-2024

Date of Decision: 18.03.2025

Kartik Rana

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CWP-34526-2024

Vijaya Rani Singh and another

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

AND

CWP-3163-2025 (O & M)

Shalvi

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sumit Sangwan and Mr. Mohit, Advocates,
for the petitioners.

Ms. Rajni Gupta, Addl. A.G., Haryana.

Mr. G.S. Sandhu, Advocate,
for respondent No.4 (in CWP-34526-2024).

Mr. Balvinder Sangwan, Advocate,
for HPSC (in CWP-31866-2024 and CWP-3163-2025).



JAGMOHAN BANSAL, J. (Oral)

1. By this common order, three civil writ petitions i.e. CWP Nos. 31866 and 34526 of 2024 and CWP-3163-2025 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-31866-2024***.

2. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of result dated 21.11.2024 (Annexure P-6) whereby respondent No.5-Haryana Public Service Commission (in short 'the Commission') has called candidates for interview/viva voce for the post of Senior Scientific Officer (DNA) (for short 'SSO') in FSL, Madhuban, Karnal, Haryana.

3. Respondent No.5-Commission issued advertisement No.7/2024 dated 06.03.2024 whereby applications were invited for different posts in FSL, Madhuban, Karnal. The opening date for filing application was 11.03.2024 and closing date was 26.03.2024. The petitioner submitted his application form on 26.03.2024 under general category. There are three posts of SSO and one is reserved for Scheduled Caste category. The petitioner was issued admit card. He appeared for written test conducted on 25.06.2024. The respondent declared result on 13.07.2024. The petitioner participated in the online process of documents verification/scrutiny and at that point of time, 4 candidates were found eligible including the petitioner, however, at a later stage, 7 candidates were declared eligible for interview.

4. In the advertisement, the respondent has prescribed essential qualifications. The relevant extracts of advertisement are reproduced as below:-



“5. **NAME OF POST AND CATEGORY WISE BIFURCATION OF THE POSTS:**

Haryana Public Service Commission invites online application forms for recruitment of 03 posts of Senior Scientific Officer (DNA) in FSL Madhuban, Karnal, Haryana. Category-wise bifurcation of the posts is as under:-

Categories	No. of Posts
General/Unreserved	02
SC	01

Note 1. The number of posts given against each category is liable to variation.

6. **ESSENTIAL QUALIFICATIONS:**

- (i) *M.Sc. (1st Division) in Zoology/ Physical Anthropology, Genetics Bio-Chemistry/Bio Technology/ Micro-Biology/Molecular Biology/ Forensic Science or its equivalent qualification in any of the above subjects, with Zoology/Botany as one of the subjects at B.Sc. Level.*
- (ii) *Three years analytical/research experience in DNA Finger Printing;*
- (iii) *Hindi/Sanskrit upto Matric standard or Higher Education.*

Desirable:- Experience of working in Forensic Science Laboratory.”

5. The petitioner is assailing qualification/experience required in the advertisement on the ground that prescription in the advertisement is contrary to Rules governing the post. The post in question is governed by Haryana Forensic Science (Group-B) Service Rules, 1980 (in short '1980 Rules'). The said Rules have been amended by Amendment Rules, 2012. There is Appendix 'B' of 1980 Rules. In the said Appendix, essential qualification for the post of SSO has been prescribed. In the said Appendix, essential qualification for the post of SSO (NDPS) and SSO (Scene of Crime) has been prescribed. The relevant extracts of Appendix 'B' of 1980 Rules are reproduced as below:-

8	Senior Scientific Officer (NDPS)	(i) <i>M.Sc. (1st Division) in Chemistry/Forensic Science with specialization in Forensic Chemistry or equivalent qualification in any of the above subjects.</i> (ii) <i>Three years research/analytical experience in relevant subject.</i> (iii) <i>Hindi/Sanskrit upto Matric standard or Higher education.</i>
9	Senior Scientific Officer (DNA)	(i) <i>M.Sc. (1st Division) in Zoology/ Physical Anthropology/ Genetics/Bio-Chemistry/ Bio-</i>



		<i>Technology/ Microbiology/ Molecular Biology/Forensic science or its equivalent qualification in any of the above subjects with Zoology/Botany as one of the subjects at B.Sc. level.</i> <i>(ii) Three years research and analytical experience in DNA Finger Printing.</i> <i>(iii) Hindi/Sanskrit upto Matric standard or Higher education.</i> Desirable:- Experience of working in Forensic Science Laboratory.
10	xxx	xxx xxx xxx
11	Senior Scientific Officer (Scene of Crime)	<i>(i) M.Sc. (at least 2nd Division) in Zoology/ Botany/ Chemistry/ Physical Anthropology/ Human Biology/ Human Genetics/ Bio-Technology/ Molecular Biology/ Physics/ Mathematics/ Statistics/ Forensic Science or equivalent in any of the above subjects.</i> <i>(ii) Three years research and analytical experience in any of the above mentioned subjects.</i> <i>(iii) Hindi/Sanskrit upto Matric standard or Higher education.</i>
12	Senior Scientific Officer (Technology)	<i>(i) M.Sc. (at least 1st Division) in Chemistry/ Bio-Chemistry/ Toxicology/ Forensic Science (with specialization in Forensic Chemistry/ Toxicology) or its equivalent qualification in any one of the above mentioned subjects from a recognized university.</i> <i>(ii) Three years research/analytical experience in the field of Forensic Toxicology.</i> <i>(iii) Hindi/Sanskrit upto Matric standard or Higher education.</i>

6. Mr. Sumit Sangwan and Mr. Mohit, learned counsel for the petitioners submit that from the perusal of 1980 Rules, it is quite evident that for the post of SSO (DNA), there is requirement of 3 years' experience in Research and Analytical. The expression used is 'research and analytical'. The respondent in the advertisement has used expression 'analytical/research' which means experience of either analytical or research is sufficient whereas as per Rules, a candidate must have experience of research as well as analytical.

7. On 27.02.2025, the following order was passed:-

“Reply on behalf of respondent No.4 in CWP-34526-2024 has been filed in Court today, which is taken on record. Registry is directed to tag the same at appropriate place.



The short controversy involved in the instant petitions is whether the candidates who had applied for the post of Senior Scientific Officer (DNA) were required to possess three years' experience in DNA (Finger Printing) qua research as well as analytical or experience of research or analytical was sufficient. There may be a candidate who is having three years' experience of research as well as analytical whereas another candidate may be having experience of either research or analytical. As per reply of Haryana Public Service Commission, they have jotted down same terms and conditions as incorporated in the requisition sent by concerned department.

Reply of the State is not on record.

Mr. Raman Sharma, Addl. A.G., Haryana is hereby directed to explain by way of affidavit of competent authority to the effect whether expression 'research/analytical experience' and expression 'research and analytical experience' carry same meaning and effect or not.

Adjourned to 18.03.2025.

In the meantime, the respondents are directed not to finalize the result.

To be shown in urgent.

Photocopy of the order be placed on the files of connected cases.”

8. Pursuant to aforesaid order, the respondent has filed affidavit dated 17.03.2025 of Director, FSL, Madhuban. The same is taken on record and Registry is directed to tag the same at appropriate place. The relevant extracts of said affidavit are reproduced as below:-

“2. That the present affidavit is being filed in compliance with the directions issued by this Hon’ble Court vide order dated 27.02.2025 in CWP No. 34526 of 2024, whereby the



answering respondent was directed to explain whether the expressions “**research/analytical experience**” and “**research and analytical experience**” carry the same meaning and effect or not.

3. That it is respectfully submitted that the two expressions carry **different and distinct meanings**, both grammatically and contextually, as outlined below:

4. The expression “**research/analytical experience**”, by usage of the symbol “/”, is ordinarily and commonly interpreted to mean “**research or analytical experience**”, thereby signifying that the candidate may possess either **research experience**, or **analytical experience**, or **both**. In this case, **possession of any one of the two** types of experience is sufficient to fulfill the eligibility requirement.

5. On the other hand, the expression “**research and analytical experience**” by usage of the conjunction “**and**”, denotes that a candidate must necessarily possess **both research experience as well as analytical experience**, taken together. Thus, the requirement becomes cumulative and **both conditions must be fulfilled simultaneously** to satisfy the eligibility criterion.

6. That, therefore, it is most respectfully submitted that the two expressions **are not synonymous and do not carry the same meaning or effect**. The expression using the slash (/) creates a **broad and more inclusive eligibility scope**, whereas the use of word “**and**” imposes a **stricter and more limited requirement**.

9. Ms. Rajni Gupta, Addl. A.G., Haryana, Mr. Balvinder Sangwan and Mr. G.S. Sandhu, Advocates submit that petitioners participated in the selection process and after having been declared unsuccessful or sensing that they are not likely to be selected have approached this Court assailing terms and conditions of the advertisement. 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. Mr. Balvinder Sangwan further submits that terms and conditions of the advertisement were prescribed as per requisition received from the Government.

10. I have heard the arguments and perused the record.

11. The respondents vehemently plead that the petitioners after participating in the selection process cannot be permitted to challenge one or another clause of the advertisement. By participating in the process, they acquiesced to terms and conditions of the advertisement. As per principle of estoppel, they are prevented from assailing one or another clause of the advertisement.

12. 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.

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

12.2 The petitioners indubitably participated in the selection process which was initiated in terms of advertisement. As laid down by Supreme Court in above noted judgments, no one after participating in the selection process can be heard to challenge advertisement, however, no candidate can be stopped from challenging validity of the rules or instructions made there-under on the ground that rules/instructions are arbitrary and violative of Article 14 of the Constitution of India.

12.3 The Supreme Court in ***Somesh Thapliyal and Another v. Vice Chancellor, H.N.B. Garhwal University and Another (2021) 10 SCC 116*** has adverted with 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.”

12.4 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.”

12.5 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.”*

13. From the perusal of above-quoted judgments, it is quite 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 applicable Rules, 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 1980 Rules, the petitions cannot be rejected at threshold. The matter needs to be examined on merits.

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

15. From the perusal of affidavit dated 17.03.2025 of the respondent, it is evident beyond the pale of doubt that expression 'research/analytical experience' is entirely different from 'research and analytical experience'. The respondent is also of the opinion that experience of 'research and analytical' means a person is having experience of research as well as analytical whereas expression 'experience of research/analytical' means a person is having



experience of either research or analytical or both. In the advertisement, the respondent has prescribed experience as 'research/analytical' meaning thereby a candidate may be having experience of research or analytical. He is not required to possess experience of research as well as analytical. From the perusal of Rules, it is evident that Legislature has used expression 'research/analytical' for few posts e.g. SSO (NDPS), SSO (Technology) whereas expression 'research and analytical' has been used *qua* posts of SSO (DNA), SSO (Scene of Crime). Both the expressions are carrying different meaning and of different connotation. Both the expressions are not inter-changeable or synonymous whereas both the expressions are independent. Thus, the impugned clause of the advertisement is contrary to Rules. It is settled law that no term or condition of the advertisement can be contrary to Rules. As, in the instant case, impugned clause is contrary to Rules, is liable to be declared invalid.

16. The respondent till date has not finally selected candidates, thus, it would not be inappropriate on the part of this Court to interfere at this stage.

17. In the wake of above discussion and findings, the instant petitions deserve to be allowed and accordingly allowed. Impugned clause i.e. Clause 6(ii) of the Advertisement is hereby declared invalid. The respondent shall consider experience of all the candidates, for the post in question, as per 1980 Rules.

18. Pending applications, if any, also stand disposed of.

18.03.2025

shivani

Whether reasoned/speaking

Whether reportable

(JAGMOHAN BANSAL)
JUDGE

Yes

Yes